State of the Judiciary
Chief Justice Harry L. Carrico, Virginia Supreme Court of Appeals
Message to the Judicial Conference of Virginia
1980

My distinguished predecessor established the practice of submitting to this Conference a State of the Judiciary Report. I hope you will permit me to continue the custom. I believe this means of communication serves to promote greater appreciation of the accomplishments of the judicial system, better understanding of its problems, and a clearer picture of the direction it should take.

In preparing I his, my first report, I reflected upon the progress the court system has made in recent years. As all of you know, the progress has been substantial. A review of past accomplishments will be helpful in appraising the problems of the future and seeking their resolution.

All of Virginia's courts now are presided over by full-time judges with legal training. The state has assumed financing for the major portion of the court system. As salaried magistrate system has replaced the fee-funded justices of the peace. Uniformity of practice and procedure has been enhanced throughout the state, and administration of the courts at the state level has been strengthened.

Modern court reform in Virginia began in 1973 when the courts were reorganized. The major impact of the 1973 reorganization was on the courts not of record. In the period from 1973 to 1980, effort was focused on the administrate development of these lower courts. Personnel systems were inaugurated to foster the recruitment, payment, and retention of qualified personnel. Continuing legal education programs were developed to insure that all judges and court personnel received adequate professional training. Uniform procedures and forms were developed on a statewide basis to promote simplicity and fairness. Automation was introduced to allow more efficient use of resources. Many educational pamphlets and manuals were produced to provide citizens with greater knowledge of the courts. Legislative enactments were clarified to facilitate more effective court operations.

Concentration on the district courts and their administrative structure during the decade of the 1970's has produced a sound foundation for Virginia's court system. These achievements have permitted the courts to keep pace with the increasing district court case load throughout the state. Virginia's citizens are being served by better trained professionals in a more uniform and efficient manner. Greater justice in the individual case has resulted.

While 1980 certainly does not mark the end of improvements in the district courts, the next several years must produce an expanded effort to improve the administration or the circuit courts and the appellate capacity of the court system. Administrative problems in both the circuit courts and the Supreme Court, as well as substantive issues confronting the whole judicial system, should be addressed. I would like to review several issues that likely will be at the center of future court reform in Virginia. These issues deserve the attention of all who are concerned with the progress of the judiciary. While open debate is desirable, I would like to offer, suggestions

for resolving these issues in a manner that should strengthen substantially an already solid court system.

The lack of appellate capacity is the single greatest weakness of our current court system. Therefore, the primary priority of future court reform in Virginia should be the creation of a new appellate court. The need for such a court can be demonstrated from several perspectives. From the litigant's standpoint, judicial resources are viewed as inadequate to provide appellate review for all meritorious cases. Whether a case involves major legal principles or simply the rights of an individual party, our appellate system should have the ability to review a matter if there is likelihood of reversible error involved. Unfortunately, and quite incorrectly, the overburden in our appellate system has led to the belief that appeals are refused despite their merit.

From the attorney's point of view, appellate capacity is seen as insufficient to decide enough cases to give adequate guidance in common law principles or to interpret constitutional and statutory law, Trial judges also share this view. This weakness can produce expensive, unnecessary litigation, inferior practice by attorneys, and inconsistent decisions by judges. Each of these results degrades public respect for the judiciary.

The Supreme Court's caseload has grown dramatically in recent years. In 1961, there were 420 petitions filed. This number grew to 2,091 by the end of 1980. In the same period, the number of judges whose work is subject to review increased from 73 to 111 without any increase in appellate capacity. The increased appellate caseload necessarily reduces each justice's opportunity to conduct the extensive research that is desired. Furthermore, the Court recognizes that preoccupation with error-correcting problems hinders the development of the common law.

The need for additional appellate capacity has been studied by a wide variety of groups for over twelve years. The severity of the problem is clear. The time for study has ended, and it is now time for action. On your agenda for discussion later in this Conference is a proposal approved by Judicial Council for an additional appellate court solicit your impartial consideration of the proposal.

The cornerstone of any court system is its judges. Even though a court structure is designed expertly and operated efficiently, it will be unsuccessful without capable and impartial judges. Only qualified judges can earn for their courts the respect of the citizenry. On the other hand, judges can destroy respect through inept practices and unprofessional conduct. Once a court system has been organized, the most important activity is the selection of judges. While the procedure for selecting judges varies from state to state, the need for closer scrutiny of the qualifications and characteristics of the applicants for judicial positions is common to every jurisdiction.

It is my opinion that Virginia should adopt some form of merit selection of judges. The process that is devised should (a) assist the General Assembly in conducting a more thorough investigation of the qualifications of each applicant; (b) provide input from laymen who will bring to the process the voice of the nonlegal community; (c) reduce the influence of politics or of pressure groups; (d) allow equal opportunity for all qualified applicants; and (e) create an open atmosphere in the selection process. Nominating procedure can be designed which will

accomplish these objectives without infringing upon the ultimate authority of the General Assembly. When instituted, this type of merit system will engender greater confidence in the selected candidate and greater respect for the legal system.

In suggesting an amendment to the nominating process, no criticism of existing judges is intended; indeed, none would be justified. Our current system has served us well; however, changes in times dictate a change in the process. The increase in the size of the bar and the movement toward greater lawyer specialization have reduced attorneys' familiarity with one another. The bar and the general public will be better served if procedures exist for the recruitment and detailed investigation of judicial applicants.

