

# Report of the Focus Groups on Trends Affecting Virginia's Courts



Office of the Executive Secretary  
Supreme Court of Virginia

January 2007

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On Trends Affecting Virginia's Courts**

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## General Information for Individuals With Disabilities

The Court System has adopted a policy of non-discrimination in both employment and in access to its facilities, services, programs and activities. Individuals with disabilities who need accommodation in order to have access to court facilities or to participate in court system functions are invited to request assistance from court system staff. Individuals (not employed by the court system) with disabilities who believe they have been discriminated against in either employment or in access may file a grievance through local court system officials. Those who need printed material published by the court system in another format or those who have general questions about the court system's non-discrimination policies and procedures may contact the Office of the Executive Secretary, Supreme Court of Virginia, 100 North Ninth Street, Third Floor, Richmond, Virginia 23219. The telephone number is 804/786-6455; communication through a telecommunications device (TDD) is also available at this number.

## **Acknowledgments**

The Supreme Court of Virginia gratefully acknowledges the time and effort invested by the judges, clerks, executive branch officials, legislative branch staff, and private citizens who participated in the judicial branch's 2006 strategic planning focus groups. Their diverse perspectives and willing, collaborative efforts helped identify a wide range of issues and implications of which the courts and policymakers should be aware and produced numerous task recommendations for consideration by the Virginia courts as they formulate their next strategic plan.

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# Report of the Focus Groups on Trends Affecting Virginia's Courts



## Introduction

# INTRODUCTION

## The Planning Process

Maintaining the courts as a core function of our democratic form of government is critically important. In addition to carrying out the basic functions of the justice system, the courts must also provide for special circumstances and anticipated needs, such as security and continuity of court services and personnel in times of natural and man-made disaster. To ensure that the court system handles these responsibilities effectively, the courts maintain an ongoing, comprehensive planning process that identifies the preferred course for meeting responsibilities and monitors progress toward identified ends.

The comprehensive strategic and operational planning process for Virginia courts operates on a two-year cycle [see **Figure 1**]. The process is driven by four information engines. The first of these engines has been the 1989 report of the Commission on the Future of Virginia's Judicial System and the mission, visions, and objectives that followed from its recommendations. That commission has strongly influenced the values and strategies that are reflected in the succeeding multi-year plans that have been adopted by the Judicial Council and Supreme Court of Virginia. The court system's recently completed second futures commission, "Virginia Courts in the 21<sup>st</sup> Century: To Benefit All, To Exclude None," used the work of its predecessor as a foundation for its work. The recommendations of this new commission will inform ensuing cycles of the comprehensive planning process.

Another information engine is ongoing futures research that the judicial branch conducts to help identify and understand developments that could shape the future. By a number of different techniques, including environmental scanning, the identification and analysis of trends, and the solicitation of expert opinions, the judicial branch gains information about the choices that are available and what the consequences of those choices may be. During 2005 and 2006, the futures research efforts of the Department of Judicial Planning of the Supreme Court of Virginia's Office of the Executive Secretary (OES) were augmented by an environmental scan, *Strong Nations, Weak States, Sinking Debts and Rising Oceans*, provided by the Hawaii Research Center for Futures Studies at the University of Hawaii. In addition, work of the Council of State Governments, a non-profit forecasting policy trends for all branches of state and local governments, provided a structural framework for consideration of Virginia- and court-specific trends implications.

The remaining sources of information driving the planning process are consumer research and constituent participation. Surveys are conducted periodically to assess citizen perceptions of the Virginia courts, and feedback is also solicited from individuals who actually consume court services. These efforts help in assessing the court system's strengths and weaknesses. Individuals within the courts and members of the bar are surveyed to clarify perceptions of the strengths, weaknesses, opportunities, and threats that the court system faces and to assess the merits of various strategies. Focus groups provide perspective on the relevance and degree of priority that certain trends may have for the courts.

The judicial branch uses the information from these many sources to develop comprehensive strategic and operational plans, identifying tasks to be accomplished that, in turn,

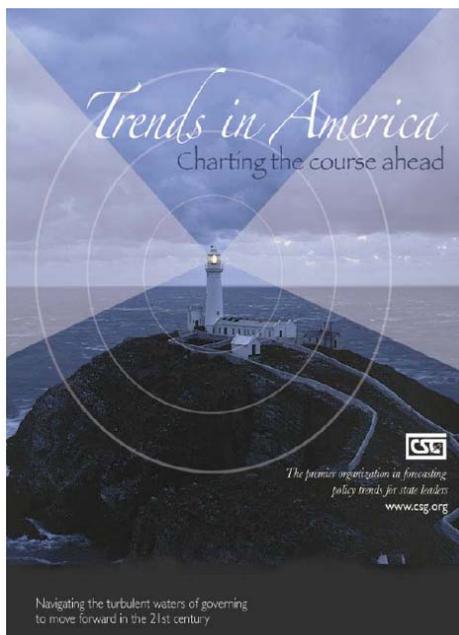
influence the acquisition of resources during the budgetary process. Prioritization within the planning process guides the subsequent allocation of resources toward task implementation. Monitoring and evaluation is continuous within the planning process to ensure that tasks are implemented in a timely and effective manner and to assess whether strategies are actually successful in meeting their intended objectives.

### **The 2006 Focus Groups**

In its planning process, the Supreme Court of Virginia has long recognized that a group of people can produce a product that is superior to what the same individuals can produce individually. Likewise, when the members of a group represent a diversity of backgrounds and opinions, the quality of the work-product tends to be better. This is particularly true when the group must address complex, ill-defined societal issues. For this reason, the Supreme Court periodically assembles focus groups or “venture teams” to work with the various findings generated by the information engines of its planning process. The focus groups allow individual judgments to be effectively pooled and used to consider aspects of the future about which uncertainty or disagreement exists as to the nature of problems and opportunities and what to do in response to them. Specifically, the groups have been helpful in:

- identifying problems and opportunities,
- exploring strategies, and
- establishing priorities.

In 2006, the OES Department of Judicial Planning decided to organize ten focus groups to consider the findings from its most recent futures research. The Planning staff had previously begun to organize their futures research around ten thematic “change drivers” that the Council of State Governments (CSG) had identified in its 2005 *Trends in America* reports:



The ten change drivers, as originally identified by the CSG, were:

- Silver Society: Aging of America
- Immigrant Nation: Changing Face of America
- Growth Dynamics: Regional Hot Spots
- Economic Transformation: Knowledge is King
- Globalization Era: New Forces at Work
- Information Revolution: Sorting it Out
- Privacy vs. Security: A Balancing Act
- Resource Management: Sustaining Our Future
- Polarized Populace: Eroding Common Ground
- Ambiguous Authority: Who's in Charge

Judicial Planning modified the names of some of the drivers (e.g., “Aging of Virginia” and “Changing Face of Virginia”) to increase the focus on Virginia but generally kept to the subject matter originally identified in the CSG reports. The principal exception was for the change driver dealing with “Resource Management.” The CSG materials associated with this driver dealt exclusively with environmental and ecological concerns. Although Virginia has its share of environmental issues to resolve, the implications of these issues for the operation of Virginia’s courts were not felt to be sufficient on their own for discussion by a judicial branch focus group. Therefore, Judicial Planning expanded the scope of the Resource Management discussion to include core judicial branch resources, namely personnel, technology, and facilities. The original title of the last change driver was somewhat confusing, but the focus group adhered to the central theme presented by the CSG, which was intergovernmental relations in the context of the shifting balance of federal, state, and local power.

Each of the focus groups had a different panel of participants, ranging from 7 to 11 members. Judicial Planning staff identified lists of prospects from which the Chief Justice and Executive Secretary of the Supreme Court of Virginia selected those who were invited to participate. The selection process encouraged diversity on several levels. Most fundamentally, no more than half the invitees for any focus group were employees of the judicial branch; the remainder—legislative and executive branch staff; attorneys; college and university professors; advocates for the poor, for immigrants, for corporate and commercial interests; etc.—were selected from various public and private organizations for the personal expertise or institutional perspectives that they might offer. Among the judicial branch participants were clerks as well as judges from both the Circuit and District levels and selected managers and directors from the OES. The trial court participants came from several different regions of the state and from urban, suburban, and rural jurisdictions.

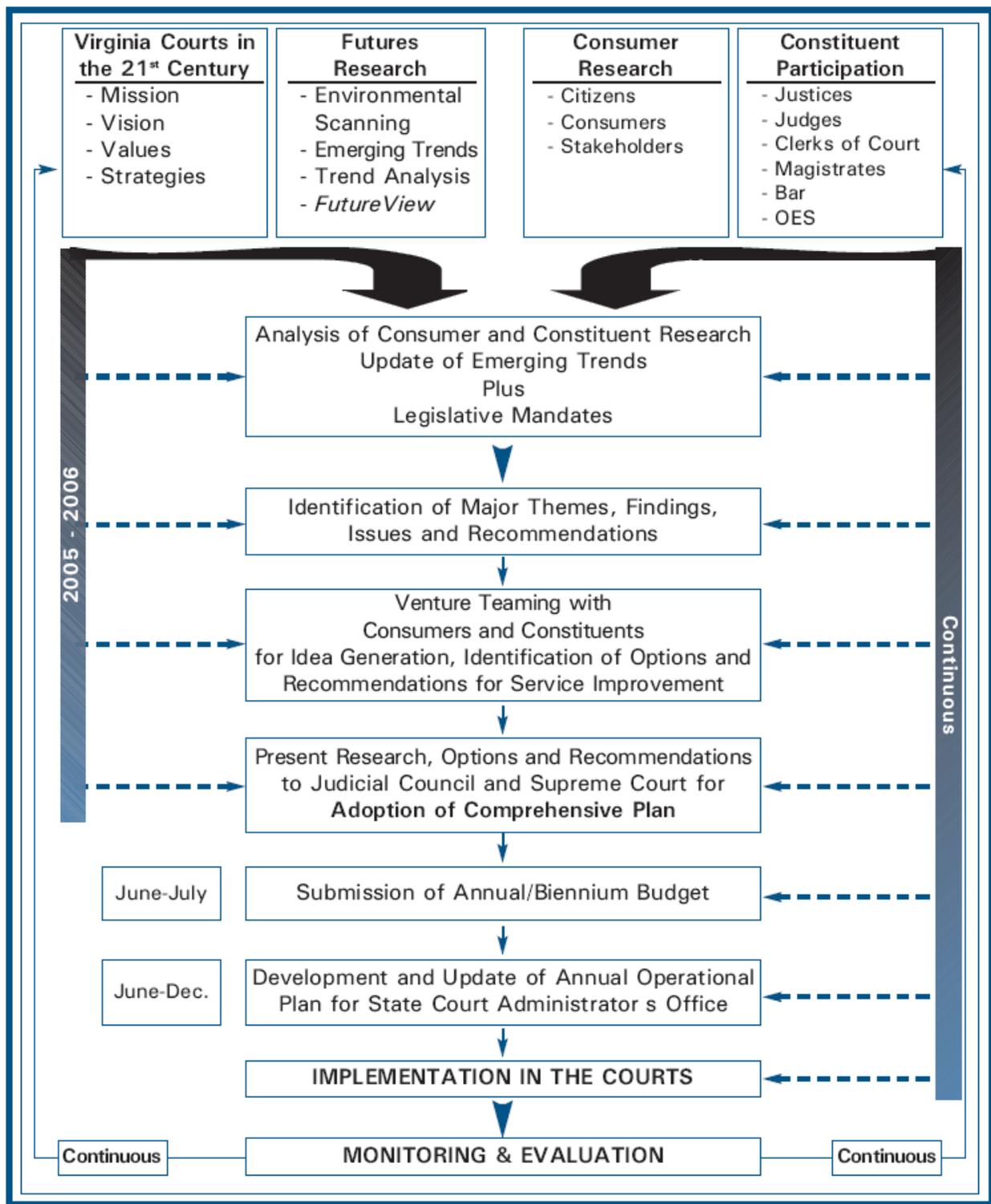
The ten focus groups were conducted in October and November 2006, with a day being devoted to each change driver. The meetings started at 10 a.m. with a welcome and a review of the focus group goals, the agenda, and basic ground rules. Introductions rounded out the first fifteen minutes. The next part of each day’s activities was a 15- to 25-minute research presentation that briefly reviewed the other nine change drivers then concentrated on the change driver that would be discussed by that day’s focus group. This presentation elaborated on research that was shared with the participants in advance of the meeting. National and Virginia

