

State of the Judiciary

Chief Justice Lawrence W. F'Anson, Virginia Supreme Court of Appeals

Message to the Judicial Conference of Virginia

1978

During the past ten years, court reform has become the byword of the judicial system both in Virginia and throughout the United States. Efforts to modernize the judicial process so as to make it more effective have been numerous. When reviewing court reform, most issues can be consolidated into four major components; a unified court structure, state financing for courts, an intermediate appellate court, and adequate compensation for judges and non-judicial personnel. In presenting the fourth annual State of the Judiciary Report, it is appropriate to relate the achievements and status of the courts during 1978 to these major areas of court reform.

Unified Court System

On December 10, 1973, the Virginia Court System Study Commission reported to the Governor and the General Assembly of Virginia its recommendations for reorganization of the Virginia courts. From that time, Virginia has been evolving rapidly toward a unified model of court organization. In order to evaluate the effectiveness of the Virginia courts as constituted in the resulting 1973 reorganization, the Judicial Council during 1978 commissioned the National Center for State Courts to conduct a major court system study. In addition to the evaluation, this study is charged with developing a blueprint for the future of the Virginia courts. The Council appointed an Ad Hoc Advisory Committee composed of distinguished judges and legislators to assist the National Center on this project.

While the final report of this study is not due until mid-1979, the initial observations are that Virginia's courts are much improved and extremely healthy. Court delay, which is the overriding concern in many court systems, is still not a major factor in Virginia. Notwithstanding the recognized improvements made since the reorganization, the study is pursuing alternatives aimed at further refinement of the judicial system.

Specifically the magistrate system is receiving close scrutiny. Even though the current magistrate system is a measurable improvement over the predecessor justice of the peace system, the present system lacks adequate administrative controls and sufficient training for magistrates. Proposals aimed at continuing the improvement of the magistrate system will be considered by the Judicial Council during 1979. Other areas being reviewed are the utilization of substitute judges in district courts, the administrative policy-making structure for the courts, the possible unification of the circuit courts and the appellate capacity of the court system. When completed, the recommendations from this study will identify clearly the remaining actions necessary to complete the court reform begun by the 1973 reorganization.

While the Court Organization Study is concerned with the broader questions of court structure, many other on-going projects are aimed at advancing the unification of Virginia's courts. One such project is the Computer Utilization Study instituted during late 1978, this project has identified and evaluated the extent of current automation within the courts statewide. The final product of this study will be a systems plan for computerization within the Virginia Judicial

System. This plan will specify those administrative functions within the courts which are most suitable for automation and will provide a cost/benefit analysis of the feasibility of automation in the various sizes and types of courts. In addition, this plan will provide guidelines to facilitate the long range goal of developing a modern management information system.

Uniformity of practice and procedure is another vital element of a unified court system. The Judicial Council continues to plan an active role in recommending improvements in the Rules of court to the Supreme Court. In an effort to achieve greater uniformity of practice throughout the entire court system, the Committee on District Courts during 1978 completed work on a set of uniform Rules for the District Courts. While these Rules will be reviewed by the Judicial Council, the bench, and the bar prior to submission to the Supreme Court, this project is indicative of the constant effort to improve the operation of every court in Virginia.

Other areas in which great strides are being made to improve the district courts include the development of uniform forms for these courts, the publication of a District Court Procedures Manual and an intensified effort by the administrative office of the courts to provide greater technical assistance on a daily basis in the local courts.

While the circuit courts of our Commonwealth are more formal in structure and more stable in nature, they also have been involved in numerous projects to create greater uniformity. The four-year study for the development of a comprehensive set of civil and criminal model jury instructions is nearing conclusion. These instructions should be published by mid-1979 and should be an invaluable resource to both the bench and bar in their joint venture to improve the effectiveness of the administration of justice in Virginia. Of equal significance during 1978 was the development by the Judicial Conference of Virginia of a course of action aimed at improving the sentencing process. Not only has the conference outlined a course of continuing education for judges on sentencing, but the conference also specified the principle objectives and criteria that should be considered by a judge in determining an appropriate sentence. This, together with the establishment of a permanent committee of the Conference to make a continuous study of sentencing, indicates the sincere commitment of the judiciary to attain a high level of competency in exercising this critical function.

The planning capability inaugurated in 1977 gained further impetus during 1978. The multi-year Comprehensive Judicial Plan was amended to provide a clear indication of the direction of Virginia's courts through 1980. Many of the projects originally included in the plan have been accomplished, and this is a tribute to the involvement of the judiciary in the planning process. The continued development of such planning is a requirement if the courts are to stay abreast of trends in court administration.

State Financing

The responsibility for the financial support of the court system is appropriately a function of state government. With the exception of the circuit court clerks' office and all facilities and equipment, a unified judicial branch budget now exists in Virginia. This principle was strengthened further during 1978 by repeal of the requirement that the localities make a contribution toward the support of the district court system. Both this provision and the elimination of any local

contribution to the salaries of circuit court judges are effective in July 1980. At the same time all court fees will be directed to the state's general fund. These changes provide a much more logical financing structure for the state courts.

Also during 1978 the administrative office of the courts assumed responsibility for the criminal fund. This appropriation provides for the payment of court appointed counsel, witnesses, jurors, and similar expenditures. Having the judicial system responsible for these funds, together with the development of an automated budget tracking system, will allow much greater fiscal management of the resources available to the judicial system.

