

State of the Judiciary  
Chief Justice Harry L. Carrico, Virginia Supreme Court of Appeals  
Message to the Judicial Conference of Virginia  
1985

Today I depart from tradition and offer, not my usual comments on the past, but instead a change of focus from the past to the future, from what is to what might be. While concentration on present concerns is a fulltime responsibility for each of us, on occasion we must be willing to free our minds from the daily routine and think of tomorrow. The problems of the future can be minimized only if we have the foresight to plan for likely change.

Virginia is a state in transition. I know that you share my pride in the distinguished history of the Virginia judicial system and my gratitude for the rich heritage which has been handed down from past generations. But what will we pass on to succeeding generations? Will our legacy be a judicial system which stands as proud, as stately, and as functional as the plantation homes along the James, or will be bequeath a system worn and crumbled like houses suffering from years of neglect and disrepair? Those in this room today are responsible not only for maintaining our present system but also for forging a pathway to the future. How, then, can we ensure that our system will be strong and responsive to the changing needs of our state and her citizens?

First, our system must have a sound foundation upon which future change can be built. Together with our predecessors, we have laid such a foundation in Virginia. Next, we must direct our energies toward the anticipation of needs. Even though our system will be subjected to short-term pressures and alterations, its long-range development must be in accordance with a well-conceived and well-designed blueprint which creates a structure capable of serving all citizens in the changing world of the next century. To develop this blueprint, we must form a vision of what the judicial system will need to be in the year 2000.

In November 1982, Governor Charles S. Robb created the Governor's Commission on Virginia's Future. This Commission brought together distinguished Virginians from all walks of life to give careful thought about the shape of Virginia's future. During this past year, the Judicial Council of Virginia, in developing the 1986-88 Comprehensive Judicial Plan, identified the need to create a similar Commission on the Future of Virginia's Judicial System. Pursuant to Council's action, I shall convene members of the bench, the bar, the legislature, and the media, as well as lay citizens, and challenge them to be visionaries. I shall charge them with the task of defining the demands likely to face the Virginia judicial system in the twenty-first century and of recommending courses of action to address these requirements.

Because of the nature of this Commission, I want its members to probe a broad range of issues which may concern the judiciary in the future. While every recommendation of the Commission may not find ultimate favor, the research and insight of this body should prove invaluable in the final resolution of most any problem.

For a few moments, I want to share with you some of the issues I think the Commission might address. In mentioning these issues, I do not advocate or take a position on how they should be

resolved. I merely call for thought, research, debate, discussion, and, hopefully, consensus on these topics.

I will suggest that the Commission be organized into six task forces, with each task force concentrating on the peculiar problems within a topical area, namely:

1. Projection of Current Trends
2. System Structure
3. Planning and Administration
4. Technology
5. Education
6. Finance

### PROJECTION OF CURRENT TRENDS

Present projections indicate that Virginia will have a population of 6.6 million people in the year 2000. What does this 1.3 million increase over our current population mean to the judicial system? The goal of the task force for this subject will be to formulate both the population and economic trends for Virginia and to relate these expectations to the judicial work-load. Questions to be answered include: What will the caseloads for each type of court be in the next century? Where geographically will these cases be heard? What types of cases will the courts be handling? What information systems will be needed to track and try these cases? How many people will be needed, both judicial and non-judicial, to process this work-load? Can we develop models which will enable us to project our workload in the next century? The answers to these questions will identify the magnitude of the problem and will form the basis on which the other task forces will work.

### SYSTEM STRUCTURE

One of the most difficult areas for this Commission will be that of system structure. The task force on this subject will need to explore the roots of the present judicial system and to ask that troublesome question: Is there a better way? Our present system is strong because our predecessors were willing to change when change was clearly indicated by different times and circumstances. By way of analogy, few of us today would select a doctor who practiced medicine according to the standards and procedures used twenty years ago. We all can foresee that drastic changes will occur and improvements will be made in the practice of medicine between 1986 and 2000. If we can see and accept the inevitability and need for change in that profession and even demand it, is it so difficult to appreciate that similar changes and improvements will be necessary and dictated in our own profession? The need for an examination of this area perhaps can also be demonstrated by briefly reviewing the past twenty years within the court system.

Since 1965, there have been enormous changes in the operation of the courts, including a major restructuring of the entire judicial system in 1973. As a result of these changes, the numerous trial courts and different courts of limited jurisdiction have been consolidated, the number of circuits reduced from 40 to 31, part-time and non-lawyer judges eliminated, a magistrate system

established, an intermediate appellate court created, and many standardized procedures introduced. Dozens of other programs and administrative services also were developed or expanded. In addition, there have been major fundamental changes in the law, some of which were due to shifts in societal values. In 1965, many of the Supreme Court decisions which altered the course of the law and the administration of the courts (e.g., Miranda, Terry, Gault, Argersinger) were yet to come. Legal aid offices with fulltime staff were just being established. Dramatic increases in crime rates also were just beginning to make their effects felt by the courts.

