

State of the Judiciary
Chief Justice Harry L. Carrico, Virginia Supreme Court of Appeals
Message to the Judicial Conference of Virginia
1996

Today, our courts are called upon to decide increasingly numerous and complex disputes and to do so efficiently with limited resources. Judges must consider and resolve issues that encompass a broad range of problems encountered by the members of our society. As Alexis de Tocqueville observed more than 150 years ago, after traveling throughout this country: "[S]carcely any question arises in the United States which does not become, sooner or later, a subject of judicial debate."

We can only anticipate that these pressures will continue to grow in the coming years. Only through continuous study and critical evaluation of past and present practices can we ensure readiness for the future. When 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.

The presentation of this annual report on the State of the Judiciary affords me the opportunity to review the events of the last twelve months as well as the occasion to suggest new ways of resolving the concerns facing the judicial system.

Effective access to justice, including the capability to resolve disputes without undue hardship, cost, inconvenience, or delay, is often facilitated by the use of technology. A total of 322 courts are now on our automated information system. During 1996, we continued with implementation of the automated system for magistrates' offices, and the system now has been installed in 122 such offices.

A statewide court electronic mail system that allows communication between judges, court clerks, magistrates, and the state administrative offices has been successfully implemented. In addition to electronic mail correspondence, this system provides bulletin boards for information storage and distribution. Not only does this system afford greater communication among all the courts in the state, but it will also provide a vehicle for interfacing with other state agencies, for example, the electronic transfer of court orders to the Department of Corrections.

In March of this year, the Virginia judicial system installed a homepage on the internet. This site features approximately eighteen months of opinions from the Supreme Court and Court of Appeals of Virginia, in addition to opinion searching capabilities, court informational brochures, and general information about each court, including addresses, telephone numbers, and terms of court. While we need to continue discussing the Internet as a vehicle for offsite access to the courts throughout the state, we have for several years maintained the law office public access system, or LOPAS, as a convenient vehicle for lawyers and the public to access the courts. This system allows, via modem, law offices and the public to access recent opinions as well as any information which could be obtained through a public access terminal in any of our circuit and

district courts. There are now over 650 subscribers on LOPAS, and it continues to be a popular way for the public to gain information from the courts without actually going to the courthouse.

Within the past few years, the daily workloads of Virginia's juvenile and domestic relations district courts have increased dramatically. In addition, new mandates have been adopted, designed to increase the access of litigants to courts involved in both civil and criminal proceedings. As a result of these changes, juvenile and domestic relations district courts now face a complex, and in some cases, conflicting set of demands for the effective and efficient processing of the types of cases within their jurisdiction. Further, the procedures used for processing cases through many juvenile and domestic relations district courts are not suited for handling the demands of today's caseloads.

As a result, litigants, victims, witnesses, attorneys, law enforcement officers, and others daily experience lengthy periods in crowded courthouses waiting for their cases to be called. Even more perplexing for litigants are the delays of weeks or months they may experience between the initial filing of a case and the actual date the court hears and disposes of the dispute.

The need to reduce court delay in processing cases in juvenile and domestic relations district courts became serious enough for the Commission on Youth to note in its 1995 Study of Juvenile Justice Reform that uniformity in procedures and the elimination of unjustifiable delay must be addressed through improved court docketing. On the basis of this concern, we have begun to develop a comprehensive statewide approach to improve the calendar management and docketing processes in the juvenile and domestic relations district courts.

Delay in the dispositions of cases generally is a principal cause of the loss of public respect for the courts and the main factor contributing to the lack of public confidence in the quality of justice. We hope that the statewide approach we are taking to improve docket management in juvenile and domestic relations district courts will help alleviate the problem of delay and enhance the public's perception of the quality of justice in Virginia.