In addition to devising a nominating process which will identify the most qualified applicants, we must insure the attractiveness of the position to these applicants. While the prestige of the judiciary is of considerable appeal to most lawyers, the compensation and fringe benefits must be adequate to attract the best members or the legal profession.

The General Assembly is to be commended for its past efforts to keep the compensation package for judges at a competitive level. For years, however, the stated but unattained goal of the Virginia judiciary has been to have the salaries of circuit court judges equal those of the United States District Court judges. In order to reach this level, substantive legislation should be introduced and adopted which fixes the salaries of circuit court judges. at the amounts set by Congress for U.S. District Court judges. Thereafter, the salaries of circuit court judges should maintain parity with the salaries of their federal counterparts, subject to the right of the General Assembly to deny an increase in any given year should a funding emergency exist. Such legislation will preclude annual debates before the General Assembly on salary increases while insuring that the state judiciary can compete with the federal system and the private law firms for the best legal talent.

Just as a competitive compensation package is required to attract qualified persons to the judiciary, it is equally necessary to provide judges with good support services. While the district courts have been furnished adequate services, circuit court judges have been given little administrative support. A number of judges do not have secretarial assistance. Secretarial support for many judges is provided by localities even though the court system is state-financed. Only a small number of judges have access to the services of law clerks, and these services also are supported by localities.

It is false economy to require a professional as highly trained as a circuit court judge to spend substantial amounts of time on activities which could be performed by a secretary or law clerk. Furthermore, providing law clerks will allow more legal research on cases and hopefully produce sounder decisions. Those circuits which have employed law clerks have found that cases are decided faster and that backlog is reduced. Early disposition of cases promotes speedy justice and stimulates confidence in the court system.

The need for secretarial assistance for circuit court judges is apparent. It may be, however, that some judges will feel they do not need law clerks. But, where law clerk services are needed. they should be provided. I propose, therefore, that we seek funding of secretaries and, where

requested, of law clerks for circuit court judges, with each of these employees serving more than one judge. The addition of these services is justified and will increase greatly the productivity and effectiveness of the court system.

Another way in which the judiciary can be strengthened is through the development of more opportunities for the discussion of mutual problems between the bench and the bar. Recently, the Supreme Court received a proposal from representative of the Virginia Bar Association to permit selected members of the bar to attend the Judicial Conference of Virginia. A committee of the Supreme Court met with the Executive Committee of the Judicial Conference of Virginia to review this proposal.

I am pleased to report that the Executive Committee of this Conference has voted unanimously to invite to portions of the next Judicial Conference the members of the Executive Committees of the bar organizations recognized by statute, namely, the Virginia Bar Association. the Virginia State Bar, the Virginia Trial Lawyers Association, and the Virginia Association of Defense Attorneys. This plan will allow more discourse with the leaders of the legal profession and should be beneficial to all concerned.

Several other administrative items deserve attention. First, with the withdrawal of federal funds, the continuing legal education program for the Virginia judicial system is in jeopardy. Virginia has developed one of the most comprehensive judicial education programs in the country. In order to continue necessary training to every segment of the judicial system, the state should assume financial responsibility for these programs.

Second, the Virginia court system is entering a new age concerning internal court operations. Efforts are underway to modernize the clerks' offices through the introduction of automation. Virginia has lagged behind in this area, but now can profit by the experience of other states. Automation of many routine, clerical functions is essential to reduce the growth of personnel and to alleviate the need for new courthouse space to accommodate the volume of paperwork generated by the courts. Automation also can be designed to provide significant research assistance to judges and attorneys.

The third concern deals with development of appropriate means for funding appointment of counsel for indigents accused of crime. The present system of court-appointed counsel is the object of criticism from all sides. The General Assembly objects to the high cost paid by the state, $6,940,532 in 1980, for these appointments. From another view, the attorneys appointed complain that the fees are woefully inadequate and have not keep pace with inflation.

Although the Public Defender System has worked well and has reduced costs in the pilot areas, I am not prepared at this time to suggest that a statewide Public Defender System is the ultimate answer. I do believe that the judiciary, the bar. and the General Assembly should combine efforts to find a workable solution to this problem.

One additional problem merits attention. During 1980, the load of commenced cases rose throughout the state. On the circuit court level, the total number of commenced cases rose to 138,986, or 6.5% higher than in 1979. The district courts reported a total of 1,860,060 regular

cases and 195,317 juvenile and domestic relations cases. These figures represent increases of 9.4% and 4.7%, respectively. Projections indicate that caseloads will continue to increase in the future.

While the extraordinary growth in workload has produced an increased need for funds, the 1980-82 judicial system budget of $104,153,900 is small when compared to the cost of state government as a whole. In projecting the future needs of the Virginia judicial system, it is clear that more resources must be committed to the courts. Wise investment of funds in court improvement projects now will permit cost savings in the future and will allow the courts to operate more effectively.

Virginia has been blessed with sound government, including a qualified judiciary. We continue to use the traditions of the past as steppingstones to the progress of the future. Our course is clear. We must maintain the sound foundation which has been forged by the wisdom and experience of our predecessors and build upon it with our own abilities to fashion a court system capable of meeting the need of today's society. The Virginia judiciary is well-prepared for the task, and it looks forward to the challenge.