

State of the Judiciary  
Chief Justice Harry L. Carrico, Virginia Supreme Court of Appeals  
Message to the Judicial Conference of Virginia  
1983

The presentation of the annual State of the Judiciary Report provides an opportunity to reflect upon past activities as well as a chance to contemplate the future direction of the court system. Both these exercises are beneficial. Only through continuous study and critical evaluation of past and present practices can we insure readiness for the future. Once we have analyzed our past activities and identified our present strengths and weaknesses, we will be better able to chart a steady course. With thoughtful, well-conceived plans, we can successfully meet the demands placed upon the judicial system in the years ahead.

Furthermore, reviewing achievements of the past year affords an occasion to express appreciation to all those who have contributed to improvements in the court system. I number among this group not only the members of the General Assembly who have supported measures promotive of a better judiciary but also those within the system who have given of their time and energy to improve its lot. And I want to take this opportunity to express my personal gratitude to all who have extended to me in the last twelve months a helpful hand of cooperation.

#### A RETROSPECTIVE VIEW

In reflecting upon the past year and the improvements achieved within the judicial system, one naturally starts with the actions of the General Assembly. I know it is no longer news, but I am still pleased to report to you officially that the 1984 General Assembly acted favorably with respect to judicial compensation. As you know, the legislature approved a ten percent salary increase for judges, effective July 1, 1984. This will bring circuit court compensation to \$62,700 annually. In addition, the State will assume each judge's contribution for group life insurance. State assumption of this expense is roughly equivalent to an additional one percent salary increase.

Aside from the dollars and cents involved in the salary increase, I sense a changed attitude on the part of the General Assembly leadership toward the compensation problems of the judiciary. There is some reason to believe, therefore, that the recent General Assembly salary action constitutes recognition that compensation levels must be structured not only to attract and retain men and women of unquestioned integrity but also to entice those who by training and experience have demonstrated a capacity to rise above the level of normal accomplishment and status in their field.

By granting the salary increase, the General Assembly has made a tangible commitment to the maintenance of a qualified judiciary in Virginia. I applaud the members of the General Assembly for their action, but, at the same time, I ask for their continued understanding and support in this vital area.

The General Assembly also approved funding for the newly created Court of Appeals. With an

appropriation of 3.2 million dollars for the next biennium, the legislature enabled the court to commence operation on January 1, 1985.

The General Assembly also made some changes in the set-up of the new court. In the most significant modification, the earlier provision for an appeal of right in criminal cases was deleted and replaced by a petition process similar to the procedure currently employed by the Supreme Court of Virginia. In moving to the petition process for criminal cases, the General Assembly cited substantial monetary savings that would occur by reducing the need for additional staff in the office of the Attorney General. The General Assembly also increased the membership of the new court from nine to ten.

To provide for the orderly start-up of the Court of Appeals, the 1984 legislation specifies that all cases within the court's jurisdiction decided by circuit courts on or after October 1, 1984, and all cases decided by the Industrial Commission on or after November 1, may be appealed only to the Court of Appeals. These provisions should establish a reasonable caseload for the court by the time it begins operation. The rules of practice and procedure for the new court have been prepared and adopted by the Supreme Court, to become effective October 1, 1984, in accordance with the terms of the 1984 legislation.

While the format of the Court of Appeals may not suit even the most ardent supporters of the effort to create an intermediate appellate court, the funding of the new tribunal represents a significant step toward the expansion of appellate capacity in Virginia. After the court has operated a while and we are able to identify areas needing improvement, I am confident the General Assembly will act reasonably to rectify any shortcomings.

In the meantime, the new court deserves a chance to prove its worth. In this effort, it will need the support of the bench, the bar, and the public to make certain that it becomes an integral and valuable part of our judicial system. I solicit your cooperation as we endeavor to implement this new member of the family of courts.

The General Assembly also took positive action, albeit less than we requested, to improve a situation that had reached near-crisis proportions. Despite substantial annual increases in the workload of the district courts, no new positions have been budgeted for the clerks' offices of those courts in the last four years.

In our budget request, we sought 105 new positions in district court clerks' offices for the biennium. The General Assembly gave us 44. This action should provide at least partial relief, and for this I am grateful to the General Assembly. And I want to express my personal appreciation to all the employees of the court system who assumed additional duties and worked longer hours to insure that the public was served despite adverse conditions.