In addition to the problem of delay in juvenile and domestic relations district courts, there has been considerable concern about how these courts handle cases of children who are abused, neglected, or placed in foster care. In light of this concern, a study was undertaken. The goals were praiseworthy -- to improve the processing of such cases and reduce the amount of time children spend in foster care, with permanency achieved as early as possible, but no later than two years from the date of initial placement.

In December 1996, the Judicial Council received a comprehensive report on the study; upon which the Council acted favorably. This led to the introduction and passage of legislation at the 1997 session of the General Assembly designed to "standardize and speed up the process" of handling cases involving children who are abused, neglected, or placed in foster care.

In the last twelve months, we have continued to support the use of alternative dispute resolution methods around the state with particular emphasis upon mediation. Our focus has been to increase the demand for and interest in dispute resolution by the public, the Bar, and the courts; to improve the quality of mediation services by providing better trained and more qualified

mediators, and to develop new dispute resolution options for litigants. Standing Committees in the areas of training, certification, ethics, and education have been created to provide for greater input and involvement of the ADR community in meeting these objectives. As you will note, we are sponsoring an additional one-day training program at the conclusion of this conference, dealing with alternative dispute resolution. It is my hope that every member of the judiciary will take advantage of the various training opportunities and will seek to learn more about the options available and how alternative dispute resolution can effectively be used to provide quality service to the public.

In addition to reviewing the activities of the past year, it is important to turn our attention to the future. Virginia's courts, particularly the district courts, are designed to provide ready access to justice for all litigants. Today, increasing numbers of pro se litigants and other court users appear at clerks' offices or in court needing extensive information and assistance. Studies have documented that it takes three times longer for court personnel to assist an unrepresented litigant than one who is represented. In addition, unrepresented litigants frequently seek advice that court personnel must refuse to give for fear of engaging in the unauthorized practice of law. According to district court clerks, this sort of situation often leaves both the clerks and the litigants feeling frustrated and powerless.

In the courtroom, pro se litigants often appear with forms that are incorrectly selected, improperly completed, or simply outdated. In such circumstances, a judge is put in the untenable position of trying to provide a level playing field for both sides without helping one party to the detriment of the other.

To address some of these concerns, the Judicial Council has proposed the creation of a pilot project leading to the establishment of a District Court Services Center. As envisioned, the goal of the Center would be to enhance access to court services while maximizing cost effectiveness, individual accountability, and linkages with services that already exist in the community. Five distinct service components would be offered under the umbrella of the Center. These are:

1. Magistrate services on a full-time basis;
2. User-friendly court forms and information and assistance for pro se litigants;
3. Legal advice on questions commonly asked of judges and court personnel;
4. Alternative dispute resolution screening and services; and
5. Referral to community human service agencies for assistance with other needs.

As proposed, the Center would be a collaborative effort of the courts, local Bars, clerks and magistrates' offices, and local human resource agencies. The Center would be located in an office convenient to courts and resource agencies and would seek to assist pro se litigants and other citizens seeking information or assistance with court processes. Hopefully, funding can be found to provide a pilot project in both an urban and a rural setting.

The Center would offer a comprehensive approach to the delivery of court services. Its establishment, even on a pilot basis, would provide tangible evidence of the judicial system's commitment to improving access to justice.

The Commission on the Future of Virginia's Judicial System, the Virginia State Bar, local Commissions on the Status of Women, and numerous other organizations have encouraged efforts to eliminate both the presence and the perception of gender bias in the legal and court systems. Extensive background work has been undertaken by the Judicial Council in order to construct a focused approach to this issue in Virginia. As a result, we are moving forward with the creation of a Gender Bias Task Force that would conduct research and document areas of gender bias in the court system; study the overall process within the system for handling allegations of misconduct based on gender discrimination; recommend ways to raise the consciousness and sensitivity of judges, lawyers, and court personnel to gender issues in the court system; and recommend training packages for each segment of the system in an effort to institutionalize a gender-fairness approach to all. It is the expectation that such a task force will not only assist in identifying problem areas that might remain but also will aid in offering solutions that will ensure greater confidence in the judicial process.

