

State of the Judiciary
Chief Justice Leroy R. Hassell, Virginia Supreme Court of Appeals
Message to the Judicial Conference of Virginia
2006

I am pleased to report to you this morning that Virginia's judicial system remains strong, innovative, and responsive to the needs of our fellow Virginians. Many significant events have occurred since our conference last year.

In August 2006, the justices of the supreme court elected me to serve a second term as your Chief Justice. I am humbled and honored by their confidence in me. I will always strive to exceed their expectations so that their trust will not be misplaced.

My colleagues, justice Lacy, Justice Keenan, Justice Koonts, justice Kinser, Justice Lemons, and Justice Agee, are active partners and participants in the administration of justice in this Commonwealth. I value their advice and counsel, and I thank them for their friendship, words of encouragement, and support. I am also appreciative of the outstanding contributions and friendship of our Executive Secretary, Karl R. Hade.

When I began my tenure as your Chief Justice four years ago, I promised you that we would work diligently to improve compensation for judges and staff. In 2005, the turnover rate for judicial branch employees, excluding judges, was 16%. The voluntary turnover rate for our staff in Northern Virginia was 24%. Simply stated, we could not retain employees because they were significantly underpaid.

Also, Virginia's judges were not compensated commensurate with certain lawyers in the government sector. For example, city attorneys, county attorneys, and commonwealth attorneys and certain regions of Virginia earned between \$25,000 and \$50,000 per year more than our judges.

I am happy to report that during the past session of the General Assembly all judicial branch employees, judges, and staff received an 8% increase in compensation. This 8% increase in compensation represents the largest single year raise that judges have received in over 20 years. I am very grateful for the General Assembly for its strong support.

During this past session of the General Assembly, we requested the creation of new circuit court judgeships for four judicial circuits the 10th, 13th, 26th, and 27th. We also requested new general district court judgeships for three districts the 2nd, 11th, and 26th. We requested the creation of new juvenile and domestic relations district court judgeships for the 1st and 28th Judicial Districts. These requests were approved by the Senate but were not approved by the House of Delegates. We will resubmit our requests for these judgeships during the next session of the General Assembly.

For at least a decade, the Supreme court has worked hard to improve compensation for court appointed counsel who represent indigent criminal defendants. During the 2007 session of the General Assembly, the legislature appointed an additional 8.2 million dollars that will be used to permit waivers of the statutorily prescribed caps on compensation for courts appointed counsel.

The appropriation of 8.2 million dollars will enable judges to authorize waivers in only 25% of the cases with court appointed counsel. The General Assembly asked the Office of the Executive Secretary to establish guidelines for all judges to use when determining whether the caps on compensation to court appointed counsel should be waived.

To assist the Office of the Executive Secretary with the drafting of the guidelines, we appointed a committee of circuit court judges, district court judges, criminal defense lawyers, commonwealth's attorneys, and clerks. The committee has drafted guidelines that will be forwarded to all judges and will also be widely disseminated to lawyers and bar associations. I thank the members of this commission for their outstanding work.

The Supreme Court established a Futures Commission called "The Commission on Virginia's Courts in the 21st Century: To Benefit All, To Exclude None." Anne Marie Whittemore served as the chair of this commission.

Participating in this very significant endeavor were judges, attorneys, commonwealth's attorneys, county attorneys, city attorneys, college presidents, presidents of fortune 500 corporations, and laypersons. Additionally, the presidents of all Virginia's statewide bar associations served on the Commission's advisory committee.

The Commission submitted its report to the Supreme Court and the Judicial council of Virginia in January 2007. A copy of this report has been submitted to all Virginia's judges for your consideration and comments.

We urge you to read this report with care. Please forward any comments that you may have to Karl Hade or me. The Judicial Council will review the Commission's report in June and will make recommendations to the Supreme Court. The Supreme Court will consider those recommendations and comments.

The Supreme Court will use all recommendations the Court approves as a basis for the judicial system's strategic plan for the next decade. I note with sadness that the Commission's final report is dedicated to Judge Randall Johnson, an outstanding jurist and a Commission task force chair who died last August.

Virginia's circuit court clerks provide an indispensable role in the operation of our circuit courts. Statewide, we are very fortunate because we enjoy good relationships with our circuit court clerks. From time to time, however, problems arise, and these problems impair our ability to serve our fellow Virginians.

In our quest to improve the administration of justice in Virginia, we have established a Circuit Court Clerk Advisory Committee that I will personally chair. This committee consists of circuit

court clerks and circuit court judges. The Circuit Court Clerk Advisory Committee will make recommendations to improve the delivery of services to from the Office of the Executive Secretary to the circuit court clerks. This committee will also seek to strengthen relationships between our circuit court clerks and our judges.

