

State of the Judiciary  
Chief Justice Leroy R. Hassell, Virginia Supreme Court of Appeals  
Message to the Judicial Conference of Virginia  
2004

I am truly honored to have the opportunity to appear before you this morning to discuss the state of Virginia's judiciary. I am pleased to report, with great confidence, that Virginia's judicial system remains strong, vibrant, and innovative.

Since our last conference, we have celebrated the 225<sup>th</sup> anniversary of the establishment of the Supreme Court of Virginia and the 20<sup>th</sup> anniversary of the founding of the Court of Appeals of Virginia. As you may know, Virginia had the first English-speaking judicial system in North America. The Virginia Colony's original charter of 1606 vested judicial authority in a council. In 1623, a formal system of courts was established by Virginia's legislative body, the House of Burgesses.

In 1776, five days before the signing of the Declaration of Independence members of the Virginia constitutional convention unanimously adopted a blueprint for Virginia's government. The Constitution of 1776 provided for a Supreme Court of Appeals. In 1779 the General Assembly enacted a statute that created the Supreme Court of Appeals, which convened for the first time in Williamsburg on August 30, 1779.

The Supreme Court of Virginia is considered one of the best and most efficient appellate courts in our nation, and I recommend my colleagues, Justice Lacy, Justice Keenan, Justice Koontz, Justice Kinser, Justice Lemons, and Justice Agee for their hard work, outstanding scholarship, and dedication to the law. I am also grateful for the help and wise counsel we received from our Senior Justices: Senior Justice Carrico, Senior Justice Compton, Senior Justice Stephenson, and Senior Justice Russell.

On March, 30 2005, we celebrated the 20<sup>th</sup> anniversary of the establishment of the court of appeals of Virginia, which met for the first time in Richmond on January 4, 1985. The court of appeals of Virginia performs a vital and invaluable role in Virginia's judicial system.

The Court of Appeals is entrusted with the tasks of developing Virginia's domestic relations jurisprudence and criminal jurisprudence. I can think of a few responsibilities that are more important than the development of jurisprudence that impacts the future of Virginia's families and the administration of our system of criminal justice. I commend the members of the Court of Appeals for their outstanding service to the citizens of our Commonwealth.

We enjoyed much success during the 2005 session of the General Assembly. We are indebted to governor Mark Warner, speaker William Howell, senator John Chichester, and many members of the General Assembly for their strong support. When I was elected as your Chief Justice, we established many goals. The justices of the Supreme Court were very concerned about the level of judicial compensation. We sought to increase judicial compensation by 10% during the budget

biennium that included 2004 and 2005 period last year, we received an increase in compensation of 5.1% for Virginia's judges. This year, we have received an increase in compensation of 4.4%, which represents a total increase of 9.5%.

I am very pleased with our progress. We will continue to seek better compensation and benefits so that we can retain current judges and attract the best lawyers to serve as members of the Virginia's judiciary.

We are also successful in obtaining funding for three additional judgeships, and the General Assembly added one million dollars to our budget that was eliminated during the recession three years ago. This money will enable us to restore an additional day to our mandatory conference, and we will also be able to provide much needed training for our court personnel.

There are 31,211 persons incarcerated in Virginia's penitentiaries, and 13% of these inmates committed drug offenses. Drug court treatment programs were created to identify nonviolent offenders who may be able to break the cycle of drug addiction and dependency. If a commonwealth's attorney believes that of nonviolent drug offender is a candidate for participation in a drug court treatment program, the offender is referred to a treatment resource facility soon after arrest. If the court and the Commonwealth attorney concur comma the defendant may be admitted to a drug court treatment program.

A team consisting of a judge, the commonwealth attorney, the offender's attorney, probation officers, drug treatment professionals, and law enforcement officers are assigned to treat and supervise the offender. The offender will receive alcohol and drug related treatment and rehabilitation services.

The offender is subject to intensive treatment, scrutiny, and supervision. The offender appears in court once each week, submits to mandatory drug testing comma and receives drug counseling period the offender will also participate in group therapy and must obtain employment.

The offender must agree to waive certain rights, and law enforcement personnel conduct random unannounced searches of the offenders home and person to ensure that the offender is not engaged in any criminal activity. Offenders are also required to share the cost of the drug treatment program, and failure to do so proposal and termination from the program.

In 2004, the General Assembly enacted the drug treatment court act. Pursuant to this act, the Supreme Court is responsible for providing oversight, technical assistance and training for drug court treatment programs. The Drug Treatment Court Advisory Committee must approve any new drug court treatment programs period we will periodically critically evaluate our drug court treatment programs to ensure that they are effective.

The General Assembly approved \$404,000 for the statewide implementation of the judicial performance evaluation program. Two years ago, the Supreme Court implemented a pilot judicial performance evaluation project. The purpose of this pilot project was to ascertain whether fair system of judicial evaluation could be designed and implemented in Virginia.

