

State of the Judiciary
Chief Justice Harry L. Carrico, Virginia Supreme Court of Appeals
Message to the Judicial Conference of Virginia
1984

Each year as I prepare for the presentation of my remarks on the State of the Judiciary, I gain a new sense of enthusiasm. This enthusiasm is fueled by both the pride I have in the accomplishments of the past year and the anticipation I feel for the challenges which await us in the coming twelve months. By reflecting on the activities of the judicial system since our last conference and by sharing with you my thoughts on our future direction, I hope not only to describe the state of the judiciary but also to renew your spirit and to enlist your support in making necessary improvements to the system.

Clearly, the highlight of the past year was the emergence of the Court of Appeals as a full-fledged member of the judicial family of Virginia. Meeting in special session on December 17, 1984, the General Assembly elected ten judges to the newly created court. The inaugural session of the court was held in Richmond on January 4, 1985. That day signified not only the culmination of years of effort to expand the appellate capacity of our state, but it also marked the beginning of a new era for the Virginia judicial system. The institution of this court should provide increased appellate opportunity for litigants and allow the Supreme Court more time to develop the common law. Greater development of the law will improve the practice of law, elevate judicial performance, and ultimately enhance public confidence in the legal system. I know that each of you joins me in extending best wishes to all the judges of this new court as they begin their important mission.

In another significant event, the advisory committee studying the adjudication of family law matters in Virginia's courts submitted its final report to the Judicial Council. This report concludes a year's study by numerous judges, lawyers, and clerks concerning the overlapping jurisdiction of, and division of responsibility between, the circuit and juvenile and domestic relations district courts in regard to domestic relations matters. The most serious problem identified by the advisory committee is the emotional damage inflicted on children and parents by the uncertainty inherent in the present system. The committee concluded that the de novo appeals process contributes to this emotional damage by permitting multiple hearings in several courts. The lack of stability and continuity of relationships for the children involved can exist for years under the current structure. The advisory committee has recommended the abolition of the juvenile and domestic relations district court and the creation of a family law division of the circuit court. The Judicial Council distributed copies of this report to all judges and clerks for their comment, and you will have several hours on your program at this Conference for discussion of this important issue. Hopefully, after everyone involved has had an opportunity to study and comment on the proposal, Judicial Council will be able to formulate a course of action which will address problems raised by this overlapping jurisdiction.

In addition to the Family Court Study, the Judicial Council has recently commissioned a review of the trial de novo concept in Virginia. As noted, this review stems, in part, from information gathered during the Family Court Study, the advisory committee concluded that the negative

aspects of trial de novo also reach into general district courts. Similar concerns were expressed by the National Center for State Courts in its 1979 study of the Virginia court system. Based on these concerns, an advisory committee of judges, lawyers, and clerks has been formed to analyze and report on problems resulting from application of the trial de novo concept in Virginia's general district courts. This report will be available to the Judicial Council in October. The Council will distribute copies of the report to the entire judiciary for review and comment prior to taking any action.

In January of this year, following several years of study, the Judicial Council adopted Standards Relating to Juror Use and Management in Virginia. These standards address every aspect of jury selection and service, ranging from identifying prospective jurors and accurately predicting the court's need for jurors to providing adequate and comfortable facilities during jury service. The goal of these jury standards is to increase the overall efficiency of jury operations while reducing costs and improving attitudes of citizens about jury duty. The fulfillment of these standards is something which should be addressed by each circuit court, and I encourage each of you to work with the appropriate administrative officials on the local level to review and to implement the standards.

Pursuant to authorization by the 1984 General Assembly, the Supreme Court of Virginia has formed a committee on rules of evidence. Consisting of distinguished judges and lawyers, this committee is charged with the responsibility of formulating by September 1, 1985, recommendations for a Code of Evidence for Virginia. The Supreme Court has already received drafts of several proposed rules. Once the Court has received the final work of this committee, a tentative draft will be circulated to the bench and bar for comment. After receiving comments, the Court will determine whether to recommend to the General Assembly a specific Code of Evidence for adoption. While this process is difficult and time consuming, hopefully the end product will improve the practice of law in Virginia and increase fairness in our courts.