As you can see, the past twenty years have brought monumental changes. Can we expect the next twenty years to be any different? The questions for consideration by the systems task force are complex and varied, but they must be asked. Should the magistrate system be abolished and a suitable alternative found? Should the use of substitute judges be abandoned? Should we create a statewide public defender system to provide defense services to the indigent? How should we deal with the growing area of administrative law? Should a system of administrative law judges replace our present hearing officers? Should the membership of the Court of Appeals be increased and the Court's jurisdiction expanded to include all civil cases? What is the best way to manage the judicial system? These are but a few of the areas which are fertile for debate and in need of direction.

To remain viable and strong, a judicial system must be flexible enough to change as the needs of society change. Furthermore, a truly outstanding system must be able to reflect the changes in society on a timely basis and not lag thirty years behind. The work of the Commission will allow us to speculate intelligently on the character of tomorrow's society and to visualize the type of judiciary necessary to be responsive.

## PLANNING AND ADMINISTRATION

As I indicated earlier, planning is the backbone of our ability to minimize future and problems control our own destiny. Those with contrary views contend that planning is useless because the future is uncertain; therefore, we should just react to change, when it comes, in the best way we can. Yet, who among us would start to build a new house without a blueprint? If planning is necessary for an investment such as a new house, it seems clear that we should plan for the expenditure of nearly 95 million dollars of taxpayers' money per year. Additionally, it is only logical that the most successful management practices of business should also be used in government. I believe that Virginia is fortunate to have in place one of the most comprehensive and sophisticated judicial planning systems in this country. The work of the Commission on the Future of the Virginia Judicial System should propel our efforts to even greater heights. It will allow us to expand our horizons and to look at true long-range planning in addition to our short-term goals.

Planning promotes research and study. Research and study produce progress and improvement. Through planning, we seek to find ways to improve the judicial system. For example, a great concern to all citizens is the need to attract qualified lawyers to the bench. In response to this concern, the task force on planning and administration should study the question of judicial selection. While merit selection of judges is an ideal objective, the Commission should consider

all systems used today for selecting judges and should feel free to recommend major changes in our present selection system. In addition, the Commission may want to consider whether some form of judicial evaluation would be beneficial.

Another major concern expressed by citizens is the delay in court proceedings caused by either excessive continuances or poor scheduling. Development of ways to improve calendar management should be a high priority of the task force on planning and administration. Likewise, careful deliberation should be given to whether Virginia should follow the lead of many other states and adopt time standards for case processing and whether alternatives to court adjudication should be pursued for certain types of cases. Mediation, arbitration, and other similar programs have been found successful elsewhere in limited cases such as domestic disputes and minor civil matters. We should study these concepts for possible application in Virginia. Other topics which merit detailed study include the concept of sentencing guidelines, judicial sentencing versus jury sentencing, victim-witness programs, implementation of the recently adopted jury management standards, and systematic ways to improve court facilities. Consideration of these and other issues constitute a formidable task, but their importance is such that we must not delay in beginning the job.

## TECHNOLOGY

This year, we celebrated the fortieth anniversary of the computer. Look at what has been accomplished in that short period of time! Even more important, consider the accelerated pace by which technology has multiplied in recent years. All projections call for an expansion of that pace in the years ahead. Indeed, the most powerful computer in use today will be available on the office desk within five years. The strides expected in technology by the turn of the century are almost incomprehensible.

The rapidly changing nature of technology requires us to be dreamers as well as long-range planners. We must be willing to re-evaluate every custom, every procedure, in order to determine how technology can assist us.

Forty years ago, when I was trial justice, I jokingly told my clerks I would invent a machine that would take the spoken word and transmit it to the printed page. I told them that such an invention would ensure my financial independence and eliminate the need for secretarial help. While it was a joke then, it is my understanding that such a capability will likely be available commercially within five years. Such a machine now exists, but it has a vocabulary of only 1000 words. We are truly living in a technological revolution. Members of the judiciary must be willing to use the products of this revolution to further enhance court services.

