

State of the Judiciary
Chief Justice Leroy R. Hassell, Virginia Supreme Court of Appeals
Message to the Judicial Conference of Virginia
2007

I am honored to appear before you today to discuss Virginia's judicial system. I am happy to report, with great confidence, that our judicial system is strong, vibrant, and well positioned to confront the challenges that await us as we work together to improve the quality of justice for our fellow Virginians.

Since our last conference, Justice Elizabeth Lacy retired from the Supreme Court of Virginia. I thank Justice Lacy for her outstanding service, and we wish her well in her retirement. We are pleased that she continues to assist the Supreme Court as a Senior Justice.

Governor Tim Kaine appointed Justice Bernard Goodwyn to the Supreme Court in October 2007.

Justice Goodwyn is no stranger to us. He served as a general district court judge and as a circuit court judge. During his short tenure on the Supreme Court, Justice Goodwyn has distinguished himself as a Justice with a keen intellect and a great sense of humor.

I also note that Governor Kaine appointed Judge LeRoy Millette to the Court of Appeals of Virginia. Judge Millette, who has served as a circuit court judge, will be an excellent appellate judge.

I acknowledge, with great appreciation and gratitude, the invaluable advice, counsel, and guidance that I have received from my colleagues: Justice Barbara Milano Keenan, Justice Lawrence L. Koontz, Justice Cynthia D. Kinser, Justice Donald W. Lemons, Justice G. Steven Agee, and Justice S. Bernard Goodwyn. I also acknowledge the outstanding contributions of our Executive Secretary, Karl R. Hade, and his staff.

This year, we will implement the most significant structural changes in Virginia's judicial system in 34 years. We will reform our magistrate system. George Mason, Nathaniel Bacon, Richard Henry Lee, and Edmund Pendleton all served as justices of the peace during that legal careers. Edmund Pendleton also served as President of the Supreme Court of Appeals of Virginia. Historically, justices of the peace performed the same duties as our magistrates.

In 1974, the General Assembly abolished Virginia's system of elected justices of the peace and replaced that system with magistrates. There are 384 full-time magistrates and 60 part-time magistrates. Last year, our magistrates issued 1,429,109 processes.

Virginia's magistrates are independent judicial officers who exercise tremendous power that impacts the lives of all Virginians and anyone who travels within our Commonwealth. Our magistrates issue search warrants. arrest warrants and inspection warrants. They issue medical

and mental emergency custody orders, medical and mental temporary detention orders, and emergency custody orders for sexually violent predators. Magistrates may set bail, or deny bail, for arrestees.

They can detain arrestees in jail for several days before the arrestees appear before a judge.

Last year, we appointed a committee and requested that the committee perform a thorough evaluation of Virginia's magistrate system. Judge Thomas Shadrick served as the chairman of this committee. The committee submitted numerous recommendations to the Supreme Court, which approved most of the proposed reforms. The highlights of these reforms are as follows.

Effective July 1 of this year, magistrates will be employees of the Office of the Executive Secretary. Currently, a new magistrate receives only 32 hours of training during the basic magistrate certification school. Beginning July 1, new magistrates will receive 4 weeks of intensive training and education.

All current magistrates will attend mandatory training courses and must be recertified by January 1, 2010. To maintain their certifications, magistrates will complete a minimum of 24 hours of continuing education every two years and receive satisfactory annual performance evaluations. Chief magistrates will attend management and personnel courses.

The Supreme Court will promulgate standards of professional conduct for magistrates. The Court will also establish a formal mechanism for the resolution of complaints filed against magistrates.

Even though Virginia's population has increased by over 500,000 citizens since 2001, the General Assembly has not created any new magistrate positions since that date. As a part of our comprehensive magistrate reforms, we will create 20 new magistrate positions in July.

Schedules for magistrates must be uniform, predictable, efficient, and fair throughout Virginia. Presently, magistrates establish their own work schedules.