As you know, the issue of sentencing disparity has been discussed for many years. In response to that debate and the recommendations of the Governor's Task Force on Sentencing, this Conference recently conducted six regional seminars on sentencing guidelines. After completion of these seminars, the Executive Committee of this Conference voted to form an ad hoc committee to study and produce a proposal for voluntary sentencing guidelines. This committee will not actually produce the guidelines but will develop a methodology for their formulation. Its proposal will then be made available to all members of the Judicial Conference for consideration. At that time, should the Conference choose to endorse any type of sentencing guidelines, we would proceed with their implementation. I expect that the work of this committee will be completed during the summer months and that further reports will be made available to you through your regional seminars.

Indicative of the national attention being given to families in general, and children in particular, the past year has seen much activity in the family law area. As you know, Congress passed the Child Support Enforcement Amendments of 1984, which led to the Virginia General Assembly's adoption of legislation transferring child support enforcement from the courts to the Executive Branch. Effective October 1, 1985, the Division of Support Enforcement of the Department of Social Services will assume responsibility for the collection of support payments. This policy

shift will have a significant impact on our juvenile and domestic relations district courts in that clerks will not be permitted to collect and disburse support payments after October 1, 1985. Payments will have to be made either between the parties or through the Department of Social Services in both current and future cases. In that regard, courts will have to take greater care to insure that support orders include the required specified information. Hopefully, these steps will lead to closer monitoring of support payments and to greater enforcement of court orders.

Last year, I reported that the Hearst Survey revealed a majority of our citizens are grossly uninformed about the court system. While this problem continues to plague us, action has been taken to address these concerns. During last fall, law-related education materials, consisting of supplemental texts on the court system for social studies teachers, were distributed to grades K through 12 throughout Virginia's school system. These materials should enable our teachers to better equip school children with knowledge of how our legal system operates. In addition, the Judicial Council has prepared and distributed Public Information Goals and Objectives for the Virginia judicial system. These goals and objectives establish numerous tasks to be accomplished at both the state and local level in order to do a better job of educating the public about the judicial system. These tasks indicate an affirmative attempt by the judicial system to improve the public's understanding of the courts and hopefully its confidence in the system. I trust you will review and implement the suggestions made in the Judicial Council's publication.

Various committees of this Conference have been active during the past year and I especially want to recognize the combined efforts of the Judicial Administration and Judicial Education Committees in undertaking work on a Circuit Court Judges Benchbook. You will hear more about the materials contained in the benchbook later during this Conference, but the Benchbook, when completed, should assist all judges in better discharging their duties.

A review of the past year would be incomplete without mention of two points which specifically deal with both circuit and district judges. The past year has seen thirty lawyers come to the bench for the first time. This represents a turnover in our judiciary of approximately ten percent in one year. The addition of this large number of new judges reminds us that we should constantly give our attention to ways to attract qualified lawyers to the bench. The 1985 General Assembly has made a tangible commitment to the maintenance of a strong judicial system by granting a nine percent increase in judicial salaries, effective July 1. We applaud this recognition of the fact that the judicial compensation package is the single most important item in attracting qualified lawyers to the bench. While I continue to be encouraged by the improvements in judicial salaries, I am dispirited by current efforts in the General Assembly to reduce retirement benefits for judges. As the House Appropriations Committee conducts its study of the judicial retirement system, I hope that we will be able to demonstrate that existing retirement benefits are absolutely necessary if we are to maintain a qualified judiciary. I seek your support in making this point clear to all legislators.

On a related point, I must report to you with regret that the concept of merit selection of judges is no closer to reality than it was when I addressed you from this podium last year. I remain convinced of its worth, however, and I shall take advantage of every opportunity to advance its cause as an appropriate means of insuring the continued high quality of the Virginia judiciary.

To determine those areas of the judicial system which need improvement, it is best to go directly to the participants in the system. For the past several years, as a part of our planning process, we have conducted surveys of judges, clerks, magistrates, members of the bar, and lay citizens. In order that we might chart a course for future action, I want to share some of the results of this year's survey with you.

