

State of the Judiciary
Chief Justice Leroy R. Hassell, Virginia Supreme Court of Appeals
Message to the Judicial Conference of Virginia
2003

Today is my second opportunity to speak to you to discuss the state of Virginia's judiciary. During the past 12 months, I have traveled over 8,000 miles throughout Virginia to meet with judges, lawyers, bar associations, court clerks, and members of the General Assembly to discuss Virginia's judiciary. As a result of my travels and conversations, I remain steadfastly convinced that in Virginia, we are blessed with an outstanding judiciary. We have excellent judges who work hard and who are very conscientious. Our court personnel are outstanding.

During this very busy year, I have received unwavering support and much appreciated counsel from my colleagues, the Justices of the Supreme Court of Virginia. I want to take this opportunity to thank Justice Elizabeth Lacy, Justice Barbara Keenan, Justice Lawrence Koontz, Justice Cynthia Kinser, Justice Donald Lemons, and Justice Steve Agee for their wise counsel and friendships. I am also indebted to the judges of the Court of Appeals of Virginia, and I thank them very much for their support.

Data compiled by an independent research firm reveals that Virginia's judiciary enjoys very strong public support. However, a large percentage of the public fails to understand how the judiciary functions, and a significant portion of the public does not understand the critical and unique role of the judiciary in our form of constitutional government.

As judges, our role in the judicial process presents great challenges and responsibilities. Even though as men and women, as human beings, we are fallible, we must always strive to do our best. The citizens of this great Commonwealth have bestowed upon us the privilege and solemn responsibility of resolving their most important and intimate disputes. We must always be mindful that we are public servants who seek to dispense justice fairly and impartially in accord with the rule of law. We must be patient, courteous, polite, and fair to every litigant or individual who appears in the courtrooms throughout this Commonwealth.

When I appeared before you last year, I informed you that I was very concerned about the level of judicial compensation in this Commonwealth. I promised you that my greatest priority would be to increase judicial compensation for all judges.

During the past 12 months, I met extensively with the Governor and members of the General Assembly. I am pleased to inform you that Virginia's judges will receive a 5.1% increase in compensation effective November 2004. This salary adjustment represents the largest increase in judicial compensation since 1988.

The General Assembly approved the creation of five new circuit court judgeships effective March 5, 2005. The General Assembly also approved the creation of two new juvenile and domestic relations court judgeships, effective March 5, 2005. The General Assembly approved 49 new positions in the clerks' offices of the general district courts. Additionally, the General

Assembly requested that the Judicial Council of Virginia evaluate and make recommendations on the funding necessary to implement a system of family courts.

I am very pleased with the General Assembly's actions. There are several members of the General Assembly who rendered invaluable assistance and leadership in support of the judiciary, and the judiciary is deeply indebted to them. These legislators are: Senator John Chichester, Speaker Bill Howell, Delegate Lionell Spruill, Senator Tommy Norment, Delegate Vince Callahan, Senator Dick Saslaw, Senator Walter Stosch, Senator Janet Howell, Senator Ken Stolle, Delegate Miles Jones, Delegate Bob Tata, Senator Bill Wampler, Delegate Lacy Putney, Senator Benjamin Lambert, and Delegate Bob McDonnell. Senator Ken Stolle and Senator Tommy Norment rendered invaluable counsel and help to me, and I am truly grateful. Speaker Bill Howell and Delegate Vince Callahan were sources of encouragement and much needed help. Senator John Chichester has been an anchor of support, and I am thankful to him. He has been a great blessing to me. Senator Chichester is one of the finest men who I have ever known, and I am honored that he is my friend. I am also appreciative of Governor Mark Warner's support and encouragement.

During the past year, significant changes were made in the administration of justice in the general district courts and the juvenile and domestic relations district courts. When I became the Chief Justice, I decided to become intimately involved in the administration of justice in these courts. The general district courts and the juvenile and domestic relations district courts are very important because they represent the face of the judiciary to most of the public. Each year, 3.1 million cases are filed in the general district courts of our Commonwealth. Additionally, 551,000 cases are filed annually in the juvenile and domestic relations district courts. By contrast, 274,000 cases are filed annually in the circuit courts, 3,292 cases are filed in the Court of Appeals of Virginia, and 3,000 cases are filed in the Supreme Court of Virginia.

At my request, all the general district courts have implemented segmented docketing systems. Prior to this change, some general district courts used a docket system, commonly referred to as a "cattle call," in which all litigants were required to appear in court and wait until their respective cases were called. Some litigants and lawyers were required to wait for unreasonable amounts of time. The segmented docketing system is designed to reduce the amount of time that a citizen is required to wait in court before his or her case is called. This change is one of many initiatives that have been undertaken to improve the efficient operation of our courts.