While the extraordinary growth in judicial business has produced an increased need for funds, the unified budgeting process has made possible greater accountability and information about the financing of court operations. During 1978-80, the state budget for the judicial system is \$68,891,810. As large as it is, this figure is miniscule when compared to the spending of state government as a whole. Furthermore, the trend is that the courts continue to produce more revenue than is required to operate them.

In developing the blueprint for the future of the Virginia judicial system, it is apparent that more resources must be committed to the courts. The courts can no longer overlook the development of needed improvements. Wise investment of funds in court improvements now will preclude crisis reactions in the future and will insure that the mission of the system is accomplished to best serve the citizens of Virginia.

Intermediate Appellate Court

In 1973, the Court System Commission recommended that an intermediate appellate court be established, however, the proposal was not enacted by the General Assembly. Since this proposal, the only substantial relief given the Court has been the addition of staff attorneys and the recently granted authority of retired justices to serve as senior justices. While these measures have provided assistance, they must be regarded as limited in the amount of relief they can provide.

The Supreme Court of Virginia has by far the greatest number of cases and the highest caseload per judge of the twenty-two supreme courts without intermediate courts. In addition, Virginia has the largest population of any state without an intermediate court. The number of appeals filed has increased fourfold in the past two decades. The Court nevertheless remains fairly current in criminal cases through use of time saving procedures, however, civil cases require approximately fourteen months from date of trial to the issuance of an opinion by the Supreme Court. Can the court continue to stay reasonably current and still perform the traditional roles of an appellate court?

All appellate courts perform two distinguishable functions. One is to examine the results reached in lower courts to assure conformity to existing law; the other is to redefine and develop the body of law. These functions must be kept in rough balance or the court system will falter. In my opinion, the Supreme Court has reached the point of saturation. All of the justices have a great concern that they do not have time enough to research issues and prepare opinions adequately in

order to perform the Court's role in developing the law.

For these reasons, I am reiterating my support for the creation of an intermediate appellate court to hear in the first instance all appeals from the circuit courts. The creation of such a court should provide the appropriate appellate capacity necessary to augment the improved trial structure established in 1973.

Compensation

Judges should receive salary and related compensation appropriate to their official responsibilities. The salary structure should be adequate to assure that highly qualified people can be attracted to the bench and can continue to serve without undergoing economic hardship. While judicial salaries have improved during recent years, reevaluation of compensation levels due to changing economic conditions must follow periodically. Judicial salaries should never again be allowed to lag significantly behind the salary levels of equivalent professional positions.

The judicial retirement system is an integral part of the compensation package for Virginia judges. Since judges have different career patterns in public service than other employees of government, a judicial retirement system cannot be established on an actuarially sound basis unless the state contribution is high. Notwithstanding this requirement, our current judicial retirement system acknowledges the special circumstances of the judicial office. Various study commissions are at work reviewing the need to make more equitable and fiscally sound the entire retirement program for all state employees. While these efforts are to be commended, no actions should be taken which will affect the ability of persons elected to the bench at advanced ages to achieve maximum retirement benefits by the normal retirement age.

It is equally important to maintain a well-informed judiciary through continuing education programs. During 1978, Virginia has continued to be a nationwide leader in providing such education to all segments of the judicial system. Particularly worthy of note is the Evening College for judges which commenced during the fall semester of 1978. Judges from every level of the trial bench returned to the law school classrooms to participate in semester long courses on topics of importance to their everyday duties. These programs were offered one night each week at Virginia law schools and required a significant investment of the judge's personal time. Once again the dedication of our judiciary is evidenced by its attendance at these courses.

In addition to the existing educational programs, several new courses were implemented during 1978. These programs include: training for circuit court clerks, mandatory training for district clerks, formal orientation programs for judges, clerks, and magistrates, as well as tours or correctional and mental health facilities throughout the state. Similarly, a pilot project providing a law clerk research pool for circuit court judges was begun in 1978. Those judges who have used the services of this project have been pleased with the work product and have indicated that such a program allows for a more effective utilization of judicial time.

The Future

During 1978, the commenced caseloads rose throughout the court system. On the circuit court

level, the total commenced caseload rose to 125,058 or 6.5% higher than 1977. The district court system reported a total of 1,596,654 general district court cases and 176,052 juvenile and domestic relations district court cases. The figures represent increases of 7.8% and 8.4%, respectively. The future will likely present even higher caseloads. Projections suggest that circuit court cases will rise at a rate of 5.1% per year while district court cases will increase by 4.8% per annum.

What do these increases in workload mean for the court system? Increases in workload will require the court system to become even more productive. Personnel are expensive, thus the increase in the number of new positions in the court system must be reduced through increased efficiency. The court system must be flexible and able to adapt to a changing society. The court system must plan better by taking a more active role in shaping its destiny. Better professional management will enable our courts to absorb increased workloads and to adjudicate dispute in a just and economical fashion. Our court system in 1978 is healthy, but we believe as Thomas Edison did when he said, "At any given time there is a better way, the challenge is to find it." We have accepted this challenge and will unswervingly seek improvement in order to retain the respect of the citizen of Virginia.