We are also considering issues related to the use of court reporters. Presently, anyone who can obtain a business license may serve as a court reporter in Virginia. As each person in this room is acutely aware, we must ensure that transcripts of judicial proceedings and dispositions are accurately transcribed. Judge Stephen Mahan, of the Second Judicial Circuit, serves as the chairman of a committee that will make recommendations to the Supreme Court regarding rules that will enhance the quality and accuracy of transcripts of pending and impending court proceedings in this Commonwealth.

Last year, we established the Information Technology Fund. Our information technology system handles over one million transactions daily. We have used revenue from this fund to improve the judicial system's information technology infrastructure. We have purchased a new mainframe that processes all major judicial information technology application, such as our case management system and our financial management system. Our financial management system handles over one billion dollars worth of transactions annually.

We have installed new videoconferencing units in courts that have never had such units. We have also replaced obsolete videoconferencing units.

We have improved our information technology network redundancy, thereby reducing telecommunication outages. We are in the process of redesigning our web page so that the site will be easier to use.

We have expanded our information technology training programs for judges. We now provide tutorial services to all judges who wish to improve their computer skills.

We will implement a system of electronic filing in all our courts. Electronic filing will allow Virginia's courts to be more efficient and more accessible too lawyers and the public. The use of electronic filing will also decrease the tremendous burdens imposed upon our understaffed district court clerks.

We have appointed an electronic filing study group. Judge Junius Fulton serves as the chair. The Circuit Court of the City of Norfolk, the General District Court of the City of Norfolk, and the Juvenile and Domestic Relations District Court of the City of Norfolk have agreed to participate in an electronic filing pilot program. We are working with the Administrative Office of the United States Courts in an effort to acquire software that the federal judiciary has used to implement its electronic filing system.

Even though we believe that electronic filing will significantly benefit our courts, we will implement our electronic filing system slowly, deliberately, and methodically. Rest assured, we will not implement an electronic filing system statewide until we are confident that this system is practicable, workable, and achieves our desired goals.

In 1974, the General Assembly abolished Virginia's justice of the peace system and replaced that system with the office of the magistrate. Magistrates are appointed by the chief judge of each circuit in consultation with the general district court chief judge and the juvenile and domestic relations district court chief judge. Circuit court chief judges have supervisory authority over magistrates, but they may delegate this authority to the general district chief judges.

There are 438 magistrates in Virginia. During the 2006 calendar year, Virginia's magistrate handled 1,032,857 transactions and issued 757,814 processes. We have not established new magistrate positions since the year 2001, even though Virginia's population has increased by 8% or almost 600,000 people since that date.

Magistrates are authorized to issue arrest warrants, issue search warrants, commit persons to bail, commit persons to jail, issue subpoenas, administer oaths and take acknowledgements, and act as conservators of the peace. Magistrates may also accept prepayments for traffic infractions and certain minor misdemeanors offenses, issue mental health emergency custody orders, issue voluntary temporary mental health detention orders, issue medical emergency custody orders, issue temporary medical detention orders, and grant emergency protective orders.

Virginia's magistrate system is an indispensable part of Virginia's judiciary. Unfortunately, we have not devoted sufficient resources or attention to the improvement of our magistrate system.

I have visited magistrates' offices, and I have observed our magistrates work under very stressful conditions. They must be knowledgeable about bail procedures, probable cause for arrest warrants and search warrants, elements of crimes, arrest procedures, protective orders, detention orders, and a host of other legal subjects. Most of our magistrates have not been trained as lawyers, but yet they have many significant legal responsibilities.

As you have discerned from our description of the powers that magistrates possess, their decisions have significant impacts upon the lives of our fellow Virginians. We must improve training programs for our magistrates and increase their compensation. We must restructure their hours of availability to the police, sheriffs, and the public and expand the use of information technology so that the public and law enforcement personnel who live in rural areas do not have to travel great distances to meet with magistrates.

I have appointed a magistrate study group, chaired by Judge Thomas Shadrick, the Chief Judge of the Second Judicial Circuit. This study group consists of judges, magistrates, commonwealth's attorneys, criminal defense attorneys, and clerks. This study group is conducting a thorough examination of Virginia's magistrate system. This study group will make recommendations to the Committee on District Courts and the Supreme Court regarding improvements to our magistrate system.

As I informed you last year, we have appointed a committee that is undertaking a comprehensive evaluation of Virginia's mental health statutes that relate to Virginia's judicial proceedings and processes. During the 2006 fiscal year, which commenced on July 1, 2005, and concluded June 30, 2006, there were a total of 43,687 involuntary commitment hearings in Virginia's courts.

Special justices presided in 17,799 hearings. 1,201 hearings were held in the juvenile and domestic relations district courts, and 24,687 hearings were convened in the general district courts.