facts and trends were included in these presentations with special attention being given to points of relevance to the judiciary. A summary of the research findings shared in each focus group is included in the chapter that follows. During the remainder of each morning, the facilitator led the participants through an idea-generating exercise to identify 35 to 50 issues or implications for the courts that related to the change driver.

After lunch, the facilitator spent an hour with the participants grouping these issues and implications thematically and determining which groups of issues should have higher strategic priority for the courts. During the last 90 minutes of each day, the participants worked in groups of two or three to draft and present strategic objectives and tasks related to these highest priority areas for consideration by the OES in the preparation of the next strategic plan for Virginia's courts. Each day concluded around 3:30 p.m. with an opportunity for each participant to comment on the day's activities and an explanation by Judicial Planning of the next steps in the court system's planning process.

In the chapters that follow, the work of each focus group is set forth in detail. The implications for the courts of each change driver and the issues raised by each focus group are presented with minimal editing basically as generated in the idea generation or brainstorming exercises. Recommended objectives and tasks developed by each focus group are also included.

**Figure 1**  
**The Comprehensive Strategic & Operational**  
**Planning System for Virginia Courts**



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# Report of the Focus Groups on Trends Affecting Virginia's Courts



**Silver Society:  
Aging of Virginia**

## **SILVER SOCIETY: AGING OF VIRGINIA**

Because people are living longer and having fewer children, the percentage of older people in the United States is growing. The number of people older than 65 will more than double between 2000 and 2050, and the population over age 85 will quadruple. Fueling America's population transformation are the 76 million baby boomers born between 1946 and 1964. What difficult decisions will states have to make as the population ages?

### **Numbers**

- Virginians 65 or older in 2000:
  - 792,000 (11.2%)
- By 2010, "older" residents will increase by about 383,000 people.
- By 2030, one in four Virginians will be 60 or older.

In general, the age distribution profile in Virginia and the rest of the country is becoming flatter—that is, more even.

### **Location**

- The highest concentrations of residents age 65 and older are in rural localities.
- The areas of greatest projected growth of the senior population are largely suburban communities where Boomers are now concentrated.

Rural localities are more likely to have difficulty providing facilities and services to meet the needs of elderly residents.

### **Elderly in Virginia vs. the U.S.**

- Fewer Virginians 60 and older are in poverty
- Fewer are high school graduates
- Comparable level of reported disabilities

### **Future Senior Virginians**

- Virginia's over-25 population is better educated and more well-to-do than the national average
- Local conditions vary significantly—Petersburg and Richmond are among 25 U.S. cities with the lowest life expectancies, 69.6 and 71.1 years, respectively.

### **Services and Entitlements**

- Social and economic strains increase as society ages
  - Social security
  - Medicare
  - Other Public Services
- Health care expenditures for a 65-year-old are, on average, four times those for a 40-year-old.

### **Virginia's Aging Workforce (2002)**

- Ranked among 3 states with highest percentage of state employees eligible for retirement.
- The average age (44.6) and average years of service (11.7) of state employees exceeded the national averages

## **Possible Issues and Implications for Virginia's Courts**

### *Workforce Replacement Issues*

1. There may be a greater number of cases related to elder divorce, multiple marriages, large estates which place heavy demand on court time.
2. Courts will not be able to pay same compensation for new hires.
3. The younger population is not applying for entry level positions (pay is not competitive and entire compensation/benefits package is more tilted towards older workers).
4. Courts may experience a significant increase in probate cases.
5. Courts may experience increased numbers of estates and wills from other states.
6. Personnel turnover will have greater impact on rural courts.
7. Younger workforce may not trust the system or be invested in it.
8. Courts should explore potential to create part time worker in older population.
9. Courts should recognize that pension laws may make it difficult to engage in work, but many older or retired workers may want to stay engaged.

### *Alternative Dispute Resolution / Problem Solving Courts Issues*

1. Courts may experience increased litigation for forced placement in institutions.
2. Courts may need to create an ombudsman.
3. Special approaches to alternative dispute resolution involving the aged are needed.
4. Elder support services will be increasingly needed.

### *Capacity / Guardianship Issues*

1. Courts may experience increased number of dementia cases and issues of competency; guardianship cases may increase; advance directives may be more common.
2. How much do we need to protect people from themselves?
3. Courts need to understand how guardianship cases are getting to court. Will there be an increase in the number of public guardianship boards?
4. Courts may need more detailed reports on competency.
5. Older litigants want to know what is happening but may be slow to understand.
6. The costs of guardians ad litem will increase.
7. State will need to qualify more guardians ad litem for this population.
8. Cases related to self-neglect and nuisance cases may increase (e.g., hoarding).

### *Education Issues*

1. There will be greater need for public education regarding involuntary commitments.
2. There will be greater need for judicial education regarding the issues of aging.

### *Caregivers and Potential Abuse Issues*

1. Cases involving caretaker abuse are increasing.
2. Courts may be called upon to play a role in ensuring adequate care by paid caregivers and facilities.
3. Identity theft is increasing amongst caregivers.
4. Courts may see more cases related to abuse from consumer-directed care.

### *Accessibility Issues*

1. Courts do not own facilities that they operates. This may lead to complications in dealing with physical accessibility issues.
2. More interpreters for deaf may be needed.
3. The courts will need to deal increasingly with mobility issues – accessibility for wheelchairs, more people with walking difficulties.
4. Courts may see an increased need for the use of video technologies.

### *Demand for Court and Legal Services Issues*

1. Courts may see more self-represented litigants.
2. The self-represented may increase information demands on clerks.
3. Courts should explore the creation of an ombudsman.
4. Courts will continue to confront the information delivery vs. legal advice conflict.

### *Issues Related to Service Options, Judicial Decisions, and Their Consequences*

1. How do courts enforce orders with this population?
2. Courts may increasingly be called upon to make decisions about imposing social isolation (e.g., restricting driving).
3. Courts will need to be aware of state and federal regulations and their impact on court services, i.e. HIPPA.
4. Courts will need to develop support services to coordinate and implement orders.

### *Issues Related to Complaints Against Fiduciaries and Advisors*

1. There may be increase in the number of complaints against money managers, for example, issues related to the stewardship of funds or asset management.
2. Courts may witness cases related to pressures to buy annuities.
3. Courts may witness cases related to abuse of the power of attorney.
4. Power of attorney burden of proof issues will be more frequent.
5. Power of attorney education needs will increase.
6. Disputes such as those involving houses deeded to children with right to stay may increase.

### *Conditions and Actions: Uniform (i.e., Statewide) versus Local Issues*

1. Will population shifts be uniform? Do solutions need to be statewide?

### *Entitlements-Eligibility Issues*

1. Courts will be increasingly be called on to consider Medicaid eligibility issues.

### *Facility Needs, Zoning, and “Not in My Backyard” Issues*

1. Courts may experience increased number of zoning cases related to the location of group homes or nursing homes.

*Correctional Issues*

1. An aging population with physical maladies will have budgetary implications for jails, etc.
2. Locally responsible offenders may become more common.
3. Jail overcrowding issues may become even more severe.

*Mental Health/Dementia and Criminal Behavior Issues*

1. More elderly are using drugs.
2. The courts may witness increased number of cases where dementia is contributing to criminal behavior.
3. The frequency of domestic violence cases is increasing in this population (e.g., violent Alzheimer's case as well as the abused elderly person).

## **RECOMMENDED OBJECTIVES AND TASKS**

### **Workforce Replacement**

*OBJECTIVE 1: To attract and maintain a qualified workforce as long-term experienced employees exit the workforce.*

Tasks:

1. Analyze demographics of statewide court workforce ( age, experience, years of service) geographically to determine impending departure of knowledge base.
2. Identify opportunities for cross-training, knowledge sharing/transfer, and further training needs of remaining employees.
3. Undertake salary studies to identify statewide salary trends within the court system to determining disparity among geographical areas and in comparison with other local government and private industry salaries in support of increasing salary bases for court employees.
4. Develop comprehensive job descriptions to identify breadth of knowledge.

*OBJECTIVE 2: To recruit qualified and capable employees and retain trained & experienced staff.*

Tasks:

5. Study ways to liberalize staffing rules to allow retirees to occupy full time positions while receiving their pension.
6. Increase staffing and salary levels to help promote image of court system as an “employer of choice”.