In addition to providing new employees to help with our workload problems, the General Assembly authorized funding for the continued automation of the courts. With the new money, we will be able to automate 48 additional courts during the next biennium. This means that 72 courts will have one or more automated systems by June 30, 1986. These improvements will provide advanced computer technology to assist Virginia's courts in the delivery of services to

the public during a period of increasing demand.

One further action of the General Assembly is worthy of note. In adopting the biennial budget, the legislature made funds available to restore the continuing judicial education program to the level it had reached prior to the termination of L.E.A.A. financing. Beginning this coming July, we will have limited funds for training at the National Judicial College and other recognized out-of-state educational programs. Furthermore, we will be able to reinstate visits to correctional and mental health facilities and to again provide law school evening programs for judges.

By appropriating \$151 million for operation of the judicial system during the next biennium, the General Assembly has presented the judiciary a strong challenge. We must utilize these funds in an efficient manner and also address forthrightly the weaknesses within the judicial system. While this challenge brings with it new responsibilities, I know you join me in accepting both the challenge and the new duties. And I am sure you share my gratitude to the General Assembly for its favorable action on judicial compensation and its appropriation of other funds for improving the court system.

## FUTURE DIRECTIONS

Having reflected on the activities of the past year, we should now turn our attention to the future. In reviewing the Comprehensive Judicial Plan approved by the Judicial Council, I found and am pleased to report that of the seventy-one tasks to be performed during the 1983-86 time frame, thirty have been undertaken and some have already been completed. This is a commendable beginning. More remains to be done.

I want to mention three major areas requiring initiative during the next two years. These areas are: Procedural restructuring, merit selection of judges, and public confidence in the courts.

### Procedural Restructuring

In evaluating our courts from a procedural perspective, three areas of deficiency are apparent. The first involves the current division of responsibility between juvenile and domestic relations district courts on the one hand and circuit courts on the other regarding adjudication of domestic relations matters. A study is presently underway to identify the legal and operational problems generated by this division and to seek their solution.

The realization has emerged from the study that many of the problems in this area have their roots in the trial de novo concept. This leads me in turn to believe that the time has come to consider the elimination of the provision for trial de novo in appeals from both general district courts and juvenile and domestic relations district courts.

The historical basis of the trial de novo provision—the part-time nature of the lower courts—no longer exists. The legal basis—the necessity to satisfy the constitutional requirement of a jury trial—presents a more difficult, but perhaps not insurmountable, problem. Some observers believe the constitutional problem can be solved by requiring the parties in cases within the jurisdiction of the district courts to elect between a trial by judge at district court level and a trial

by jury in circuit court.

The abolition of the trial de novo would eliminate duplication of effort within the judicial system and reduce both time and expense to litigants. It is obvious that serious study must be given the issue. It is time to begin this review. As we proceed with our investigation of the need for a family court, I am hopeful that we can expand the scope of this inquiry and seriously pursue options to the trial de novo procedure.

Jury management is another area requiring improvement. Excessive waiting time, last-minute continuances, lack of juror orientation, inefficient summoning and qualification procedures, excessive exemptions, and long periods of juror service are but a few of the areas cited for improvement by citizens and court system personnel. A blue-ribbon panel of judges, lawyers, and clerks of court has been appointed to address these issues as well as review the American Bar Association's new Jury Management Standards. Hopefully, this study will lead to innovative suggestions which can be implemented throughout the State. Other states have found that improved jury management presents an opportunity to save tax dollars and to establish better public relations within the citizenry.

Finally, in the procedural area, emphasis must be placed on providing fair and equitable sentencing policies in the courts of the Commonwealth. During this conference, you will hear concerns expressed about widespread disparity in sentencing. Later, the Governor's Task Force on Sentencing will present its views on sentencing disparity at a series of regional meetings in the fall. From what has appeared thus far, it is clear there is a need to gather better information on persons accused as well as to obtain accurate comparative sentencing data. We must begin the preparation of detailed statewide reports of sentences imposed by various jurisdictions for specific offenses with similar characteristics. Distribution of the reports to all judges on a continuing basis should significantly reduce sentence disparity. In addition, I feel compelled to renew my call for elimination of jury sentencing as another positive step toward reduction of disparity and the introduction of professionalism in this important part of the trial process.