This committee will make recommendations to improve our civil commitment process. This committee will also consider alternative methods of transportation for mentally ill persons to courts; examine processes that encourage and facilitate voluntary treatment of mental health patients who are in crisis or experiencing deteriorating conditions so that they can avoid the involuntary commitment process; and recommend other reforms to the involuntary commitment process. Among these crucial reforms is the implementation of a system that ensures that those who are ordered to participate in outpatient treatment actually pursue and complete outpatient treatment.

The committee is conducting a survey of all judges and special justices who preside over involuntary commitment proceedings. This committee is expected to complete its work in 2008.

We remain concerned with the provision of security for our courts and our judges' personal residences. We have a responsibility to our fellow Virginians to ensure that when they enter our courthouses, as witnesses, jurors, victims, litigants, or employees, our courts will be safe and secure.

We have developed courthouse security assessment standards and procedures. We have obtained funding that has been used to pay for security audits. Every Virginia judge who desires a security evaluation of his or her courthouse or home will receive such assessment. I encourage you to take advantage of this resource.

The Office of the Executive Secretary maintains a database of all threats or perceived threats that judges and court personnel report to us. We monitor all reports of threats to ensure that the appropriate law enforcement agency assesses and responds to each threat. We encourage you to continue to report any threats or perceived threats to the Office of the Executive Secretary as well as to your local law enforcement agency.

Since our last meeting, we celebrated the 230th anniversary of Virginia's Constitution and Declaration of Rights. This year, we celebrate the 400th anniversary of the founding of Jamestown.

Our Commonwealth was conceived upon the issuance of the Charter for the Virginia Company of London by King James I on April 10, 1606. This charter empowered the Virginia Company of London to establish the first permanent English settlement in America.

On Saturday, December 20, 1606, three ships, the Susan Constant, the Godspeed, and the Discovery left England and began the four and one-half month journey to the new world. The Discovery, whose captain was John Ratcliffe, was the only ship owned by the Virginia Company of London. Christopher Newport was the Captain of the Susan Constant, and he was the Admiral of the three-ship fleet. The English voyagers arrived in Virginia in April 1607. Four hundred

years later, Queen Elizabeth II, participated in Virginia's celebration of the 400th anniversary of the establishment of Jamestown.

Virginia's first constitution was adopted on June 29, 1776. George Mason was the author of this constitution, which contained a preamble written by Thomas Jefferson. Virginia's Constitution was the first constitution in America with a declaration of rights. George Mason was the author of the Declaration of Rights, which included the right to a trial by jury, freedom of the press, the free exercise of religion, separation of powers, free elections, no taxation without consent, the right of one charged with a crime to confront his or her accuser and call for evidence on his or her behalf, the right to an impartial jury, the prohibition against cruel and unusual punishment, and many other rights that we deem sacred.

Virginia's Declaration of Rights that was adopted in 1776, stated that "the legislative and executive powers of the state should be separate and distinct from the judicative." Section 3 of Virginia's first constitution stated that "the legislative and executive powers of the State should be separate and distinct from the judiciary."

Deeply embedded within the doctrine of separation of powers is the concept of judicial independence. The framers of Virginia's Constitution had witnessed King George III's abuses of the weak and dependent colonial judicial system that the King controlled. The framers of our constitution were determined that Virginia's judicial system would not be subject to manipulation by the legislative or executive branches of government. Judicial independence is an elemental precept upon which our constitutional form of government was founded. We must be vigilant to ensure that this important principle is never diminished or ignored.

During the past 400 years, our Commonwealth, and our nation, have experienced tremendous changes. Most of these changes have been positive and have made the promises of freedom, liberty, and equality a reality for all Virginians.

The judicial branch of government must undertake greater efforts to preserve and document our rich legal history. To achieve this important goal, we have established the Supreme Court of Virginia Historical Commission. Judges, lawyers, nationally acclaimed historians, librarians, and archivists serve on this commission, which has begun to obtain oral biographies of Virginia's justices, judges, and lawyers. The Commission will acquire historical artifacts and document our 400 years of rich legal history. Additionally, this commission will sponsor lectures on Virginia's courts and will retain a historian to write a book on the history of Virginia's judicial system.

As judges who comprise an independent judiciary, we occupy a very special and unique position of trust in our government. We are public servants who have been chosen to exercise the enormous judicial power of this State.

In the exercise of this tremendous power, we must be firm but we must be fair. We must be efficient, and we must process our cases timely; yet we should never be too busy that we fail to listen. We must never think too highly of ourselves that we forget the importance of humility and a strong work ethic. And we must not be too confident that we neglect to learn.

Each day that we discharge our duties, let us do so in a manner that demonstrates we are worthy of the honor and trust that our fellow Virginians have bestowed upon us. May God bless our Commonwealth and our honorable courts.