### **Alternative Dispute Resolution / Problem Solving**

*OBJECTIVE: Provide an alternate form for the resolution of issues associated with the elderly.*

Tasks:

7. Study other models that include rules of evidence, broader range of remedies and greater accessibility & convenience.
8. Implement the model on limited basis in areas highly populated by the elderly.

## **Capacity / Guardianship**

*OBJECTIVE: To expand upon the reform legislation to be more accessible to aging.*

Tasks:

9. Evaluate guardian ad litem certification requirements to educate and encourage advocacy, and compliance with the Code of Virginia.
10. Educate the public and the courts public about Guardianship Boards.
11. Employ mediators in cases involving contested guardianships.

## **Education**

*OBJECTIVE: Develop legal and practical aspects of serving the elderly in various media to inform and educate the public, the judiciary, the bar and service providers.*

Task:

12. Develop publications in an easy to read format.
13. Develop a website that better accommodates the needs of the elderly population.
14. Develop lists of resources and how to access the resources.
15. Develop community education programs to be presented to the public by community agencies, bar, etc.
16. Develop and provide information on alternatives such as mediation.
17. Incorporate issues affecting the elderly into judicial education and staff education.
18. Conduct a surveys of judges and clerk to assess the issues affecting the elderly they are seeing in the courts.

**Focus Group Participants  
October 12, 2006**

**The Honorable Cleo E. Powell, Judge**  
Chesterfield Circuit Court

**The Honorable Lucretia A. Carrico, Judge**  
Petersburg General District Court

**Frances H. Hedrick, Clerk**  
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Compensation Board, Commonwealth of Virginia

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# Report of the Focus Groups on Trends Affecting Virginia's Courts



**Immigrant Nation:  
Changing Face of Virginia**

## **IMMIGRANT NATION: CHANGING FACE OF VIRGINIA**

The percentage of the population comprised of immigrants is close to record levels, and the number of immigrants is at an all-time high. In recent years, most immigrants have come from Latin America and Asia. And many of these newcomers are dispersing to areas and states where immigrants traditionally have not lived. What are the economic impacts to states as the immigrant population increases?

### **National Immigration Statistics**

- Population (2004): 34.2 million (c. 12% of U.S.)
- Immigration Rate: Over 1 million per year
- A majority still live in the traditional gateway states (California, Florida, Illinois, New Jersey, New York, and Texas)
- Other states, including Virginia, have experienced a substantial influx since 1990

### **Immigrants in Virginia**

- 723,667 foreign-born residents (2005)
  - Increased by 26.9% between 2000 and 2005
- A third of recent *legal* immigrants are from:
  - El Salvador
  - India
  - China (including Hong Kong and Taiwan)
  - The Philippines
  - Vietnam
- Estimated illegal immigrants in 2000: 103,000
  - 55,000 entered from 1990 to 2000
  - Nationally, 69% of illegal immigrants are from Mexico
- 2005 Census estimates indicate 12.7% of Virginians speak a language other than English at home (up over 1% in 5 years)
- Most foreign-born Virginia residents live in the D.C. Metro area and the state's major suburban and university communities, however
- Since 1990, new immigrants have been settling throughout the state, including rural communities for which the cultural and social implications of immigration are new phenomena

### **Immigrants' Workforce Significance**

- 12% of Virginia's civilian labor force (vs. 14% nationally)
- 6.5% of Virginia's active duty armed forces (vs. 5% nationally)
- 44% of Virginia's labor force growth, 1990-2000
- In hospitality/food services and construction industries, immigrants make up 19% and 17% of the workers, respectively

### **Three Primary Needs of Virginia's Foreign-Born (JLARC findings)**

1. Access to opportunities to improve English proficiency,
2. Access to services and information in their native languages

- In FY06, foreign language interpreters served 59,936 non-English speakers in Virginia criminal cases at a cost of \$3,624,300.
3. Access to affordable health care.

## **Possible Issues and Implications for Virginia's Courts**

### *Resource Issues*

1. Dealing with immigrants is expensive.
2. Document management in courts of record should be reviewed and reformed including the records retention policy.
3. The courts should explore better ways to manage names of clients in the system with attention to understanding how names are used in different cultures.
4. Courts should develop information technology for enhanced search capacities on names.
5. Courts need to explore better resource management techniques and develop a problem-solving philosophy (e.g., sharing interpreters).

### *Training Issues for the Judicial System*

1. Victims and witnesses may become victimized by the system.
2. Courts need longer-term training for judges and court personnel to improve cultural understanding.
3. The diversity of training required is vast.
4. Courts should take advantage of resources and top notch training modules that are already available.
5. Judges must better trained to work with interpreters.
6. Defendants fear the court in some ways.
7. Role of the interpreter should be explained to litigants.
8. Interpreter certification should be required. Courts are not selecting Spanish interpreters from the list of certified interpreters.
9. Juvenile and domestic relations district courts need additional services and greater utilization and awareness of existing services (undocumented parents, foster care, etc.).
10. Courts may not be well equipped for dealing with international divorces and custody matters.
11. Courts must educate the "English-only" camp including equal access concerns.
12. Are there implications for the number of mistrials, etc. based on inadequate services?
13. Courts must become aware of the increasing trend of bilinguals preying on the non-English speaking community with respect to interpreter needs.

### *Interpreter Training Issues*

1. Interpreters must understand their proper role and interpreter ethics should be exact.
2. Resources and excellent training modules for interpreters and courts are available.
3. Clients are not understanding the interpreters in some cases due to interpreters not being qualified.
4. The courts must conduct training on interpreter ethics for languages other than Spanish.

### *Outreach Issues*

1. The risks of exploitation and identify theft are increasing.
2. Do the courts have any community outreach responsibilities to targeted communities?

3. The Supreme Court of Virginia needs to do more community education for this population.
4. The courts should better utilize the media for community outreach, education, healthcare, and for the learning of English.
5. Outreach programs should be carefully designed based on policy decisions (lack of uniformity of court process and policies).
6. The courts need to be aware of the trend for bilinguals to prey on non-English speaking community with respect to interpreter needs.
7. Increase training for CBDs and non-governmental organizations regarding court system? Court services so that representatives can give appropriate I&R.
8. The courts should communicate with universities about the need for qualified interpreters

#### *Policy Review Issues*

1. It may be very time consuming to work with non-English speaking litigants (e.g., to speak with them, track witnesses, etc.).
2. Courts and the bar need to do more in terms of providing legal services to this population.
3. Increased appearance of non-English speakers in Virginia's courts impacts all parties, defendants and witnesses, others.
4. Interpreter certification should become mandatory.
5. Could Virginia offer tests to interpreters in Korean and Vietnamese? Other languages?
6. If interpreters can't make a living, they will not consider certification to be important.
7. Courts need to balance general information needs and giving legal advice. What are the implications of this balance for providing public information?
8. Courts need to standardize the procedure for attorneys for obtaining and having the court appoint interpreters (for example, some need to make motion and judge appoints). Inconsistency can contribute to delays and result in blame being placed on the interpreters.
9. The courts need to develop definitions of access to justice for this population within the larger context of answering what constitutes access to justice in Virginia.

#### *Service Development Issues*

1. Juvenile and domestic relations district courts need additional services and greater utilization and awareness of existing services such as undocumented parents, foster care.
2. Standards should be developed for the translation of documents; some standards are available but may be very expensive.

## RECOMMENDED OBJECTIVES AND TASKS

### Resources

*OBJECTIVES: To declare that it is a fundamental requirement that the defendant be “present” (including full communication ability) and that the court be able to understand what the defendant is saying.*

*To declare that in order to preserve effective representation, the judiciary must provide interpreters for effective communication.*

*To require the use of certified interpreters for court proceedings and adequately fund pay for interpreter services.*

### Task:

1. Work with the legislature to increase funding for requiring qualified/certified interpreters and to explain the possible consequences of failing to do so. (To do otherwise will be to undermine the concept of a fair trial in Virginia).

### Judicial System Training

*OBJECTIVE: To raise awareness of judges and court personnel that fundamental fairness when dealing with diverse populations requires an understanding of special linguistic, cultural and religious issues.*

### Tasks:

2. Emphasize in training the importance of using only certified interpreters and explaining the dangers of using non-certified interpreters. Teach using examples of mistrials, reversals and misinterpretations.
3. Create interpreter ethics training for interpreters.
4. Create more comprehensive training on the use of interpreters for judges.
5. Create comprehensive training for court personnel for clerks and others on the use of interpreters.
6. Seek policy changes to make training on the use of interpreters mandatory for judges and court personnel.
7. Seek sources of permanent funding to implement training programs.

8. In judicial training on the use of interpreters, include the importance of allowing time and resources for attorneys to talk to victims and witnesses.
9. Create working definitions of “multicultural” which includes gender, race, ethnicity, culture, language, sexual orientation, disability, religion, etc.
10. Ensure diversity of personnel conducting the training on interpreter and non-English speakers’ issues.
11. Include in training a clear explanation that translated forms are an aid and not a replacement for English forms.

### **Community Outreach**

*OBJECTIVE: Develop a community outreach program to be dissimulated through the courts, community based organizations, governmental and non-governmental organizations, religious organizations, bar associations and others to educate the community about court services.*

Task:

12. Create appropriate educational materials and programs on court processes and court services.
13. Develop a dissimulation network (i.e., organizations, lectures, websites, public service announcements).

### **Policy**

*OBJECTIVE: To uphold and defend rights to due process and a fair trial for all.*

Task:

14. Define access to justice to include the necessary right to a professional certified interpreter.
15. Guarantee the availability of professional interpretation services.
16. Define the parameters of mandatory certification in all languages.
17. Require certification before interpreting in any Virginia court.
18. Using a common format, standardize the means of accessing interpreters for clients.

*OBJECTIVE: Improve representation for indigent clients, especially those speaking a foreign language.*

Task:

19. Increase incentives to attorneys to serve as court appointed attorneys.
20. Simplify the process and paperwork used to pay court appointed attorneys.
21. Increase the pay scale for court appointed attorneys and its flexibility with reference to time to allow for additional costs / time needed in some cases.
22. Increase the number of bilingual court appointed attorneys.
23. Develop a training program to improve language and cultural sensitivity for all sectors of the judicial system.

*OBJECTIVE: Balance the need to help litigants by providing general information with the issue of giving legal advice.*

Task:

24. Provide training on this issue for clerks of court including deputy clerks.
25. Develop and distribute information on constitutional rights in various languages.