I strongly encourage all courts in this Commonwealth to be considerate of the needs and concerns of Virginia's citizens when scheduling hearings or motions. Many citizens who are compelled to attend court are forced to miss time from work for which they will not be compensated.

When I stood before you last year, I stated that I was concerned because each day in courtrooms throughout this Commonwealth, pro se litigants appear in domestic relations cases to contest issues of child custody and visitation. Many of these litigants need the assistance of attorneys but cannot afford their services. Last summer, I met with representatives from all Virginia's legal aid organizations and with representatives from all the statewide bar associations.

I appointed a commission, chaired by John M. Oakey, Jr. Lawyers, as well as judges, serve on this commission. This commission will create a statewide pro bono program so that lawyers will be available to assist poor litigants involved in child custody and visitation disputes. This commission, which has done an excellent job, will implement a pilot program this summer called Virginia's Lawyers Helping Families. This program will be sponsored by the Virginia Bar Association, the Virginia Trial Lawyers Association, and the Virginia State Bar. I am grateful to these bar associations for their sponsorship of this program that will help poor Virginians.

Virginia's Lawyers Helping Families, which will be the first program of its type in the entire United States, will conduct pilot programs in the greater Richmond area and Harrisonburg. Judges should constantly encourage lawyers to assist poor and middle-income litigants who cannot afford attorneys.

As judges, we have responsibilities to our communities that extend beyond the mere adjudication of cases. I strongly encourage all members of the judiciary to speak with civic groups throughout Virginia to inform them about the importance of the courts in our Commonwealth. I also encourage judges to serve as volunteers in Virginia's public and private schools. I serve as a volunteer for the Richmond City Public Schools, and I participate in the Virginia Bar Association's Community Service Program. The Virginia Bar Association's Community Service Program enables lawyers and judges to perform volunteer work in their respective communities. I commend the Virginia Bar Association for this initiative.

Too many citizens fail to understand the role of the judiciary. For example, many citizens do not understand why the courts must provide interpreters, at the taxpayers' expense, to persons who cannot speak English. Citizens do not understand why someone who has been convicted of a serious crime is entitled to seek habeas corpus relief. Many citizens fail to understand the role of Virginia's appellate courts. Some citizens do not understand why a defendant who has admitted guilt is entitled to a trial by jury. Many citizens do not realize that the judiciary cannot implement necessary measures designed to improve the quality of justice, such as family courts, without adequate funding. And, most citizens do not know that the judiciary collects significant revenue for the Commonwealth. The judiciary will collect about 671 million dollars in revenue for the fiscal year that will conclude June 30, 2004.

The judiciary must do a better job teaching the public about the role of the courts in our society. To address this need, I will appoint a commission to develop programs that will serve as resources that public and private schools throughout Virginia can rely upon in the development of government instructional curricula. These resources will also be made available to Virginia's colleges and universities. This commission will also recommend suggestions that the judiciary can implement to facilitate greater use of its website by teachers, students, and the public. The website will also contain information designed for instructional use by schoolteachers. Additionally, this commission will develop a speaker's bureau that will assist judges and court personnel who volunteer to speak with civic groups or school children. It is vital that we educate and inform the public about the importance of Virginia's judiciary.

The judiciary must continue to utilize technology to improve the efficient operation of the courts. Consistent with this objective, we will consider the use of electronic filing in the circuit courts.

However, our approach will be slow, methodical, and deliberate. We will proceed with great caution because we cannot permit the conveniences that we achieve with electronic filing to frustrate our citizens' rights of access to the courts.

For example, funds do not exist in the judiciary's current budget that will permit us to finance the necessary technology. Vendors who are willing to provide the necessary technology will do so only if the costs are absorbed by the litigants. One vendor has suggested a proposed cost, to be paid by the litigants, of \$8.00 for each paper filed in the clerk's office. Even though, at first glance, this cost may seem nominal, I am concerned because this cost may create financial barriers that deprive litigants of access to the courts. I am also concerned about the impact that the statewide implementation of electronic filing may have upon judges, lawyers, and clerks' offices throughout Virginia.

The judiciary will not implement statewide electronic filing systems without input from the judges, the bar, and the clerks' offices. More important, we must ensure that poor litigants and middle-income litigants are not denied access to the courts because of costs that may be imposed upon litigants. We cannot, and we will not, erect barriers that deprive the citizens of this Commonwealth of their rights of access to the courts.

Every litigant who appears in the courts of this Commonwealth has an absolute right to have his or her case decided by an impartial judge who will not be influenced by political, social, or economic considerations. Courts must make decisions based upon facts and the law unique to each case, free of political influences from the executive and legislative branches of government. Judicial independence is essential in our system of justice, which is predicated upon the rule of law.