Magistrates' schedules, like those of other court employees, will be based upon a 40-hour workweek and generally, eight or ten-hour shifts. The Office of the Executive Secretary will approve and monitor schedules so that we can better serve our citizens. Additionally, the Office of the Executive Secretary will provide information technology support services for our magistrates 24 hours each day, seven days a week.

I thank the General Assembly for enacting the necessary legislation that authorized these significant structural reforms. Delegate Lacey Putney and Senator Janet Howell were the primary patrons of the magistrate reform legislation, and we are greatly indebted to them. Even though the Commonwealth's economic status is precarious, the General Assembly appropriated approximately \$8,000,000 during the next biennium that will enable us to implement the magistrate system reforms.

This year marks a significant change in our Judicial Performance Evaluation Program. Since the inception of the program in July 2006, 139 judges have been evaluated. This program, which is

administered by judges for judges, serves as an important assessment tool that will enable us to improve our performance and to facilitate our professional growth. Since our last conference, Judge Suzanne Fulton retired as the director of the Judicial Performance Evaluation Program. We thank Judge Fulton for her outstanding service. I am pleased to report that we have selected Ellen Marie Hess to serve as our new director for the Judicial Performance Evaluation Program.

Justice Barbara Milano Keenan has been an outstanding leader in our efforts to establish and implement our Judicial Performance Evaluation Program. She served as the chair of the advisory committee that established our pilot program, and she was instrumental in the creation of the Judicial Performance Evaluation Program. She is the chair of our Commission that establishes policies and provides oversight for the administration of the Judicial Performance Evaluation Program.

Justice Keenan will complete her tenure as chair of the Judicial Performance Evaluation Commission effective June 30th of this year. We are very indebted to her, and I thank her very much.

I have appointed Justice Lawrence Koontz to serve as the new chairman, effective July 1. Justice Koontz, like Justice Keenan, has served as a judge on every level of Virginia's court system. He was a juvenile and domestic relations district court judge, a circuit court judge, the chief judge of the Court of Appeals of Virginia, and a member of the Supreme Court of Virginia. I am confident that Justice Koontz will serve with high distinction.

This year, for the first time, judicial performance evaluations for individual judges will be submitted to the chairman of the House of Delegates Courts of Justice Committee and the Chairman of the Senate Courts of Justice Committee. The Supreme Court is in the process of preparing protocols to ensure that the evaluations remain confidential, which is consistent with prior agreements between the General Assembly and the Supreme Court.

We continue to expand and improve the use of information technology to better serve our citizens, judges, employees, and attorneys. We have expanded internet based training classes for circuit court and district court employees. Online conference registration sites allow judges and employees to register for conferences, meetings, and training programs.

We have implemented case imaging systems that allow our courts to store, scan, and instantly retrieve case records electronically. This system has been installed in approximately 30 circuit courts.

We are improving our circuit court case management systems and our financial management systems to make those systems more user-friendly. Beginning this October, we will host annual user group meetings so that we can have meaningful discussions among judges, district court clerks, circuit court clerks, and other employees to ascertain how we can improve our information technology services. Staff will be available 24 hours each day, seven days per week, to support our information technology services.

We are confident that we will be able to implement our electronic filing pilot program within 18 months. We will establish a statewide advisory committee of lawyers, judges, court clerks, and citizens to help us plan and design our e-filing system. Their participation will ensure that our e-filing system is practicable, desirable, beneficial, and user-friendly. I assure you, we will design and implement an e-filing system that will be a model for the nation.

All courts in Virginia use our financial management and case management systems except the circuit courts in Fairfax County, Prince William County, and the City of Alexandria. Once we implement electronic filing in our courts, the judges and lawyers in these circuits will not be able to enjoy the benefits of electronic filing because they will not have access to our case management system. We are hopeful that we can resolve this significant problem soon.