**Focus Group Participants  
October 16, 2006**

**The Honorable Ian M. O’Flaherty, Judge**  
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**Wetawna G. Hays, Clerk**  
Prince William General District Court

**The Honorable Samuel H. Cooper, Jr., Clerk**  
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# Report of the Focus Groups on Trends Affecting Virginia's Courts



**Growth Dynamics:  
Regional Hot Spots**

## GROWTH DYNAMICS: REGIONAL HOT SPOTS

While the South and West are growing faster than the rest of the nation, another population trend is taking place. The population in all regions is becoming more concentrated in suburban areas. And people are moving beyond the traditional boundaries of suburbia into what is now known as exurbia. How will the changing demographic landscape alter the demand for education, health care and other services?

### Growth in Virginia

- Since World War Two, growth in Virginia has followed the national pattern, concentrated in suburban areas spreading outward from older urban cores
- Virginia exhibits all three types of “Growth Counties” noted nationally:
  - *Massively Enlarged, Growth Accelerated (MEGA)* Counties (e.g., Fairfax) where most so-called “Edge Cities”—large concentrations of office and retail space (e.g., Tyson’s Corner)—appear
  - *Edge* Counties (e.g., Henrico and Prince William), often at the leading edge of metropolitan growth, characterized by “Edgeless Cities”—sprawling office development that never reaches the densities or cohesiveness of Edge Cities
  - *New Metropolis* Counties, low-density, centerless, and sprawling regions, generally on the regional fringe and associated with the “Exurbia” to which many white middle class families have moved as more mature suburbs become more diverse and crowded (e.g., Culpeper, Gloucester, James City, Loudon, New Kent, Powhatan, Spotsylvania, Stafford)
- In practice, Virginia counties have only coarse tools for controlling growth. The “Dillon Rule” denies municipalities the home rule authority to address social issues as they develop, and political conflicts between regions allow developers to block efforts to grant new authorities to deal with sprawl.
- Political power in the state has shifted to the state’s suburban north and east from its agricultural west
- Issues associated with sprawl dominate state and local political agendas
- Between 1975 and 2005, the state’s average population growth rate was 40%

### Courts

- Since the 31<sup>st</sup> Circuit and District (Prince William, Manassas, and Manassas Park) were formed from part of the 19<sup>th</sup> in the 1970s, there have been no appreciable changes in the geographic boundaries of Virginia’s circuits and districts.
- Since 1975, all Circuits have experienced increases in filings, even those that have lost population
- Increases in judges and staff do not necessarily correlate with increases in workload or population

## **Possible Issues and Implications for Virginia's Courts**

### *Technology Issues*

1. Technology is outdated with respect to maintaining land records.
2. Technology is outdated with respect to maintaining case management systems.
3. The Court should develop and adopt data standards which would allow local flexibility and data sharing.
4. One-size-fits-all approach to data processing and automated systems will not work.
5. The judicial system should take care that technology does not drive the law.
6. The courts should guard against letting advantages of technology drive policy to the point that it excludes or restricts access.
7. Technology must be used to bring in new groups of clients that may not be familiar with Virginia's systems.
8. Live video connections in all courts could increase efficiency; adult courts, in particular, need resources to do this.

### *Judicial Resources Issues*

1. There have been increased demands for Virginia Crime Commission (VCC) codes without adequate training.
2. Staffing will be a critical need as courts become more technologically advanced.
3. Funding will be required to support higher levels of staffing standards.
4. Inadequate staffing levels compromise training capacity and present risk to the court system.
5. The aging workforce will affect staff replacement in the courts.
6. Many current clerks of court are "baby-boomers" and will soon be leaving the workforce.
7. Inadequate staffing levels will be impacted by low compensation.
8. Increasing demands on clerks offices for information support by consumers will raise the debate on providing information versus giving legal advice; technology will also contribute to demands on the part of self-represented litigants.
9. Larger, unmanageable dockets are the wave of the future; technology must be available to judges to assist with their docket management responsibilities.
10. There are too many cases and too few judges in many jurisdictions.

### *Land Use Issues*

1. Growth decisions made in one locality may be affecting neighboring localities.
2. Zoning decisions may begin to exclude potential residents.
3. The courts may see increases in eminent domain cases in multiple levels of courts.
4. There will be more cases involving homeowner's associations.
5. Should we be concerned about the apparent disregard of Virginia Department of Transportation (VDOT) land use recommendations?

### *Services Issues*

1. To what degree should where you live dictate quality of available services?
2. Citizens have increasing expectations that localities will provide public services for free.

3. More Americans with Disability Act (ADA) issues will come before the courts in the future.
4. Localities may have demands for services placed upon them that they are not prepared – or able – to accommodate.
5. Questions of access to justice and to services should be addressed by the courts.
6. The legislature must recognize the differences in localities with respect to service levels and costs.

*Issues Related to Population Changes — Customer Profiles / Demands*

1. Increasing growth in immigrant population affects technology and information accessibility needs.
2. The courts need to provide information in multiple languages.
3. Increasing numbers of elderly are consumers of the courts' services.
4. Increasing demands on clerks' offices for information will again raise the debate between providing information versus giving legal advice.
5. As marriage becomes less frequent, the courts may perhaps see more relationship contracts and related cases.
6. More ADA issues will be coming before the courts.
7. As youth mature sooner, the courts may have to deal with juvenile issues in a different way and perhaps sooner.

*Judicial Caseloads / Types of Cases Issues*

1. Courts will have higher caseloads related to growth management policies (e.g., land development).
2. Improvements in one type of service (e.g., special education) may bring more cases to the courts.
3. Schools are increasing demands on courts.
4. School finance issues may become more prominent.
5. There is the potential for more litigation regarding home schooling.
6. The courts will experience larger more unmanageable dockets.
7. There will be increasing demands for appeals and mandamus and increasing election-related litigation.

*Issues Related to the Shifting Role of the Courts*

1. Increasing demands on clerks offices for information support by consumers will raise the debate on providing information versus giving legal advice; technology will also contribute to demands on the part of self-represented litigants.
2. The future may be characterized by increasing conflicts with the legislature over matters that are traditionally court matters as the legislature increases its purview.
3. Schools are placing increasing demands on the courts.

*Public Relations Issues*

1. Increasing demands on clerks offices for information support by consumers will raise the debate on providing information versus giving legal advice; technology will also contribute to demands on the part of self-represented litigants.
2. The courts will have to deal with more angry and dissatisfied customers.

## **RECOMMENDED OBJECTIVES AND TASKS**

### **Technology**

*OBJECTIVE: To partner with Virginia Information Technology Agency to create data standard for the sharing of information to be used statewide.*

Tasks:

1. Establish a public / private task force to recommend approaches to implement a statewide initiative for develop of data standards.
2. Secure funding for software and hardware upgrades.

### **Land Use**

*OBJECTIVE: To facilitate the ability of local governments to manage growth.*

Tasks:

3. Reevaluate the doctrine governing local government powers (e.g. Dillon's Rule) in light of modern circumstances and legal concepts.
4. Reevaluate the authority of private landowners associations to regulate land use and individual rights.
5. Consider ways for land use decision-making processes to minimize extra-jurisdictional impacts.

### **Judicial (Court) Resources**

*OBJECTIVE 1: To ensure that staff responds to changing caseloads and an aging workforce.*

Tasks:

6. Develop and deliver training to keep pace with turnover and changing case types.
7. Insure salaries and benefits become competitive with other government employment and the private sector to attract and retain good employees.

*OBJECTIVE 2: To enhance the skills and availability of the current workforce.*

Task:

8. Develop a Human Resources policy or practice and expectation that clerks may return to work after retirement as wage employees in order to train, to work peak hours, and to help with special projects.
9. Secure funding necessary to implement the above policy beyond the current wage budget of \$2,500 per court per year.

*OBJECTIVE 3: To staff district courts to the level required by staffing model.*

Tasks:

10. Assess current staffing need; identify greatest needs.
11. Conduct a thorough trend analysis of staffing needs out 20 years in order to maintain current service levels and then to enhance service levels.

**Focus Group Participants**  
**October 17, 2006**

**The Honorable Becky J. Moore, Judge**  
Alexandria General District Court

**The Honorable Charles V. Mason, Clerk**  
King George Circuit Court

**Dianne Henley White, Clerk**  
Goochland Combined Court

**Ashley S. Colvin, Project Leader**  
Joint Legislative Audit & Review Commission

**Randall R. Silber, Director of Planning**  
Henrico County

**Linda L. Butler, Vice Dean & Chancellor Professor of Law**  
William and Mary Law School

**Marsha C. Fiol, Division Administrator**  
Transportation & Mobility Planning Division  
Virginia Department of Transportation

# Report of the Focus Groups on Trends Affecting Virginia's Courts



**Economic Transformation:  
Knowledge is King**

## ECONOMIC TRANSFORMATION: KNOWLEDGE IS KING

The United States has gradually shifted from a manufacturing-based economy to a technology- and service-based economy. The new economy will be marked by technological advancements that enable businesses to locate almost anywhere. In the era of knowledge, new high-tech solutions and innovations will continue to foster economic development. Are state economic development and fiscal policies adapting fast enough to keep pace with these dramatic changes?

### The New Economy

- Technological Changes and New Industries
  - Biotechnology
  - Nanotechnology
- Service-based: Focused on ideas and knowledge
- Linked globally
- Hallmark is innovation, the rate of which is accelerating

### Importance of Creativity

- Production, industry, and information are so efficient that they offer comparatively little return on investment.
- The focus for creating value and profit is shifting to *content*, with an emphasis on entertainment, art, music, sports, and other forms of creative expression. A key component of this content is *culture*, the diversity and subjectivity of which is an obstacle to marketplace domination by any one product or firm.
- Linear, logical, analytical talents will no longer be sufficient (although they *will* still be needed). Artistry, empathy, seeing the big picture, and pursuing the transcendent will gain importance, leading to a resurgence in Fine Arts programs.

### Virginia Employment 2006

- 3,723,400 Non-farm Jobs
  - 3,082,300 Private Sector
  - 641,100 Governmentor
  - 3,147,900 Providing Services (including Government)
  - 575,000 Producing Goods
- 206,900 New Non-farm Jobs (5.88% net increase since 2001)
  - 200,900 of these new jobs were in the Services sectors
  - Construction is the only significant growth sector for Goods-producing Jobs.

### Economic Development

- Shifting emphasis from promotion of capital-intensive ventures to the creation of business opportunities in emerging and developing economic sectors. Promoting development of a competitive 21<sup>st</sup> Century workforce.
- Antiquated tax system is beginning to show strains that could threaten investment in infrastructure, education, and other areas critical to economic health.