When electing or re-electing a judge, the General Assembly must assess the candidate's abilities, experience, integrity, judicial philosophy, judicial temperament, and views of the role of the judiciary. However, when the General Assembly discharges its constitutional responsibility, the legislature must be careful to avoid any actions that diminish the independence of the judiciary. I remain committed to undertake all actions necessary to protect and preserve the independence of Virginia's judiciary. To do less would be an abdication of my oath of office as your Chief Justice. As you are aware, we have implemented a judicial performance evaluation pilot project. Eight juvenile and domestic relations district court judges, nine general district court judges, and ten circuit court judges are participating in the pilot program. Attorneys and jurors have returned their completed questionnaire forms. Over 54% of the attorneys who appeared before the participant judges returned their questionnaire forms, and 71% of the jurors who considered cases with the participant judges returned their questionnaire forms.

The circuit court judges who are participating in the pilot program have been given the option of having a retired circuit court judge observe courtroom proceedings. Approximately one-half of the circuit court judges have asked to participate in this phase of the pilot program. After the retired judge has observed the program participant judge conduct courtroom proceedings, the retired judge will meet individually with the participant judge and provide comments regarding the proceedings as observed by the retired judge.

All judges who are participating in the pilot program will meet with facilitator judges. The facilitator judges will meet, individually and confidentially, with the participant judge to obtain the judge's candid and critical comments about the judicial performance evaluation pilot program. The participant judge will also make recommendations whether the judicial performance evaluation pilot program should be implemented on a statewide basis. The pilot program should be completed by the end of this summer. The Supreme Court of Virginia will only make a favorable recommendation for the implementation of a statewide judicial performance program if the Justices conclude that such program can be implemented fairly and impartially.

During the past few years, the judiciary was compelled to curtail its expenditures on judicial education because of a lack of adequate funding. Even though this funding has not been restored, the judiciary must continue its efforts to provide training for judges, substitute judges, clerks, and magistrates. The judiciary, through the expanded use of technology, will implement long distance education programs that will permit the judiciary to provide educational training at reduced costs. Additionally, retired judges subject to recall and substitute judges will be required to participate in continuing judicial education programs.

I value, very much, the opinions of the judges who serve the citizens of this Commonwealth. Your input and your concerns are very important to me. Consistent with these views, I meet twice each year with all the chief judges to discuss any issues of concern to you. These meetings permit the chief judges and me to candidly discuss issues of importance to the judiciary.

This year marks the 50th anniversary of the United States Supreme Court's decision in *Brown v. Board of Education*. The Supreme Court's decision in *Brown v. Board of Education* is one of the most important decisions in American jurisprudence. As we all know, the Supreme Court's decision prohibited racial segregation in public schools, and the decision was ultimately used to prohibit racial segregation by all government entities.

Prior to the Supreme Court's decision in *Brown v. Board of Education*, racial segregation permeated most aspects of life in Virginia, as well as the entire nation. For example, I was born in a racially segregated hospital in Norfolk that was equipped with substandard medical equipment. As a child, I could not attend certain movie theaters throughout Virginia because those theaters did not permit black patrons to enter. I attended segregated elementary schools. As my family traveled throughout Virginia and the South, we could not eat at many restaurants because the owners did not permit black patrons to do so.

I was one of approximately 14 black children who voluntarily integrated the Lake Taylor Junior High School in Norfolk. Even though some students were bitterly opposed and hostile towards us, I can say, with gratitude, that my teachers were very supportive, and my classmates voted to elect me as an officer of the student government.

Even after the Supreme Court decided *Brown v. Board of Education*, racial discrimination continued to plague Virginia. Black citizens were not permitted to swim in the waters of Virginia Beach. Even citizens who appeared in some courtrooms in Virginia were required to sit in seats designated "whites only" or "Negroes only."

As we celebrate the 50th anniversary of *Brown v. Board of Education*, our challenge is that we learn from the mistakes of those who preceded us so that we will never repeat them as we seek to make equality under the law a reality for all Virginians. As men and women who have dedicated our lives to the rule of law, we must recommit ourselves to the fair and equal treatment of the law for all Virginians, regardless of race, creed, religion, or gender. To expect less is unacceptable; to do less is simply wrong.

In the discharge of our duties, let us always remember that, as judges, we are stewards of the public trust who seek to dispense justice fairly and impartially to all litigants who appear in the courts of this great Commonwealth. Our responsibilities are tremendous, our purpose is noble, and our duties are essential to the preservation of our Constitution and the liberties and freedoms that we as Virginians value and cherish. Thank you for your attention. May God bless this Commonwealth and our honorable courts.