#### Merit Selection

For many years numerous individuals and groups have called for merit selection of judges as a means to insure the continued high quality of our judiciary. The creation of a Judicial Nominations Commission has been the traditional proposal aimed at effecting merit selection. The General Assembly has rejected on several occasions legislation creating such a commission. It became obvious to me last year that alternatives must be found to accomplish the objectives of merit selection. For this reason, I proposed in my 1983 report to you that judicial nominating commissions be created in Virginia but that their recommendations be made advisory only and not binding upon the General Assembly. I voiced the hope that, in time, the worth of the commissions might become so evident that their recommendations would carry more than advisory weight.

Last year's proposal fared no better than its predecessors. Indeed, merit selection's most ardent legislature supporters have become so disheartened that no bill on the subject was introduced at the last General Assembly session.

My belief in the worth of merit selection remains constant. I urge once more, therefore, that judicial nominating commissions be created in Virginia, with advisory authority only. I make one concession, however; I propose creating the commissions on a trial basis, say for five years. If, at the end of that period, the commissions have not proved effective, then I will be the first to admit the whole idea should be scrapped; and I will officiate at its burial.

### Restoring Public Confidence

The lack of public confidence in the courts, demonstrated so vividly in the recent Hearst Report, stems primarily, I think, from a lack of public understanding of the courts. In an effort to better inform the public concerning the operations of the court system, Judicial Council is considering a number of objectives with specific tasks aimed at implementing each objective. Several of the proposals deserve your consideration.

For example, Council is in the process of developing policy guidelines for all judicial system personnel. The guidelines would standardize and encourage dissemination of appropriate information to the public by identifying what is releasable information and prescribing release procedures. The purpose of this project is to insure that, when information is released, it meets "fair trial, free press" standards and is accurate.

Other projects include efforts to encourage members of the judicial system to speak to the public through appropriate forums such as churches, colleges, civic organizations, and the media. In addition, plans are being implemented to expand law-related studies in Virginia elementary, middle, and high schools. Supplemental texts are being prepared to assist in teaching the subject of Virginia's judicial system in school grades K through 12.

Last, but certainly not least, one of the Council objectives urges the chief judge of each circuit to develop a docent, or court tour, program similar to plans presently operating in several areas of the state.

The Hearst survey I mentioned a moment ago showed that fully one-half the people in this country believed that a person accused of crime must prove his or her own innocence. The same poll also showed that 52% of high school graduates and 83% of those with an eighth-grade education or less harbored this mistaken belief.

I find these figures shocking, to say the least. And I think we are duty-bound to do something about the situation.

Informed observers believe that the way to reduce the 50% overall figure is to work with those making up the 52% and 83% groups, or, in other words, those in school below college level. And I am convinced that one of the best ways of capturing the interest of these young people is through the docent program, enabling them to visit the courts and to learn firsthand how the legal system operates.

As some of you know, I have been advocating the expansion of the docent program into every

corner of the Commonwealth. I am happy to report that the idea of a state-wide program might become a reality. Only recently, the Virginia Lawyer's Auxiliary, an organization that represents all the bar auxiliaries in Virginia, agreed to appoint a state-wide law-related education committee to coordinate the docent programs already in existence and to encourage and support the formation of others throughout the Commonwealth.

I must emphasize, however, that neither the docent program nor the remainder of Judicial Council's education plan will succeed without your encouragement and support. I request, therefore, your active participation in an effort to eradicate from society the sort of ignorance which would cause half our people to believe that one accused of crime must prove himself or herself innocent.

The task of educating the public will not be an easy one; indeed, it represents a giant undertaking in which success might be an elusive goal. But succeed we must. It is our duty as judges to help develop an enlightened citizenry, well informed on basic principles and better equipped to participate in the administration of justice.

This and the other tasks I have outlined for future attention all have as their common goal the restoration of the courts to a position of public respect. Your cooperation is vital to the achievement of this essential goal. As I solicit your support, I am at once made confident of your affirmative and wholehearted response, for which you have my sincere gratitude.