*Report of the Focus Groups on Trends Affecting Virginia's Courts*

## **Possible Issues and Implications for Virginia’s Courts**

### *Jurisdictional Inequality – Wealth Issues*

1. Discrepancies in compensation supplements currently exist between poor and affluent localities.
2. Discrepancies also exist between poor and affluent localities with regards to court facilities.
3. Difficulties in implementing video conferencing capabilities exist due to varying local capacities.
4. Poorer courts have difficulties maintaining staff as qualified staff leave to go to higher paying localities.
5. Does the Supreme Court of Virginia have an outreach function for poorer localities?

### *Resources Issues*

1. There are currently difficulties accessing enough court reporters.
2. How might increased court fees be used to enhance compensation?
3. Are there other creative ways to bring in money (e.g., selling automated applications that the state develops)?
4. Should general district courts deposit their funds directly?
5. Is it appropriate to consider increasing court user fees given the courts' proper role?
6. Consumers are frustrated by paying court costs when they don't use court.
7. State does not currently even fund recommended staffing levels (levels determined to be needed by the staffing standards and models).
8. Courts will need more foreign language interpreters and needs to certify additional languages beyond Spanish.
9. The courts should examine the certification of clerks office staff to speak other languages.

### *Technology Related Issues*

1. There are currently difficulties implementing video conferencing capabilities due to varying local capacities.
2. Technological advances are needed for greater utility (e.g., electronic forms, etc.).
3. Courts are seeing more technology-based presentations at trial.
4. Courts are seeing a large increase in remote access to court records/land use records.
5. Courts should anticipate large increases in the use of “e-filing”.
6. Globalization issues are affecting the court process (e.g., international service, etc.).

### *Caseload Related Issues*

1. People are using mediation more.
2. The corporate sector is focusing on mediation rather than using the courts as a first option.
3. The structure of businesses is changing such that it is more difficult to identify responsible parties/owners.
4. Courts are experiencing increases in debt collection cases and business distribution cases.

5. Will we be “dumbing down” complex issues for juries, judges, and attorneys just to more easily understand them (“cartoon justice”)?
6. Attorneys may make presentations too complex.
7. Courts may be seeing more cases with attorneys who have limited trial experience.
8. Globalization issues are affecting the process (e.g., international service).

## **RECOMMENDED OBJECTIVES AND TASKS**

### **Jurisdictional Inequality**

*OBJECTIVE: To ensure that all localities have adequate resources to operate the courts.*

Tasks:

1. Develop state guidelines for local funding and local supplements.
2. Develop a methodology / formula to provide state aid to assist poorer localities.
3. Develop a Supreme Court of Virginia assistance program to localities to improve technology and to recruit and train employees.
4. Form a task force to study the implementation of circuit court integration into a state-supported system.

### **Resources**

*OBJECTIVE 1: To establish optimum staffing levels in the courts.*

Tasks:

5. Explore possible funding sources for an independent compensation commission.
6. Appoint the independent compensation commission to include as members representatives from business, industry, academia, non-court system resources.
7. The commission shall perform an independent compensation study and report its findings to the Chief Justice, Supreme Court and Judicial Council of Virginia.

*OBJECTIVE 2: The state should accept responsibility for funding all costs of providing the resources necessary for the operation of the trial courts (circuit and district).*

*All courts should be provided with high quality video-conferencing systems. This system would facilitate elimination of on-site court reporters and translators. On-call translators/reporters would be used.*

## **Caseload Issues**

*OBJECTIVE: To provide judges with management information to improve dockets and caseload administration.*

Tasks:

8. Develop monthly caseload reports for civil and criminal dockets that are disseminated to judges by OES, rather than by clerk, with data such as cases with no future hearing date, cases with no activity within 90 days, and with pendency greater than 1 year.
9. Develop training for judges and clerks on caseload reporting procedures and the use of management information to better manage the courts' dockets.

## **Technology**

*OBJECTIVE: To improve the utilization of information technology applications used in the delivery of legal services at all court levels.*

Tasks:

10. Implement a uniform capability for remote access at the trial court level throughout the Commonwealth, including but not limited to uniform videoconferencing access and remote motions practice.
11. Promote user-friendly access to court records and e-filing systems, including interactive PDF standardized forms.
12. Explore possible uniform standards for electronic presentation of evidence at trial.

**Focus Group Participants**  
**November 6, 2006**

**The Honorable Pamela Baskervill, Judge**  
Petersburg Circuit Court

**The Honorable Suzanne K. Fulton, Retired Judge**  
Director, Judicial Performance Evaluation Program  
Office of the Executive Secretary  
Supreme Court of Virginia

**The Honorable Gary M. Clemens, Clerk**  
Loudon Circuit Court

**The Honorable Ashby Pritchett, Clerk**  
Martinsville Circuit Court

**Bob Palmer, Manager, Applications Development Division**  
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# Report of the Focus Groups on Trends Affecting Virginia's Courts



**Globalization Era:  
New Forces at Work**

## GLOBALIZATION ERA: NEW FORCES AT WORK

Globalization will continue to integrate businesses, governments, and people across the world. This process will be driven by trade and investment and accelerated by information technology. Rapid changes in the global economy will propel state governments into the international arena and constantly demand greater levels of awareness and engagement among state officials. Are states equipped to compete and take advantage of benefits offered by the global economy?

### Definition

“Globalization is a process of interaction and integration among the people, companies, and governments of different nations, a process driven by international trade and investment and aided by information technology. This process has effects on the environment, on culture, on political systems, on economic development and prosperity, and on human physical well-being in societies around the world.”

— *Center for Strategic and International Studies*

### Increased State Activity in the International Realm

- More state legislative bills and resolutions on international topics
  - Increased nationally from 72 in 1991-92 sessions to 270 in 2001-02 sessions
- Virginia’s economy
  - Official economic goals include aims for global competitiveness
  - Exports: Over \$15 billion in 2003
  - Imports: Gateway state for \$24.9 billion in international imports in 2003
  - The state has invested in infrastructure—roads, ports, waterways, rail systems—to accommodate increasing amounts of international cargo.
  - 8% of the state’s employment base is trade-related

### International Trade Agreements (e.g., WTO and NAFTA)

- Treaties may limit states’ abilities to exercise regulatory and legislative powers, e.g.:
  - Rules protecting the environment and consumers
  - The processes states use to procure government services, and
  - Programs that provide subsidies for in-state businesses
- Ad hoc international tribunals set up under trade agreements can become courts of last resort for numerous commercial disputes as well as sensitive national public health and welfare issues, disrupting assumptions regarding the finality of state judgments.
  - State court decisions in Massachusetts and Mississippi have already been reviewed by such tribunals, even after the U.S. Supreme Court declined a hearing on appeal.
- Provisions of the General Agreement on Trade in Services (GATS) extend to the regulation of attorneys, a field historically left to the states under the authority of their courts of last resort.

### “Off-shoring,” “Outsourcing,” “Insourcing,” and Subsidiaries

- While jobs in manufacturing and, more recently, high-tech fields have been lost to other countries, there is a long and continuing history of workers coming to Virginia to fill jobs in critical fields such as health and education—not just menial labor.

- Virginia has lost jobs in industries such as textiles and furniture to foreign competition, but subsidiaries of foreign firms (e.g., Airbus, BASF, Infineon, Nestle, Sodexo, and Volvo) employed 146,000 Virginia workers in 2006, an increase of 25% over 5 years.
  - Virginia ranks 13<sup>th</sup> in the U.S. in the number of employees supported by U.S. subsidiaries of foreign firms.

### **Public Health**

- The ease and high volume of International Travel help spur globalization.
  - With such travel come increased risks of the worldwide spread of diseases.
  - Similarly, there is an increased risk of the admission of terrorists who might attack our food, water, or air
- The principal burden of protecting public health falls on the states
  - “First responders” now have more complex roles and responsibilities.
- During a public health emergency, the justice system helps maintain public order.
  - The Supreme Court of Virginia added new rules in 2006 for:
    - ◆ Isolation Proceedings
    - ◆ Appeals from orders of quarantine or isolation for public health threats

### **Environmental Management**

- Globalization presents unique challenges in environmental management. Concerns include:
  - Habitat loss
  - Pollution
  - Global Warming
  - Invasive Species

### **Public Safety and Justice**

- The same developments that have reduced legal and logistical barriers to the movement of goods, money, and people across international boundaries have also increased the risk of transnational crime and terrorism.
- Threats
  - International crime—trafficking in people, drugs, and other contraband
  - International terrorism
- Increased state responsibilities
  - Need for better state-local interaction
- Increased need for public and private sector planning and investment in security and business continuity / recovery.
  - Actual threats and threat levels for courts probably have not changed BUT
  - Awareness of the impact from natural or manmade disasters has increased.
  - Emergency preparedness is recognized in the court system’s strategic plan.

## Possible Issues and Implications for Virginia's Courts

### *Issues Related to the Economic Consequences of Globalization*

1. Globalization may affect enforcement of labor laws.
2. How can companies be held accountable for subsidies they receive?
3. Courts may social consequences of globalization (e.g., those who are left behind).
4. The courts need a disaster recovery plan in order to recover from an attack on central court infrastructure.

### *Nature of the Public Record Issues*

1. Records have become more accessible electronically and globally.
2. What is the proper use of the "public record?"
3. How can the courts respond to the fact that it is very difficult to expunge records in various technology systems?
4. A vetting process would be a huge economic cost but have potentially a low benefit.
5. Should the information kept on the case management system be revisited?

### *Language / Culture Issues*

1. Courts must increase the training of and number of available interpreters.
2. To improve cultural and linguistic diversity and competency, should certification be considered?
3. Demand for foreign language services varies dramatically statewide from one jurisdiction to another.
4. Some communities have much more experience with immigration issues than others.
5. Drawing upon experiences of "first wave" communities may be instructive.
6. Funding limitations may suggest focusing on core staff to handle such cases.
7. Courts may see more social consequences (e.g., those who are left behind).
8. What responsibilities do our courts have for vetting for terrorists or those with improper purposes?
9. Possibility of increased social tension as ethnic and linguistic diversity increases ("What is the real Virginia?")

### *Attractiveness to International Businesses Issues*

1. Persons from other countries are concerned with "hostility" in Virginia's civil proceeding.
2. Do we want to make courts more hospitable to international business?
3. Courts need to maintain efficiency and fairness in the dispute resolution process.
4. The judiciary must maintain the high quality of judges.
5. The judiciary must maintain the dignity of facilities and proceedings.

