State of the Judiciary
Chief Justice Leroy R. Hassell, Virginia Supreme Court of Appeals
Message to the Judicial Conference of Virginia
2008

Even though the Commonwealth of Virginia is confronted with a severe and continuing financial crisis, I stand before you to report that our judicial system is strong, vibrant, and well positioned to serve the citizens of our great Commonwealth.

Since our last conference, Justice Steven Agee retired from the Supreme Court of Virginia upon his nomination and confirmation to the United States Court of Appeals for the Fourth Circuit. Interestingly, Judge Agee is the first Justice in the history of the Supreme Court of Virginia to retire from this Court to serve on the United States Court of Appeals. We are grateful for Justice Agee's outstanding service on our Court.

We are very pleased with Governor Tim Kaine's appointment of Justice LeRoy F. Millette, Jr., to the Supreme Court in August 2008. Justice Millette is an outstanding jurist who has distinguished himself as a general district court judge, a circuit court judge, and as a judge of the Court of Appeals of Virginia. During his short tenure on the Supreme Court, Justice Millette has exhibited a great intellect and a wonderful sense of humor. We are honored to have Justice Millette as our friend and colleague.

I also note that since our last conference, Governor Kaine has appointed Judge Cleo E. Powell and Judge Rossie D. Alston, Jr., to the Court of Appeals of Virginia. We are confident that Judge Powell and Judge Alston, who have both served as district court and circuit court judges, will continue their service of excellence appellate judges

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. Koont, Jr., Justice Cynthia D. Kinser, Justice Donald W. Lemons, Justice S. Bernard Goodwyn, and Justice LeRoy F. Millette, Jr.

We also acknowledge the outstanding contributions of our Executive Secretary, Karl R. Hade, and his staff. Mr. Hade and his staff are invaluable to the Supreme Court and we thank them immeasurably.

Our state and national economies are in trouble. The Commonwealth's tax revenues have declined significantly and consequently, all branches of state government, including the judicial department, have been required to reduce expenditures.

During this past legislative session, the General Assembly reduced the judicial system's budget by over ten million dollars. The impact of this budget reduction is significant, particularly when we consider that our judicial system is already understaffed by over 300 positions, primarily in our district courts. Our judicial system is also understaffed by approximately 20 judgeships.

The Justices, working closely with Karl Hade, developed a plan designed to minimize the disruptive impact of this significant budget reduction. We have carefully scrutinized all the judicial system's operations and we have reduced non-essential spending and programs that are not absolutely critical to the administration of justice.

We began this challenge with the principle that all judicial operations that relate to public safety and the resolution of litigation will remain unaffected. Additionally, we have made and will continue to make, every effort to avoid terminating employees.

We have an outstanding and highly dedicated work. force which includes our magistrates, who issue almost two million processes each year, and our district court employees, who process over four million cases each year. These employees are overworked and are not compensated commensurate with their responsibilities and contributions. We must make every effort to preserve their jobs, which are necessary for the effective administration of justice.

We have implemented a six-month hiring delay that will save several million dollars. We have eliminated a department in the Office of the Executive Secretary. We have ceased annual and sick leave balance payments to district court judges. These payments were never appropriated by the General Assembly but were financed through savings from funded but vacant positions. This source of revenue, however, is no longer available. We have declined to authorize the use of additional substitute judge days in the district courts when a district court judge decides to use accumulated but unused annual and sick leave days.

We have cancelled the voluntary conferences for our judges and we have reduced the mandatory conferences for judges by one-half day. We have reduced expenditures for travel, postage, publications and all discretionary programs. Even though we are in need of approximately 20 new judgeships, we have refrained from submitting such requests to the General Assembly. We note that a new judgeship has not been created in Virginia since 2006.

Virginia's judicial system is one of the largest and busiest in the United States. Our citizens turn to our courts in search of justice. In spite of our efforts to minimize the impact of these budget reductions upon the public, our citizens have been, and will continue to be inconvenienced. However, we cannot simply close the doors of our courthouses or deny our fellow Virginians access to justice. Even though our resources have been diminished, we must ensure that budget reductions do not impair our constitutional responsibilities to dispense justice fairly and impartially.

We have been very aggressive and quite creative in seeking new sources of revenue to fund certain judicial initiatives. For example, we have obtained a grant that will allow us to provide educational programs for our juvenile and domestic relations district court judges. We have received a grant that will enable us to fund new court related mental health initiatives. We have obtained private funding that will allow us to continue to develop our Judicial Wellness Program, under the leadership of Justice Barbara Milano Keenan.

This past year, we encountered numerous challenges related to our Judicial Performance Evaluation Program. For the very first time, judicial performance evaluations for individual judges were submitted to the General Assembly. Upon the inception of the Judicial Performance Evaluation Program, the Supreme Court reached an agreement with certain leaders of the General Assembly regarding the dissemination of the judges performance evaluation reports. The Court and these leaders agreed that the reports of the judges' would not be released to the public.