In the realm of the public's image of the judiciary, nearly 75 percent of all respondents characterize Virginians' knowledge about the court system as uninformed. Among citizen respondents, less than 10 percent feel that Virginians are informed about the basic structures, procedures, and services of the courts. Citizens mention numerous issues which are misunderstood, including constitutional rights, plea bargaining, sentencing, continuances, and the degree to which court personnel may assist the public with cases. What should be done to address these deficiencies? The responses most often given suggest the development of professional slide presentations or public service announcements on the functions and services of the courts. In addition, expansion of court docent programs and formation of Bench/Bar/Citizen Conferences on the judiciary are advocated to increase understanding of the courts. As I mentioned earlier, all of us at both the state and local levels must concentrate on ways to better educate the public on the judicial system.

Next, we sought to determine what services should be offered to citizens who utilize the courts. Perhaps as a result of legislative initiatives as well as increased media coverage regarding treatment of victims and witnesses by the legal system, participants suggest that handbooks should be prepared for victims and witnesses explaining their role in the judicial process and that there should be additional funding to compensate victims for their injuries or losses. Also, it is significant to note that most of the responses to this inquiry list creation of mediation and arbitration services for certain types of cases as a needed improvement in the court system.

Another major topic addressed in the planning survey relates to the pace of litigation. While sixty percent of respondents express satisfaction with the speed of litigation, increasing interest is expressed in developing case management techniques and procedures to improve the pace and efficiency of litigation. Suggestions include streamlining discovery, making continuances more difficult to obtain, expanding pretrial conferences, and modernizing scheduling procedures. The institution of time standards for case processing is also seen as an appropriate way to reduce delay and expense in litigation. Each judge must be willing to reevaluate every custom, every procedure, not just for the sake of change but to see if there can be legitimate improvements in the speed and cost of litigation.

Of particular importance in the development of long-range planning for the judicial system is the response to an inquiry which asked what issues should be recognized and addressed by policy-making bodies, judges, and court personnel within the judicial branch. Citizens appear to be most concerned about attracting qualified lawyers to the bench, eliminating delays in litigation, and improving public access to the courts. While current projects are underway to address each of these concerns, both the Judicial Council and the committees of this conference should note these issues and seek to identify new initiatives to remedy them.

As was the case in 1982, when asked what one concrete change in the operation of the judicial

system should be implemented today, the largest number of respondents mentioned creation of a family court. Also listed in the top responses were abolition of trial de novo, elimination of jury sentencing, and creation of a statewide public defender system. When asked what long-term problems should be addressed, respondents listed the desire for greater access to the Supreme Court, development of alternative forms of dispute resolution, and the need to increase resources, particularly technological, in order to process the high volume of litigation.

I cannot conclude this brief glance at the future direction of the court system without touching on the entire area of technology. In order to imagine what technology will be available in the next ten years, one need only review how far we have come in the last ten years. It is almost incomprehensible for the average person to envision the strides which are expected in this area during the next decade. In the past, the judiciary has lagged behind private enterprise and indeed the remainder of society in application of technology. The workload will not allow us to make the same mistake in the future. Proper exercise of the trust given us by the citizens will not allow it. We who manage the system cannot tolerate it.

Technology requires us to exercise fertile and vivid imaginations. We must scrutinize every facet of court operation to determine how technology may assist us in doing a better job. We truly live in an age in which we can achieve most anything our minds can perceive. And members of the judiciary must be leaders in both perception and achievement.

When we become judges, we assume a dual trust. First, we must perform the duties of our office honestly and with diligence. Second, we have the responsibility to leave the office in better professional shape than we found it.

How one judge carries out this trust will differ, substantially, perhaps, from the way it is fulfilled by others on the bench. But, remembering that we are engaged in a never-ending search for truth and justice, each of us must contribute to the creation of a judicial environment in which all judges, present and future, can pursue these elusive concepts with greater fervor.

Because this contribution is the responsibility of the present members of the judiciary, we hold these conferences in an effort to keep abreast of new and changing ideas. Let us therefore learn what we can at this meeting and return home proud of our past, involved in the present, and better prepared for the future.