### *Demand for Services Issues*

1. Demand for foreign language services varies dramatically statewide from one locality to another.
2. Need for interpreter services is difficult to predict.
3. What is the demand for international cases in Virginia's courts system (at all levels)?

4. How can the courts respond to the “E-bay effect” - persons in Virginia selling products in other countries who don't understand domestic laws?
5. Will we have more litigation over intellectual property rights?
6. The courts may see increases in cases related to the provision of health care (in-sourcing and out-sourcing).

#### *Issues Related to the Courts Role in Security*

1. What responsibilities do our courts have for vetting for terrorists or those with improper purposes?
2. The courts need a disaster recovery plan in order to recover from an attack on central court infrastructure.
3. How can the courts ensure the integrity of public records in the face of potential global threats?

#### *Technology Issues*

1. Courts will need to improve video conferencing capabilities.
2. Should the information maintained on the case management system be revisited?
3. Courts and government must find better ways to respond to changing technology.
4. The courts need a disaster recovery plan in order to recover from an attack on central court infrastructure.
5. How can the courts ensure the integrity of public records in the face of potential global threats?

#### *Issues Related to the Impact of Global Trade Agreements*

1. Aggressive law suits could emerge as a response to trade agreements.
2. Will laws technically violate trade agreements? Will these laws stand?
3. Virginia court cases may be reviewed by international tribunals.
4. Globalization may affect enforcement of labor laws.

#### *Processes and Internal Procedures Issues*

1. How can the courts respond to the “E-bay effect” - persons in Virginia selling products in other countries who don't understand domestic laws?
2. Courts need to maintain efficiency and fairness in the dispute resolution process.
3. Mediation and arbitration services may be needed for large and small disputes.
4. The judiciary must maintain the high quality of judges.
5. The judiciary must maintain the dignity of facilities and proceedings.

#### *Emerging Legal Issues*

1. How can the courts respond to the “E-bay effect” - persons in Virginia selling products in other countries who don't understand domestic laws?

## **RECOMMENDED OBJECTIVES AND TASKS**

### **Economic Consequences**

*OBJECTIVE: For the court (a) to understand and protect against the adverse consequences of globalization on workers, local communities, displaced persons and groups, and related governmental bodies and (b) to encourage / facilitate global enterprise that benefits these same constituencies.*

#### Tasks:

1. Enforce existing laws insightfully to protect against the adverse consequences and encourage the beneficial effects of globalization.
2. Develop and advocate for new laws and procedures based on the courts' experience in dealing with these matters.
3. Dialog with legislators and other judges (state, federal, and international) concerning effective ways to minimize the adverse consequences and maximize the benefits of globalization.
4. Assess and comment on the state impact of international trade agreements.

### **Nature of the Public Record**

*OBJECTIVE: To determine for the 21<sup>st</sup> Century the definition of a public record and promote a common understanding in the public of the nature of public records in an open society.*

#### Tasks:

5. Establish a study commission to examine how court, land, and other public records in the digital era should be available to the public
6. Establish guidelines for the expungement of public records and consider laws penalizing the dissemination of expunged records.

## **Language / Cultural / Social**

*OBJECTIVE: To improve the capability of courts to respond to the needs of an increasingly diverse clientele.*

### Tasks:

7. Develop and implement pilot regional response teams that include the following characteristics:
  - a. Multi-level in scope
  - b. Advanced training in specific areas
  - c. On call assistance
  - d. Exchange programs
8. Expand technological resources for language and other translation services beyond the courtroom.
9. Tie court service development strategies to economic development in order to obtain adequate court funding and pre-empt backlash.

**Focus Group Participants**  
**November 8, 2006**

**The Honorable Frank D. Hargrove Jr., Clerk**  
Hanover Circuit Court

**John Rickman, Director**  
Fiscal Services  
Office of the Executive Secretary  
Supreme Court of Virginia

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Jepson School of Leadership Studies  
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# Report of the Focus Groups on Trends Affecting Virginia's Courts



**Information Revolution:  
Sorting it Out**

## INFORMATION REVOLUTION: SORTING IT OUT

The Internet has revolutionized information dissemination. Because of increased access to vast amounts of information, people will become more demanding of both business and government. There will be an increased emphasis on the art of communication. And there will be a growing need to integrate and make sense out of the fragmented information that's available. Is this the age of information overload? How will "blogging" affect the political process?

### Advances and Innovations

- Wireless networks and Fiber Optic Systems (FiOS)
- Radio frequency identification (RFID) tags
- Quantum communications and computing
- Biological communications and computing
- Blogs
- Advanced search tools
- Virtual reality environments

### Opportunities and Challenges

- Ubiquitous technologies and untethered workers
- Virtual interaction
- Challenges of security and increasing complexity
- Online services
- Information pollution
- "Bubbling"

### New Means to Communicate with Officials

- E-mail
  - While *ex parte* rules restrict communication with judges, e-mail offers many opportunities for communication between the public and clerks' offices.
- Web logs (Blogs)
  - Since 2001, the clerk of the West Virginia Supreme Court of Appeals has published three official court blogs as well as an unofficial blog that addresses the intersection of the law, technology, and the courts. The official blogs are useful public education tools on which the clerk republishes the topical summaries of opinions and posts news about upcoming developments.
- Issues for the courts
  - May jurors blog jury duty?
  - How may judges and other court employees participate in blogs and other online communications?

### IT Applications

- E-government operations / Internet-based services (e.g., e-Filing)
  - Allows greater efficiency, enabling government to provide services with fewer hands
  - Provides citizens more convenient access to services
- Networking—promotes connectivity, efficiency, and accountability
  - Improves possibilities for effective privatization of some services
- Verifying information: More information does not equal better information

### New Solutions via Technology

- Virtual visitation, see <http://www.internetvisitation.org/>
- Remote appearances
- Telecommuting
- Home confinement with advanced monitors
- Remote training workshops

## **Possible Issues and Implications for Virginia's Courts**

### *Issues Related to Court Users and the Public: What Do Customers Need?*

1. Increasing availability of information may increase demands on court staff to give legal advice (e.g., as the courts work with self-represented litigants)
2. How can technology be used to increase access to courts (e.g., to pay fines, etc.)?
3. What can I currently get publicly as a citizen by law (e.g., existing records, proceedings)?
4. What as a practical matter can I easily access technologically (e.g., forms, information)?
5. Why is it so difficult to get internet into local jails?
6. The courts need to consider "transaction" orientation versus "event" orientation.
7. Processes are much broader than the court system, for example, the federal government is going to require certain things of state courts.
8. Is enhanced electronic filing a possibility?
9. The judiciary should work to make justice more accessible to all (language, disability, etc.).
10. The courts should more fully engage all stakeholders in court proceedings and processes, for example, victims, families, the media.
11. The judiciary should utilize RSS feeds and technology to "push" information to interested parties and the general public.

### *Technology Planning Issues*

1. The courts need clear objectives to be reached by applying technology.
2. The courts need to continually ask whether technology, if applied, will improve the situation.
3. Technology should support the business of the courts, not define it. Technology may need to be applied differently to civil and criminal processes.
4. Can technology assist in achieving the goal of cost-reduction?
5. Is technology driving the judiciary's goals or are the judiciary's goals driving technology?
6. What is the proper role of the Supreme Court of Virginia in creating and managing immature technology in the courts environment?

### *Technology to Enhance Judicial Communication Issues*

1. Teleconferencing capabilities may offer significant advantages to the courts and court users (e.g., in the appointment of counsel, at arraignments and bond hearings). The courts should expand the use of this technology with attorneys.
2. Technological solutions for pre-trial, and other court actions and proceedings should be explored.
3. Teleconferencing opportunities need to be more available for the civil side of the docket (e.g., attorneys that serve multiple courts could be better able to attend court hearings).
4. Technology could be better used to assist in the scheduling of attorneys and cases between courts (e.g., "Shotsky's Deli" type blinking beepers and airline type light-up boards).

### *Records / Information Management Issues*

1. No matter what we do, we will need a dual (electronic/paper) system.
2. The courts need to explore open records format and the creation of data standards.
3. The courts need to develop recommended versus required records standards.
4. Personal identification systems and technology needs to be better utilized by the courts.

### *Self-Represented Litigants Issues*

1. Increasing availability of information may increase demands on court staff to give legal advice.
2. Some citizens may be put at a disadvantage by encouraging them to proceed pro se.

### *Outsourcing Issues*

1. What are the outsourcing goals?
2. Outsourcing contracts and management must be specific. You must understand the process.
3. Outsourcing is not giving the work away.
4. Land records have been outsourced; this approach must be made available to other contractors.

### *Separation of Information / Classification of Information Issues*

1. More court records online will allow easier mining of information.
2. There may be distinctions between information available or accessible for circuit vs. district (e.g., criminal records/civil records).
3. Information processes are much broader than the court system.
4. Is enhanced electronic filing a possibility?
5. The courts need to explore technology to better redact information.

### *Collaboration / Interagency-Interbranch Issues*

1. Why is it difficult to get internet into local jails?
2. Are there collaboration opportunities between the courts and executive branch with regards to records management or other technological needs?

## **RECOMMENDED OBJECTIVES AND TASKS**

### **Court Users – What Do Customers Need?**

*OBJECTIVE: To facilitate the use of technology to handle the distribution of information to and from the public.*

#### Tasks:

1. Define formats for distribution of information.
2. Define the process and architecture for a comprehensive information repository.
3. Establish a permanent and stronger liaison with technology planning.

### **Technology Planning**

*OBJECTIVE: The use of technology in the courts should be tied to achievement of specific goals in the next strategic plan.*

#### Tasks:

4. For all objectives and tasks, assess the value (cost and risk) of the use of technology. Establish a process to assess the links between goals, people, processes and the application of technology).
5. Create a process within OES and the courts to share best and least successful technology projects and experiences.

### **Technology to Enhance Judicial Communication**

*OBJECTIVE: To allow two-way communication between judges, lawyers and litigants to avoid unnecessary travel, delay & expense to the courthouse.*

#### Tasks:

6. Implement videoconferencing facilities in all Virginia courthouses and jails.
7. Conduct all routine contacts for appointment of counsel and determination of indigence via videoconference.
8. Allow courts to notify attorneys when the case is called, whether in the same courthouse or a different location.
9. Conduct all civil pre-trial hearings (except for complex cases requiring witnesses) by videoconference.