As you are aware, Justice Barbara Keenan served as the chair of an advisory committee of judges and citizens that developed and implemented a pilot judicial performance evaluation program. The advisory committee issued a report to the Supreme Court of Virginia in December 2004. The advisory committee recommended the state add implementation of the judicial performance evaluation program. The Supreme Court forwarded a copy of the proposed program to the judge in Virginia, and we solicited your candid comments.

Upon consideration of your comments and the Supreme Court's review of the Advisory Committee's recommendations, the Justices unanimously approved the statewide implementation of a judicial performance evaluation program. As Chief Justice, I will appoint a permanent committee of judges who will have oversight responsibility for the implementation and administration of the program.

Justice Barbara Keenan has graciously agreed to serve as the chair of the Judicial Performance Evaluation Program Committee. Judges from all levels of the judiciary will serve on this important committee. This committee will make every effort to insure that the Judicial Performance Evaluation Program is fair. This program will be a tool for professional growth and development that will enable use to better serve our fellow Virginians.

The issue of funding for court appointed counsel has been a major concern for many years. When the Supreme Court submitted its budget request for the current biennium, the Court sought funds to increase significantly compensation paid to court appointed counsel who represent criminal indigent defendants. Court appointed counsel in Virginia are the poorest paid in the nation, and we must work hard to eradicate this program.

For the first time in many years, the General Assembly allocated additional funding of \$2,000,000 for court appointed counsel who represent indigent criminal defendants. This increase is a small but important step in the right direction. However, we need more money to improve compensation for these attorneys.

Additionally, the Supreme Court of Virginia, in conjunction with the Virginia State Bar, will sponsor an annual training seminar for experienced court-appointed counsel who represent indigent criminal defendants. The first seminar, which will be held on May, 20, 2005, is designed to teach the experienced court appointed lawyer subjects such as understanding and challenging DNA evidence, the use of scientific evidence, confrontation and cross-examining of difficult witness, perfecting an appeal, hearsay, and the Confrontation Clause. We have a superior faculty that includes nationally-acclaimed scientists, lawyers, and professors.

The seminar, which is free of charge, will be held in Richmond and simultaneously broadcast in Abingdon. The Supreme Court is very indebted to Jude Walter S. Felton, Jr. the chairman of this commission, commission members, and faculty. Also, consistent with our goals to improve the quality of criminal justice in this Commonwealth, we have created training programs for judges who preside over capital murder trials.

The Supreme Court of Virginia, with the assistance of the Virginia State Bar, has sponsored seminars, at no charge, designed to help solo practitioners, rural lawyers, and members of small

law firms. The Supreme Court will conduct Town Hall meetings throughout the Commonwealth as the Justices seek to learn how we can better serve Virginia's citizens and improve the quality of our judicial system. The first Town Hall meeting was held in Abington in March, and a second Town Hall meeting will be held in Harrisonburg in September 2005.

Many changes have occurred since our Judicial Conference last year. Robert Baldwin, who served as the Executive Secretary of the Supreme Court for 30 years, has retired. Kathy Mays, our former director of Planning, has also retired. The Supreme Court thanks them for their important contributions to the administration of justice in Virginia.

We are very fortunate that Judge Bruce Bach has graciously agreed to serve as our Acting Executive Secretary. Judge Bach has been invaluable, and I thank him for his friendship and support. We are also blessed because we have outstanding and dedicated employees in the office of the Executive Secretary.

The use of technology is critical to the administration of justice in this Commonwealth. Our Judicial Information Technology Department handles more than 1,500,000 transactions each day in our courts. The Department of Judicial Information Technology provides a wide range of information technology services to the entire judicial system, including the Supreme Court, the Court of Appeals, 326 circuit, district, and juvenile and domestic relations district courts, and over 125 magistrates offices. The Department of Judicial Information Technology provides the following tasks: application development, data center operations, telecommunications, network management, personal computer software and hardware support, and end-user training support for over 2,8000 employees of the judicial branch of government.

The Information Technology Department maintains automated information systems that provide case management systems for the circuit, general district, and juvenile and domestic relations district courts. Our Information Technology Department supports financial management systems that are integral to the judicial system's ability to collect over \$900,000,000 annually for the Commonwealth and her localities.

The Information Technology Department provides critical services to our magistrate. Our automated records indexing management systems that permit imaging of land records, wills, financial statements, and, marriage licenses have been installed in 666 of the 121 circuit courthouses in Virginia. The Information Technology Department interfaces with the Division of Motor Vehicles, the Virginia State Police, the Department of Juvenile Justice, the Department of social Services Division of Child Support Enforcement, the Auditor of Public Accounts, and the Department of Taxation.

Unfortunately, during the past five years, the judiciary had not received sufficient funding to enable us to acquire and maintain technology that is vital to the continued efficient operation of our courts. The expanded use of technology is critical for the efficient administration of our judicial system.