Consistent with this agreement, the Supreme Court submitted the reports of the evaluations, by order, to the Chairman of the House of Delegates Courts of Justice Committee and the Chairman of the Senate Courts of Justice Committee. A dispute arose because some legislators questioned the Supreme Court's authority to transmit the performance evaluations by order, and other legislators raised concerns because the enabling legislation for the Judicial Performance Evaluation Program was silent on the issue regarding the confidentiality of the judges' evaluation reports.

This problem was very troublesome. Former and current Justices had consistently assured you, our fellow judges, that the performance evaluations would not be given to the media and we simply could not breach our commitment to you. We were equally concerned because judges who were the subjects of the performance evaluations that had been forwarded to the General Assembly were not going to receive re-election hearings until this issue was resolved.

Thankfully, we resolved this impasse during the last week of the General Assembly's session. The Justices agreed to withdraw the transmittal order and the legislature agreed to treat the reports as confidential.

We remain confident that the Judicial Performance Evaluation Program is beneficial to our judges. Many judges who have participated in the program have informed the Justices that the program was helpful to them. Legislators of both political parties have stated that the evaluations have improved the quality of the judicial re-election process and that the evaluations were beneficial to the judges.

The General Assembly eliminated funding for the Judicial Performance Evaluation Program and, therefore, we have suspended the program. Once we agree upon a permanent solution that will ensure the confidentiality of these evaluations, we will seek funding from the General Assembly for the restoration of the Judicial Performance Evaluation Program.

There are currently 28 drug treatment court programs in Virginia. 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 each week. Drug offenders are required to work and they must share the cost of the drug treatment court program.

We are confident that our drug treatment court programs are successful, and they seem to be the only effective judicial resource in helping break the cycle of drugs, dependency and addiction. The recidivism rate for drug court graduates is 50 percent less than the re-arrest rates of non-drug court graduates.

During the past two sessions 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 were successful in retaining funding for our drug treatment courts, we must remain vigilant in our efforts to preserve these important drug treatment courts.

Approximately 18 months ago, we began to study the impact that an influenza pandemic would have upon the operation of Virginia's courts. During the past year, we met with consultants from health organizations and state and federal courts that have developed influenza pandemic plans.

Recently, the World Health Organization issued a phase 5 global alert in response to a fast spreading new strain of influenza called H1N1, also known as swine flu. The phase 5 alert is one stage below phase 6, which signifies a global pandemic.

This strain of flu is contagious and humans have no natural immunity to this disease. The H1N1 influenza virus has been reported in every state in the United States. Several persons in Virginia have been infected with this strain of flu.

Three months ago, we appointed a Pandemic Flu Preparedness Commission. Judge Westbrook J. Parker serves as the Chairman of this planning Commission. Judges from all levels of Virginia's courts serve on this Commission. Additionally, magistrates, district court clerks, Commonwealth's Attorneys, public defenders, private attorneys, law enforcement personnel, legal aid attorneys, and other stakeholders serve on the Commission.

The Commission will develop a comprehensive plan that will permit us to operate our courts safely during an event of pandemic influenza. Imagine the disruption that would occur if judicial operations were to cease. All criminal and civil proceedings would have to be continued. Without sufficient healthy personnel, how would we operate our courts and our clerks' offices? We must provide a safe environment for court personnel, jurors, witnesses, sheriffs, and the public.

As judges, we physically touch thousands of pieces of paper. Could an influenza virus be transmitted when we touch pleadings or other documents that have been filed with the courts? If we are compelled to close a court or clerk's office because of an event of pandemic influenza, how would these closures affect the expiration of the statute of limitations or a criminal defendant's right to a speedy trial? Our planning Commission will address these issues, as well as a myriad of other questions, as we seek to ensure the continued and safe operations of our courts during a pandemic event.

Last year, we appointed an Electronic Filing Committee to develop an e-filing system in our courts. This Committee, which is chaired by Judge Junius P. Fulton, has been working extremely

hard to design the prototype of the electronic filing system that will initially be implemented in all the courts in the City of Norfolk. The General Assembly has authorized the Supreme Court to impose a fee to fund the electronic filing initiative statewide and we are very appreciative. The General Assembly’s approval is a significant development and we thank Senator Yvonne B. Miller and Delegate Lacey E. Putney for their leadership and help with this extremely important project.

We have continued to make significant improvements in the provision of our information technology services. We have created a new home page for the Supreme Court's website. This new home page will be more user friendly and will allow us to locate and access information easier and faster.

We have designed new case management and financial management systems. We will eliminate our old code based systems, and replace those systems with windows based applications. We will implement a pilot program for our new windows based case management and fiscal management systems in the Circuit Court of Tazewell County in September 2009.

We are expanding the use of our case imaging systems. Our case imaging systems will permit our judges to review, electronically, pleadings, correspondence, and other documents in a case file. We have received a grant that will enable us to develop an electronic summons program that will permit police officers and sheriffs who issue traffic tickets to obtain court dates electronically. This program will benefit our understaffed district court clerks' offices. The e-summons program will also permit a person who has received a ticket to monitor his case, including hearing dates, on our website.

We continue to provide computer tutorial sessions for judges who desire help. We will come to your chambers to help you. We encourage you to take advantage of this opportunity.