## **Records / Information Management**

*OBJECTIVE: To establish records and information management technologies to improve court processes and service to the public.*

Tasks:

10. Define records and information management requirements to meet the business and technical components of court processes.
11. Determine alternative means for meeting requirements.
12. Pilot data improvements.
13. Evaluate pilot program and modify accordingly.
14. Expand “roll-out” of piloted procedures until fully implemented.

**Focus Group Participants  
October 19, 2006**

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**The Honorable Harold W. Burgess, Jr., Judge**  
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**Louis McDonald, Chief Technology Officer**  
Center for Innovative Technology

# Report of the Focus Groups on Trends Affecting Virginia's Courts



**Privacy vs. Security:  
A Balancing Act**

## **PRIVACY VS. SECURITY: A BALANCING ACT**

New technologies will present businesses and governments opportunities to increase their efficiency and offer new products and services. But they will also have the potential to dramatically erode personal privacy. Homeland security concerns, data mining, personal profiling, and identity theft are just some of the evolving issues transforming our society. States are finding themselves on the frontlines of far reaching privacy and security policy questions. Is America trending toward less privacy?

### **Technological Innovations Affecting Privacy Expectations**

- Internet
- Biometrics
- DNA analysis
- "Backscatter" X-Ray Screening
- Cookies
- High-resolution satellite imaging for public use
- Radio Frequency Identification (RFID)
- "Black boxes" for cars
- Forward-looking Infrared (FLIR)
- Spyware

### **Court Records**

By law, courts must collect and employ a wide variety of records. Many of these are "public" in nature and must be provided, subject to reasonable conditions, when requested. e.g.:

- Immediate documents from case files
- Other records associated with
  - Marriages
  - Wills
  - Real Estate Transactions
  - Adoptions
  - Financial Judgments
  - Criminal Histories

### **Who Views Court Records?**

- Law enforcement agencies
- Media representatives
- Departments of transportation
- Credit bureaus
- Social services agencies
- Private investigators

### **History and Policy**

- Open records lend transparency and legitimacy to court proceedings
- For security and other reasons, the government may seek the collection of or access to certain information
- Historically, court records have been hard to access—requiring physical visits to the courthouse and time to review or copy records page by page.
- Now, many records are available online and can be accessed and downloaded en mass for rapid and complex searches at a later date.
- Courts cannot practically correct or expunge all records copied by outside entities
- Redacting social security numbers, minors' names, and other sensitive information from older records is burdensome

**Study Group**

In 2005, Chief Justice Leroy Rountree Hassell, Sr. of the Supreme Court of Virginia appointed the Committee to Study Privacy and Access to Court Records, charging it to prepare proposed rules of Court addressing public access to court records. The Committee's December 2006 final report recognizes there are competing views with respect to the privacy of information and proposes Rules of the Supreme Court that address public access issues, taking into account constitutional case law and basic court operational mechanics.

## **Possible Issues and Implications for Virginia's Courts**

### *Data Quality Issues*

1. The courts are facing an enhanced need for accurate and complete data entry.
2. If privacy is dead, the courts should do no harm by providing accurate data.
3. What are the mechanisms for correcting inaccurate data when it is found?
4. How do the courts ensure quality of personal identification?

### *Workplace Security Issues*

1. How is personal information handled for judges and court staff?
2. The judiciary should consider a state standard for how we protect and release personal information on judges and court staff.
3. How do we protect court staff but also comply with need for information release (FOIA)?
4. How could search engines help protect personal information for staff?

### *Court Personnel Education Issues*

1. There is a growing expectation for openness in government.
2. How do the courts educate judges and court staff on potential security breaches and potential procedural changes necessary?
3. How can the courts deal with the burden not to release private information due to the increasing complexity of legal requirements?
4. The courts must recognize the tension between confidentiality concerns and the "right to know."
5. Drawing the line between what is public and not public is difficult.
6. The courts are facing an enhanced need for accurate and complete data entry.
7. How do we protect staff but also comply with need for information release (FOIA)?
8. If privacy is dead, the courts should do no harm by providing accurate data.
9. What are the mechanisms for correcting inaccurate data when it is found?

### *Legislation Issues*

1. There is a growing expectation for openness in government.
2. Is everything public really public? What is the courts philosophy?
3. To what extent can people opt in or opt out of having their information available (e.g., medical information)?
4. The law and court Rules seem unable to keep up with new technology.
5. How do you reconcile historical definitions with the way technology might change the form of the record or of court procedures in the future?
6. Should there be different degrees of access depending on the method of access (e.g., remote versus in-person access)? Should there be different degrees of privacy?
7. There is an increasing burden not to release private information due to the increasing complexity of legal requirements.
8. How do the courts balance the tension between confidentiality concerns and the "right to know?"
9. Drawing the line between what is public and not public is difficult.

10. There is a good possibility in the future of increased legislative intervention or initiatives in court matters.
11. What are the liability issues for the record keeper or clerk in the courts?
12. Who is deciding whether these information tools are a benefit to society?
13. What is personal information?
14. How does this affect requests from data miners, FOIA requests?
15. The courts should update requirements for all expungements.

#### *Court Resources Issues*

1. The law and court Rules seem unable to keep up with new technology.
2. How might enhanced privacy protections affect caseloads?
3. The courts are facing an enhanced need for accurate and complete data entry.
4. The courts should update requirements for all expungements.

#### *Public Education Issues*

1. The public has unrealistic expectations for what they can and cannot see.
2. There is a growing public ignorance of the need for security given the advancements in information technology.
3. To what extent can people opt in or opt out of having their information available (e.g., medical information)?
4. How do the courts balance the tension between confidentiality concerns and the "right to know?"
5. There is a public perception that the courts can "fix" everything.
6. The courts are facing an enhanced need for accurate and complete data entry.
7. Citizens increasingly expect "one-stop shopping" (e.g., identifying people across case types and courts).
8. What are the mechanisms for correcting inaccurate data when it is found?
9. There are concerns that disclaimers ("mouse print") are not being read and understood.

#### *Court Processes Issues*

1. How do the courts ensure authentication of users?
2. How do the courts make information availability consistent? Who sets the standards at a granular level?
3. The state and state courts are not necessarily in control of their own data.
4. The courts should update requirements for all expungements.
5. Is there a possibility for the loss of backups?
6. What are the current issues regarding mobility of data?
7. Court systems and processes are characterized by poor process and systems designs.
8. Are the courts making things so secure that they aren't usable?

#### *Rapidly Changing Technology Issues*

1. The law and court Rules seem unable to keep up with new technology.
2. How do you reconcile historical definitions with the way technology might change the form of the record or of court procedures in the future?
3. How do the courts ensure authentication of users?

4. How do the courts make information availability consistent? Who sets the standards at a granular level?
5. The state and state courts are not necessarily in control of their own data.
6. Is there a possibility for the loss of backups?
7. What are the current issues regarding mobility of data?

*Reality Issues*

1. There is no privacy: "Get over it!"
2. Do families keep court-related issues private? Do they, for example, fail to report crimes or get treatment due to concerns about information being publicly available?

## **RECOMMENDED OBJECTIVES AND TASKS**

### **Data Quality**

*OBJECTIVE: To ensure accuracy of court data collected and processed.*

Tasks:

1. Provide adequate number of trained personnel for court needs with on-going education.
2. Build in or procure data checking technology for systems that collect data.
3. Develop a system for correcting inaccurate data that maintains a trail of documented changes.
4. Verify information offered for personal identification with computer database.

### **Workplace Security**

*OBJECTIVE: To increase security of court personnel through greater protection of personal info of judges and staff.*

Tasks:

5. Modify policy that encourages court personnel to have listed phone numbers/addresses.
6. Develop central system to receive and route messages to court personnel (for each court):
  - a. central office e-mail address
  - b. central office phone with recording system
  - c. emergency service to find judges

## **Court Personnel Education**

*OBJECTIVE 1: To ensure court personnel are adequately educated on court privacy and confidentiality issues.*

Tasks:

7. Initiate periodic mandatory training of court personnel on public disclosure of court records.
8. Develop and communicate and train on information handling procedures and best practices.
9. Modify and enhance physical security training so personnel see the link between information and privacy / security issues.

*OBJECTIVE 2: To educate personnel in order to improve data quality ensuring accurate records.*

Tasks:

10. Educate staff on data entry best practices.
11. Educate system development staff on building in data accuracy controls to systems.

*OBJECTIVE 3: To improve compliance with privacy and public access rules, statutes and policies.*

Tasks:

12. Identify inconsistencies or gaps.
13. Develop consistent policies and fill gaps.
14. Train judges.
15. Train court staff.
16. Audit for compliance.

## **Legislation**

*OBJECTIVE: To encourage a comprehensive statutory guideline for statewide standards for implementation & protection of court data.*

### Tasks:

17. Identify federal mandates for confidentiality and disclosure.
18. Undertake collaborative, multi-branch effort to develop rules and policies for information and data not covered by #1 above.
19. Develop guidelines & resources for implementing #1 & #2 above.

**Focus Group Participants  
October 20, 2006**

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# Report of the Focus Groups on Trends Affecting Virginia's Courts



**Resource Management:  
Sustaining Our Future**

## RESOURCE MANAGEMENT: SUSTAINING OUR FUTURE

Americans will continue to use large amounts of energy, electronic devices, paper and natural resources and generate large volumes of wastes. U.S. population growth and economic development in other nations will further increase demands on natural resources and the environment's capacity to assimilate wastes.

Meanwhile, an aging workforce, the demand for greater technological sophistication, and a changing economic base will challenge governments to secure the workers, modern technologies, and revenues needed to meet the public's service expectations. Are states open to innovative solutions that address current and emerging resource issues?

### Environmental Trends

- Population growth continues
- Increasing amounts of waste
- Environmental effects on health
- Climate change threatens landscape
- Alternative energy sources and conservation

### Increases in Resource-Related Cases and Controversies

- Land use / Development
- Trash / Waste Management
- Climate Change
- Water Rights
- Pollution

In December 2005, the Inuit Circumpolar Conference petitioned the Inter-American Commission on Human Rights regarding perceived violations of their rights as a result of global warming. If a ruling in the Inuit complaint is favorable, it could form the basis of a case against the U.S. in International Court or class action suits against companies. States<sup>1</sup> and Pacific islands<sup>2</sup> are already suing, not for cash but to lower carbon dioxide.