## EDUCATION

Education provides the knowledge, skill, and confidence to help us discharge our responsibilities. Education, however, is not an activity which can be permitted to start and stop, but instead is an exercise which must never cease. Those who are willing to join the exercise can remain vital, integral parts of their profession. Those who are unwilling are left behind; they stand to witness the diminution of their contributions to society and their profession. The task

force on education must conduct a critical review of our existing continuing legal education programs for both judicial and non-judicial personnel. Our present education programs contain most of the necessary ingredients, but we must look at ways to improve them. Should continuing legal education for judges be mandatory? Should judges be allowed educational sabbaticals? Should our pre-bench orientation program be expanded and made more intensive? Should the judicial education program be associated with one of the state law schools in order to take advantage of available expertise? Can community colleges be used to assist in training clerks and magistrates? Again, these questions only scratch the surface of education issues meriting review.

In a related matter, I would request the task force on education to deal with the topic of a public information program for the judiciary. The Judicial Council of Virginia has recently adopted Public Information Goals and Objectives for Virginia's Judiciary, calculated to address the problem of the public's understanding of the judicial system. The task force on education should translate these objectives into long-range programs. Specifically, the task force should decide whether to seek to have the present law-related education materials incorporated into the formal curricula of Virginia's schools, grades K - 12; how to expand the creation of docent programs for court visitations by schoolchildren; what audiovisual materials should be developed to explain the operation of the courts and the concepts of our Constitution; whether more bench, bar, media, and citizen's conferences should be conducted; what types of adult education programs should be initiated; and whether the court system should establish a public relations component.

As people better understand the courts, their confidence in the judicial process will be increased. As this confidence increases, so too will their acceptance of the courts' actions. Public understanding, confidence, and acceptance should produce a more orderly society and reduce divisions among people. Can we afford not to take all necessary steps to accomplish this end?

## FINANCE

In 1973, when the Virginia courts were reorganized, a major shift in policy was achieved. For the most part, the courts became state-financed. Since that time, the General Assembly has been generally receptive to the financial needs of the judiciary. It will be necessary, however, for a task force to wrestle with the difficult problem of identifying the financial needs of the judicial system in the next century. By identifying these needs now, we can provide the General Assembly a better opportunity to develop means necessary to meet them, while maintaining the sound fiscal policies which have been traditional in Virginia.

The importance of providing adequate funding for operating the judicial system was emphasized by the results of the recent comprehensive planning survey. Those results demonstrate that attracting a qualified judiciary is the key factor in maintaining a strong judicial system and that adequate compensation is the single most important factor in accomplishing that goal. While recent General Assembly actions have been commendable, the task force must decide what the compensation needs of the judiciary will be in the future and how these needs can be satisfied so the Commonwealth can maintain a qualified judiciary. The task force on finance may want to consider whether the creation of a compensation commission is appropriate for Virginia and how best to insure that adequate compensation is available to all non-judicial personnel in the court system.

Other issues worthy of attention include whether the state should finance secretaries, law clerks, and office expenses for circuit court judges; whether financing of the circuit court clerks' offices should be the province of the judicial system rather than the Compensation Board; and whether the state should assume financing of equipment costs in the courts. In addition, on the revenue side, the task force should examine ways that courts can improve the collection of fines and costs. Even though the courts usually collect more money than they spend, millions of dollars remain uncollected each year. This situation should be improved. With the assistance of experienced and capable financial leaders, ways can be found to insure that the necessary resources are available to the courts without an unreasonable drain on state revenues.

In brief, this outlines some of the issues which could be addressed by the Commission on the Future of Virginia's Judicial System. I know that some will question the need for such a study. Indeed, some may point to similar efforts and discredit the results. What is it, then, that we seek? Will we allow this to be simply another study to gather dust on the shelf when concluded? I sincerely hope not. What we seek is a forum for discussion of new ways to improve the operation of our court system in the future. What we will discuss is the method and manner of delivering justice.

As former Chief Justice Edward E. Pringle of Colorado has stated, "The all-embracing statute, the best-possible rule, the most soundly grounded line of decisional law—all lose their effect unless there be speedy and impartial treatment when the citizen looks to the courts for relief. Constitutional guarantees become meaningless where antiquated procedures exist, where delay is endemic, and the attempted dispensation of justice is but a sad response to the written mandates of fundamental documents from the Magna Carta on down. Our problem is not our law, but how best to translate it into prompt resolution of disputes."

Speculation on the future is uncertain and difficult. It does not allow for the precision that those trained in the law desire. The difficulty of the task often dissuades the fainthearted. And yet, it is our professional responsibility to utilize our experience to build a bridge from the present to the future.

Oliver Wendell Holmes struck the keynote of what I expect from the Commission on the Future of Virginia's Judicial System. He once said:

Law is the business to which our lives are devoted, and we should show less than devotion if we did not do what in us lies to improve it, and, when we perceive what seems to us the ideal of its future, if we hesitate to point it out and to press toward it with all our heart.