We will seek authority from the General assembly that will permit us to establish a technology trust fund. Revenue from the trust fund will allow us to acquire and maintain the necessary

technology that will enable us to better serve the citizens of this Commonwealth. Additionally, we will establish the necessary protocols and safeguards to protect confidential information, such as social security numbers, dates of birth, sensitive financial information, and other personal data.

When I stood before you two years ago as your newly-elected Chief Justice, I observed that we have an excellent system of justice in Virginia. Our foundation remains strong. I also promised you that we would examine all facets of the judicial branch of government to ascertain how we can improve the administration of justice.

During the next few months, we will explore the feasibility of the establishment of a system of family courts in Virginia. Judge Dennis Smith serves as the chair of a committee that will submit a family court proposal to the Supreme Court, the Judicial Council of Virginia, and the General Assembly.

We will thoroughly examine Virginia's magistrate system. We have 436 full and part time magistrates. Our magistrates are independent judicial officers who process over 777,000 proceedings each year in this Commonwealth. Magistrates are invaluable participants of our system of justice.

Our general district courts and our juvenile and domestic relations district courts process over 3.6 million cases annually. We have highly dedicated employees in the clerks offices, our clerks remain overworked, understaffed, and underpaid. Increased compensation for our clerks will be a priority during the General Assembly's next session.

During the past 12 months, we have been planning methodically for Virginia's next future Commission that will assess all facets of our judicial system. This Commission will recommend changes that will enable us to plan for our future needs during the next decade. I am pleased to report that Anne Whittemore, a prominent Virginia attorney, has agreed to serve as the chair of this Commission. Numerous judges throughout Virginia will serve on this commission that will be called "Virginia's Courts in the 21st Century: To Benefit All, To Exclude None."

We must also address ever increasing concerns for the safety of our judges, court personnel, and citizens who enter our courthouse each day. The Virginia State Police, working in conjunction with the sheriff's and police departments around the Commonwealth, will assist our judges to ensure that our court facilities and homes are safe. The sheriffs and the State Police, working collaborative, will, at the invitation of local judges, make security assessments of our court facilities, court procedures, and homes.

We are also examining Virginia's mental health statutes and how those statutes affect the administration of justice, particularly the involuntary mental commitment process. We have enlisted the aid of internationally acclaimed mental health professional to assist us in this endeavor. The Supreme Court and the Virginia State Bar will host a mental health conference in Charlottesville in December 2005 for judges, special justices, guardians ad litem, lawyers, mental health professionals, and law enforcement personnel.

We will continue to develop domestic violence programs. We will also enhance our education and training opportunities for judges, clerks, and magistrates.

When the delegates to Virginia's first Constitutional Convention met in 1776, they approved a bill of rights and Virginia's first constitution. Virginia's Constitution and Bill of Rights made clear that the powers of the judiciary are distinct from the powers of the legislative and executive branches of government.

The founders of Virginia's government recognized that "no free government, or the blessings of liberty, can be preserved to any people but by a firm adherence to justice." As judges, we must recognize, appreciate, and reaffirm our strong belief that today, just as was true upon the inception of our Commonwealth, no free government, or the blessings of liberty, can be preserved for our fellow Virginians without a firm adherence to justice. In Virginia, we, the members of the judiciary, have solemn responsibility to insure that this precept remains a reality for our Commonwealth and her people.

I remain very concerned about the public's lack of understanding of the concept and importance of judicial independence. An independent judiciary is an indispensable component of our constitutional form of government. We must not forget that the absence of judicial independence and the obstruction of administration of justice were important factors that our nation's founders relied upon to justify their separation from Great Britain and the establishment of the United States of America. Our democracy cannot, and will not, function without a strong independent judiciary that enjoys the support and respect of all Virginians.

We must be unyielding in our efforts to protect this fundamental principle. As judges, we must always be free to make decisions without concern of fear or reprisal. A strong judiciary is the greatest safeguard of individual rights, property rights, liberty, and freedom.

Judge Rosemarie Annunziata is the chair of the commission called Journey Through Justice. This Commission is in the process of developing materials that will be used to educate public and private school children about the role of the judiciary in Virginia. This Commission, which includes judges, lawyers, school superintendent, school teacher, and representative of two major Virginia universities, will implement pilot programs in Arlington, Washington County, and Virginia Beach.

I am truly honored and humbled to serve as your Chief Justice. As judges, we must be ever mindful of the power, respect, and trust that have been conferred upon us as we serve the citizens of Virginia. It is my hope that each and every day, we will serve with wisdom, passion, zeal, patience, and with an unwavering commitment to the rule of law. It is also my hope that we will always discharge our duties fairly and impartially, and that we will serve with the heart. Of a servant.

The quality of our service, as reflected by our temperament, our practice, our humility, our diligence, our preparation and scholarship, should always make us worthy to discharge the tremendous responsibilities that our fellow Virginians have entrusted to us. I thank you for your

commitment and dedication to the people of Virginia. I am indebted to you and humbled by your support. May God bless this Commonwealth and her honorable courts.