There can be no doubt that, in the future, technology will continue to be a driving force in the administrative operation of the court system. Recognizing the need to take advantage of all the technologies that are available to the system, we are establishing a Technology Advisory Committee, composed of informed persons from private enterprise, to assist the Administrative Office in implementing new and innovative technologies. While we currently have an Advisory Committee of court users, it is our belief that by forming a committee of private enterprise experts we will be better able to stay abreast of the latest applications of technology and determine how they may be pertinent to the operation of the court system. If we are to keep abreast of the rising number of cases facing the courts, we must take advantage of every option that technology has to offer to assist us in handling our caseload.

You will recall that in 1987, we produced a document entitled "Virginia Courthouse Facilities Guidelines." This document attempts to provide assistance to all those in the judicial system who are called upon to plan renovations or to undertake new court-house construction. It has now been ten years since that document was prepared and in the coming year, we will seek to update the guidelines. Many new issues have developed since the original preparation of this document, and we will attempt to cover these issues in the update. We will seek to address, at a minimum, the specifics of security planning and design as well as the signage, interpretation, and other services needed to accommodate an increasingly diverse population. We will also accumulate information on new technologies available for both the internal and the public service aspects of court operation. We will, of course, also include information concerning compliance with the Americans with Disabilities Act. An updated version of the Courthouse Facilities Guidelines should be of assistance to all those charged with the responsibility of providing suitable quarters for the courts throughout the state.

You will also recall that in the mid-1980s, the Judicial Council produced the Standards for Jury Utilization and Management. These Standards, patterned after American Bar Association recommendations, seek to provide guidelines for the efficient operation of the jury system. The Judicial Council is currently conducting a review of the existing Standards and will, by the end of October, complete a new set of standards. At a time when the jury system is called into question on a regular basis, it is our hope that the revised standards will help to ensure the efficient and effective operation of juries across the state.

Finally; a familiar theme. Since I became chief justice in 1981, I have consistently stressed in my State of the Judiciary reports the need to adopt some form of merit selection of judges in this Commonwealth. Indeed, in my very first report, I urged a change in the way we select judges, and I said that the process that is devised should be one with objectives to "(A) assist the General Assembly in conducting a more thorough investigation of the qualifications of each applicant; (B) provide input from lay [persons] 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."

Over the years, I have come to believe that a judicial nominations commission is the appropriate vehicle to implement the shift to merit selection and attain the objectives listed in my first report. In my view, this commission should be a nonpartisan, non-political body composed of lawyers, judges, and laypersons. It would be charged with the responsibility of recommending a list of three persons found qualified on merit for each judicial vacancy, from which list the appointing authority would select the name of the person to fill the vacancy.

I think that the move to merit selection is absolutely essential to continue the high quality of the Virginia judiciary. I hasten to say, however, that no one could be more proud than I of the men and women who have been appointed under the present system to sit on the benches of this great Commonwealth, including those introduced a few moments ago, and I will defend to my utmost their reputation for integrity, proficiency, and ability. But times have changed, and I think the changing times dictate a change in the way we select judges.

I must admit that it has been somewhat frustrating to make a recommendation for merit selection year after year only to see the proposal rejected time and again. But I am a judge, and judges are trained to be patient. It took us seventeen years to get a court of appeals, but its time finally came and, while I have been advocating merit selection almost that long, its time, too, will come, if we are patient.

In conclusion, I want to say that I believe the judiciary of Virginia is stable and strong, and I want to express to each of you my appreciation for the devotion you give to your work and the contribution you make to the goal of keeping the judiciary independent. When all is said and done, the quality of Virginia justice is determined by the caliber of the men and women who occupy the benches of this state. I happen to think that ours is the very best of judiciaries and that its members go about their business of deciding cases in an atmosphere of independence, free from the influence or pressure of any person or any group. And, for this, Virginia is much the better.