In December 2005, we began to examine Virginia's mental health statutes and processes that affect our courts. During the 2007 fiscal year, which commenced on July 1, 2006 and concluded on June 30, 2007, there were 23,365 involuntary mental health commitment hearings in Virginia's courts. Simply stated, there are over 100 civil involuntary commitments each day in Virginia.

We appointed a Commission on Mental Health Law Reform chaired by Professor Richard Bonnie. The Commission made numerous recommendations to the General Assembly, which approved every recommendation.

Significant statutory enactments include new commitment standards designed to help ensure that people with mental illnesses receive prompt and appropriate treatment; a requirement that representatives of community services boards and independent evaluators attend commitment hearings, thereby enhancing the likelihood of improved treatment alternatives and compliance with commitment orders; and new procedures that allow courts to order mandatory outpatient treatment and improve the monitoring and enforcement of treatment orders.

The General Assembly unanimously approved Senate Joint Resolution 42, which directs the Joint Commission on Mental Health to receive, review, and evaluate for consideration in the 2009 and 2010 sessions of the General Assembly recommendations from our Commission on Mental Health Law Reform. We thank the Commission for its outstanding work

Currently, there are 28 drug treatment court programs in this Commonwealth. Drug treatment court programs were established to identify and help non-violent offenders break the cycle of drug addiction and dependency. A Commonwealth's Attorney must approve every offender who participates in a drug treatment court program.

A team, consisting of a judge, a Commonwealth's Attorney, the offender's attorney, probation officers, drug treatment professionals, and law enforcement officers, is involved in each drug offender's case. The drug offender is subject to intensive treatment, scrutiny, and supervision. The drug offender must appear in court once each week. Drug offenders are required to work and they must share the cost of the drug treatment court program.

We believe that our drug treatment court programs are successful, and they seem to be the only judicial resource effective in helping break the cycle of drug addiction and dependency. During this past session of the General Assembly, we had to fight very hard to retain funding for our drug treatment court programs. Even though I am happy to report that we prevailed, we must remain vigilant in our efforts to retain funding for drug treatment court programs.

Virginia's population continues to grow older. Currently, 1,065,502 of all Virginians are 60 or older. This figure represents 15% of our population. By the year 2030, 25% of all Virginians will be 60 years of age or older.

Our aging population will have a significant impact upon our courts, and we must be prepared to accommodate these Virginians. Our aging citizens must have complete access to court facilities and related services. We must be sensitive to those older Virginians who may be apprehensive about the use of technology even as we increasingly rely upon this technology to obtain greater efficiencies in our courts.

We must be prepared to respond to the anticipated increase in legal proceedings involving probate, guardianships, advance directives, and elder abuse and neglect. We must ensure that court-appointed fiduciaries protect, and not harm, our citizens. We simply cannot permit court-appointed fiduciaries to prey upon our citizens. Within the judicial system, we must be prepared to attract and train new employees as our workforce reaches retirement age. We will appoint a study group that will examine the numerous issues that relate to our aging population and its impact upon our courts. We must make every effort to ensure that our aging Virginians are treated with the utmost dignity and respect and that our courts are accessible, responsive, and sensitive to their needs.

As you are aware, the Justices of the Supreme Court have received the final report of our Futures Commission: The Commission on Virginia's Courts in the Twenty-First Century, to Benefit All, to Exclude None. The Judicial Council of Virginia has reviewed the report and made numerous recommendations to the Supreme Court. The Supreme Court will consider these recommendations this summer.

Our courts do not operate in a vacuum, and when public health crises arise, these crises will impact us. Presently, we do not have policies and protocols that are necessary to ensure the safe and effective operation of our courts in the event of pandemic influenza or other contagious diseases. However, we must, and we will, be prepared to respond in the event of such catastrophic emergency. We will appoint a commission that will recommend the necessary policies and procedures that will allow us to continue to operate our courts in a safe and healthy environment.