We remain concerned about access to the courts for indigent Virginians. All citizens - the rich, middle class, and poor - should have access to our court where they can vindicate their interests and property rights. I have asked Virginia's voluntary statewide bar associations, particularly the Virginia Bar Association, to assist with the planning of a bold and comprehensive statewide initiative for Virginia's lawyers and law firms so that we can significantly increase the provision of legal services to the poor. We plan to develop a voluntary program that will encourage every Virginia lawyer to provide pro bono services to the poor. I thank John D. Epps and the Virginia Bar Association for their help and leadership.

In December 2005, we began to examine Virginia's mental health statutes and processes that impact our courts. There are over 24,000 involuntary commitment hearings each year.

Last year, the General Assembly unanimously approved a resolution that directs the Joint Commission on Health Care 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. Our Commission on Mental Health Law Reform made numerous recommendations that were approved by the General Assembly. The newly enacted mental health statutes provide mandatory out-patient treatment for juveniles; grant a mental health

consumer the right to have a person of his or her choice notified of his or her condition, location, or transfer; allow a mental health consumer's family members to be notified of the consumer's location and general condition when the mental health patient is subject to the civil commitment process; provide that a special justice serves at the pleasure of the chief judge of the circuit; and create a mental health advance directive and instructions for the use of such directive.

We thank the Commission on Mental Health Law Reform, and its chairman, Professor Richard J. Bonnie, for their outstanding service to the citizens of this Commonwealth. We thank Gregory E. Lucyk, the Supreme Court's Chief Staff Attorney, for his assistance to the Commission. We also thank Senator Janet D. Howell, Senator Henry L. Marsh, Ill, and Delegate Phillip A. Hamilton for their leadership and help in this very important area.

Fifty years ago, the Supreme Court of Virginia issued a seminal opinion that had a tremendous impact upon the rule of law and race relations in Virginia. Following the United States Supreme Court's decision in Brown v. Board of Education, the social and political environment in our Commonwealth was turbulent, to say the least. Virginia, like many other southern states, embarked upon a policy of massive resistance to the United States Supreme Court's mandate that the states integrate public schools. In 1956, the General Assembly of Virginia enacted statutes that divested local control of any public school that was racially integrated. Authority, power, and control of such schools were vested in the Commonwealth and the Governor was empowered to operate the schools. The State withheld funding from such schools.

President Eisenhower injected himself in Virginia's political debate. President Eisenhower instructed Virginia's Governor, Lindsey Almond, to obey the mandate of Brown v. Board of Education. Governor Almond closed the public schools in Norfolk, Charlottesville, and Warren County, rather than permit the schools to integrate based upon race. Almost 13,000 school children, 10,000 of them in Norfolk, were not permitted to attend public schools. Consequently, many of these children never graduated from high school.

The Attorney General of Virginia, Albertis S. Harrison, Jr. who would later serve as Governor of Virginia and a member of the Supreme Court of Virginia, filed a petition for mandamus in the Supreme Court and requested a declaration that the statutes that authorized the closing of the schools complied with the Constitution of Virginia. The Supreme Court, in Harrison v. Day, 200 Va. 439 (1959), held that the statutes that authorized the Governor to operate public schools violated the Constitution of Virginia.

The United States District Court for the Eastern District of Virginia, the Norfolk Division, also held that the challenged statutes and Governor Almond's act of closing the Norfolk schools violated the federal constitution. The federal district court ordered the Governor to open the schools. The federal district court planned to hold the Governor in contempt had he failed to comply with the order. Consequently, 17 brave young black students integrated the high schools in the City of Norfolk.

The Supreme Court of Virginia's decision to issue a declaration invalidating the statutes authorizing Governor Almond to close the schools in furtherance of the policy of massive resistance is an example of courage and respect for the rule of law during an extraordinarily

racially turbulent era in Virginia's history. Without question, the decisions of the Supreme Court of Virginia and the United States District Court were unpopular and subject to great criticism and ridicule. Nonetheless, the courageous acts of judges who made these decisions should be a constant reminder to us that as jurists our allegiance is not to the predilections and biases of men and women, but rather our commitment is to the impartial application of the rule of law.

As judges, our constitutional role is extraordinarily unique; the public has imposed upon us a sacred trust shared by no other member of any other branch of government. We are called upon to decide the most intimate aspects of the lives of our fellow Virginians. We determine whether to honor a person's will, or whether to invalidate that will. We must decide which parent is best suited to raise a child or whether parental rights should be terminated, decisions that affect present and future generations of Virginians. Each day, we determine guilt, innocence, and punishment. And, in rare instances, we determine whether a fellow human being should be sentenced to death and ultimately executed.

As we discharge the sacred trust that our fellow Virginians have conferred upon us as judges, let us do so with humility, reverence, and respect. Let us never think too highly of ourselves that we cannot learn; let us not become too confident that we fail to listen. Let us begin each day with vigor, and a passion and love for the rule of law. I hope that each of our hearts will always reflect an unyielding passion for service as we seek to dispense justice fairly, and impartially, to our fellow Virginians.

May God save this Commonwealth and our honorable courts.