It is no secret that during this past session of the General Assembly, the House of Delegates and the Senate of Virginia had a difficult time electing judges for numerous vacancies that existed. Judge Robert Humphreys, a highly respected member of the Court of Appeals of Virginia, was a casualty of the legislative disagreement, and he was not able to serve as a judge for six days until the General Assembly was able to reach an agreement during the veto session. Several vacancies remain unfilled.

The Supreme Court did not sit silent during this impasse. We were tireless in our efforts to encourage the General Assembly to resolve this impasse. Even though the legislative impasse exposes a significant weakness in the process of electing judges, we remain confident that Virginia's process is better than systems of popularly elected judges that are used in the vast majority of states.

The legislative impasse did not disrupt our judicial operations, in large part because of the willingness of our retired judges to serve. We are very indebted to our retired judges, and we thank you, very much, for your help. Each year, for the past five years, we have sought, without success, to increase compensation for our retired judges. This issue will be among our most important priorities during the next session of the General Assembly.

We tend to forget that as judges, we are fallible, we are human, and like everybody else, we experience at times overwhelming personal challenges. Sometimes, we, as judges, need help, but we are reluctant to seek help because of our positions as judges.

We will appoint a committee that will implement a program called Judges Helping Judges. This program will provide confidential assistance to judges who need help when wrestling with personal and emotional crises and alcohol addiction. Justice Barbara Milano Keenan will chair this committee

This year marks the 50th anniversary of two significant events. Fifty years ago, in 1958, Herman T. Benn, a black attorney, became a member of the Virginia State Bar. He was one of a few black lawyers who were members of the Virginia State Bar during that era, and he was the first black lawyer to join the Virginia Bar Association. Mr. Benn, who died last year at the age of 95, represented Ford Johnson in a case called *Johnson v. Virginia* in which the United States Supreme Court held that the practice of racial segregation in Virginia's courtrooms was unconstitutional.

Gender diversity, racial diversity, and geographical diversity are very important to our judiciary. Our courts, our judges, our policymaking committees, our court personnel, and our juries should be reflective of our citizens. Diversity is important if we are to retain public trust and confidence in our judicial system. No citizen, no litigant, no lawyer, no witness, and no juror should ever have a perception that he or she was treated differently or unfairly because of his or her religion, race, gender, or national origin.

The second significant event that occurred 50 years ago was the issuance of a proclamation by President Dwight Eisenhower to establish May 1 as Law Day in America. On Law Day, we pause to recognize and celebrate freedoms and liberties that we as Americans enjoy. Too often, we take these freedoms and liberties for granted.

In our constitutional form of government, the courts and lawyers are indispensable to the preservation of our liberties and our freedoms. The judiciary and our lawyers represent the greatest deterrence to governmental tyranny and abuse.

Imagine if we were to awaken tomorrow to find our courts no longer exist. Our state and federal constitutions and bills of rights are intact, but our courts have disappeared. Imagine that, just as in Pakistan, we as judges are arrested, imprisoned, and removed from office simply because we discharged our constitutional duties as judges.

Who would ensure that our citizens' right to free speech, our right to practice our religion, and our right to be free of unreasonable searches and seizures would be honored? Who would protect our right to vote, our right to assemble, and our right to petition the government? Who would dispense justice impartially, free of political considerations? Who would resolve disputes between the Executive and Legislative Branches of government? The answers are simple; no one. Without a strong and independent court system, no one would protect our basic rights, freedoms, and liberties. Our sacred right to a trial by jury would vanish. Without an independent judiciary, despotism and tyranny would replace democracy.

As we perform our duties each day as judges, we must never forget the importance of our responsibilities. And, I remind you, that Virginia's judicial system is the oldest and one of the largest in America. Each year, we resolve more cases in Virginia's courts than the entire federal judiciary.

As we discharge our duties as judges, let us strive to do so with patience and humility. Let us administer justice impartially, and when appropriate, with compassion. Let us be zealous in our degree of preparation, and let us exhibit wisdom and patience in great abundance as we serve our fellow Virginians. May God bless our Commonwealth and our honorable courts.