### Public Resource Trends

- An aging public will demand more services
- Many aging workers will soon retire—a significant loss of workforce experience
- Sprawl challenges services and infrastructure
- Much infrastructure is aging
- There is a growing need for lifelong learning
- Antiquated state tax codes, built around the old economy, may limit revenue streams
- Opposition to new taxes and general unwillingness for self-sacrifice

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<sup>1</sup> Eight U.S. states (California, Connecticut, Iowa, New Jersey, New York state, Rhode Island, Vermont, and Wisconsin) and New York City filed a lawsuit in July 2004 against five U.S. power companies for their contribution to global warming. The suit sought a steady reduction of carbon dioxide emissions by at least 3 percent per year for 10 years.

<sup>2</sup> The island nation Tuvalu, joined by Greenpeace and public and private plaintiffs in the U.S., sued the U.S. government in 2002 for the damages being wrought by carbon dioxide-related climate change.

## Court Resources

### Judicial System Appropriations

Agency/Program	Expended FY 04-05*	Budgeted FY 05-06*
Supreme Court		
Appellate Review	6,464,617	6,595,077
Law Library Services	891,688	873,834
General Management & Direction	11,328,552	12,758,476
Judicial Training	802,140	782,140
Adjudicatory Coordination	8,857	25,000
Physician Regulation (Medical Malpractice)	1,493	25,000
<b>Total</b>	<b>19,497,347</b>	<b>21,059,527</b>
Court of Appeals		
Appellate Review	6,092,267	6,794,916
Circuit Courts		
Trial Process	67,484,307	75,518,598
District Courts		
General		
Trial Process	77,307,565	78,161,845
Juvenile & Domestic Relations		
Trial Process	62,404,157	63,314,963
Combined		
Trial Process	24,871,631	17,795,661
<b>District Courts Total</b>	<b>164,583,353</b>	<b>159,272,469</b>
Magistrate System		
Pre-Trial Assistance	19,100,893	19,360,963
<b>GRAND TOTAL</b>	<b>276,758,167</b>	<b>282,006,473</b>

\*2004-06 Appropriations Act – Chapter 951

### State-level Expenditures and Revenues

	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
<b>Expenditures</b>	\$257,854,205	\$257,242,635	\$261,666,100	\$276,758,167	\$301,664,279	\$319,200,000
<b>Revenues**</b>	\$422,430,011	\$528,471,037	\$614,853,720	\$891,352,559	\$1,001,699,905	\$1,031,750,900

\*\* Does not include all funds collected by Circuit Courts.

### Caseload and Staffing

- Since 1975, caseloads have increased in all jurisdictions, even those that lost population
- In recent years, trends in overall case filings have been flatter

- Allocation of new judgeships and staff does not correlate directly with workload increases
- Workload per judge seems relatively stable
- Based on formal, workload-based staffing standards, both the circuit and district courts are hundreds of positions short of the staff they should have

### **Judicial Technology**

- Statewide system
- 5,000 Users
- 3,000 E-mail accounts
- 300 Servers
- 450 Sites
- Over 3 million transactions daily

Virginia's courts were among the first to develop statewide computer systems for entering and sharing case-related information. Some states still lack a state-wide system; however, Virginia's system is challenged now by age. Both hardware and software need to be updated.

New revenues from the recently created Court Technology Fund are intended to accelerate technology upgrades.

### **Judicial Branch Facilities**

- Over 450 courthouses and magistrate offices
- Many antiquated but historic structures
- Many do not meet modern requirements for workspace, access, or security
- Locally controlled, so state judiciary has little say regarding space or conditions

## **Possible Issues and Implications for Virginia's Courts**

### *Funding Facilities Issues*

1. Need for new facilities will create funding issues for local governments. Should this be a state issue?
2. Revenues collected by the courts are not maintained by the courts; they are put back into the state's General Fund.
3. Facilities are currently locally funded.
4. If the court is collecting funds for courthouse maintenance (CHMF), funds should be put back into facilities.
5. What are the facilities issues with respect to historic buildings?
6. There needs to be mandated standards for new courthouse construction and court facilities.
7. Interpretation of current facilities guidelines varies locally.
8. Court buildings create a design/character for the community.
9. The judiciary or legislature should consider state mandates on facilities that are tied to state funding.
10. Standards for existing buildings should be state mandated.
11. Court staff need a voice in the facilities planning process.
12. Staff input must be balanced with funding realities.
13. More state mandates may increase tension with localities' abilities to address needs.
14. Reminder: sustainability includes a fiscal dimension.
15. There must be a recognition of the changing socio-economic character of particularly older urban communities.

### *Funding Courts - People/Resources Issues*

1. There are not currently enough funds to provide adequate human resources for security.
2. Court staff are inadequately compensated.
3. Should the state also be responsible for local court personnel such as law clerks?
4. Cost-sharing between localities and state on staff funding is an ongoing problem (e.g., local supplements).
5. Reminder: sustainability includes a fiscal dimension.
6. There must be a recognition of changing socio-economic character of particularly older urban communities.
7. Fees should be paid by some court users.

### *Technology Needs Issues*

1. The move to a digital workplace may require different types of staff/qualifications.
2. Technology is key in managing the volume and access to the courts.
3. Current courts information technology system is antiquated (the main frame).
4. Should partnerships with private sector be pursued for information technology advancements?
5. Local courts need to be autonomous and not tied to Richmond ("When Richmond goes down, all courts go down.").

6. The Supreme Court of Virginia cannot keep up with case management technology demands of the courts.
7. Local courts must wait for long periods of time for upgrades and enhancements to come online.
8. The Supreme Court of Virginia should establish comprehensive data standards for all courts.
9. There are currently several areas of overlap in data entry (e.g., magistrates, clerks).
10. Could the use of video arraignments be expanded? Why is it difficult to get sheriffs' departments on board to do this?
11. How can document management software assist with staffing and caseload demands? Should this be done on a statewide basis?
12. Enhanced technology will impose increased demands on the courts from the public.
13. Technology could create cross-court efficiencies, enhancements.

#### *Security Issues*

1. There are not currently enough funds to provide adequate human resources for security.
2. Once court sessions are over, no security personnel are on site.

#### *Workforce Skills/Replacement Issues*

1. The move to a digital workplace may require different types of staff/qualifications.
2. The younger workforce expects more from their job.
3. Where do the courts send workers for training? Would partnerships work?
4. There appears to be a different work ethic among today's younger workers (e.g., they are more likely not to consider how their actions impact the clerks office and the court).

#### *Streamlining Workflow Issues*

1. There are several areas of overlap in data entry (e.g., magistrates, clerks).
2. How can document management software assist with staffing and caseload demands? Should this be done on a statewide basis?
3. Some judges prefer not to use form orders.
4. Form orders can save staff time in courts and decrease out of compliance orders in jails.
5. Technology could create cross-court efficiencies, enhancements

#### *Workload Issues*

1. Offenders seem to be appearing before the court more often increasing demands for paper work and staff time.
2. Could the use of video arraignments be expanded? Why is it difficult to get sheriffs' departments on board to do this?
3. How can document management software assist with staffing and caseload demands? Should this be done on a statewide basis?
4. Some judges prefer not to use form orders.
5. Form orders can save staff time in courts and decrease out of compliance orders in jails.

6. The number of hearings should be included in measures of workload.
7. Judges and clerks are on overload due to high workloads.
8. There are growing environmental issues with regard to waste management.
9. Courts will face issues associated with deinstitutionalized mental health patients.
10. Enhanced technology will impose increased demands on the courts from the public.
11. The needs of an increasingly aged population will place additional demands on courts and court staff.

*Access to the Courts Issues*

1. Courts need additional foreign language interpreters to help overcome language and literacy barriers for court staff and customers.
2. The judiciary's website should include FAQs, use an easier to navigate book layout, make court forms available, and provide directions to all court facilities.
3. Enhanced technology will impose increased demands on the courts from the public.

## **RECOMMENDED OBJECTIVES AND TASKS**

### **Funding Facilities**

*OBJECTIVE: To provide for new building and renovations of courthouses, which are uniform in standards for security, accessibility & function and yet allow for the uniqueness the community desires.*

Tasks:

1. Develop uniform standards for all courthouses (new and existing buildings).
2. Develop method of state subsidy to localities which takes into account these factors:
  - New courthouses
  - Expansion or modification of new courthouses considering the economic condition of the locality
3. Consider the re-division of circuits or consider the concept of regional courthouses.

### **Funding Courts — People Resources**

*OBJECTIVE: To ensure an adequate & equitable funding source for the court systems.*

Tasks:

4. Ensure adequate measure of workload by requiring a quadrennial comprehensive review of staffing standards.
5. Conduct biennial salary survey of all court personnel in all courts.
6. Determine funding responsibilities between state & local governments that considers the fiscal stress factors.
7. Implement the recommendations of the Court Security Task Force.
8. Provide full funding for staffing in circuit, general district, and juvenile & domestic relation.

## **Technology**

*OBJECTIVE: To facilitate the implementation of use technology and automated systems by judges and judicial system personnel.*

### Tasks:

9. Update court IT system to make more flexible, reliable, and enhance ability to distribute information, interface with other state agencies.
10. Pursue funding mechanism for enhancing technology, i.e. partnership between the Commonwealth and private sector.
11. Evaluate how enhanced technology will impact demands on court staff from users of court system.
12. Expand use of video conferencing to facilitate arraignments, hearings and other court procedures.

**Focus Group Participants  
October 24, 2006**

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City of Petersburg

**Toney Rigali, President**  
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# Report of the Focus Groups on Trends Affecting Virginia's Courts



**Polarized Populace:  
Eroding Common Ground**

## **POLARIZED POPULACE: ERODING COMMON GROUND**

The political process is more polarized now than it has been since the early 20th century, and the polarized debate has focused largely on “culture wars.” At the same time that the country has become more polarized in the political arena, there is also a trend of greater income inequality. What are the far-reaching consequences of political and economic polarization on state government?

### **Polarizing Factors**

- Realignment of the major political parties
- Closely divided political control of states in recent years
- Culture wars—single issue politics
- Economic divisions—greater income inequality

### **Gridlock**

States with recent budget gridlock:

California	Kentucky	Minnesota	New Jersey
New York	North Carolina	Pennsylvania	Virginia

- Virginia
  - Late budgets in 2001, 2004, and 2006 Sessions
  - 2006 Special Session on Transportation Needs

### **Emphasis on Social Issues**

- Gay marriage and civil unions
- Abortion:
  - Bans on procedures (e.g., “partial birth”)
  - Parental notification
  - Licensure of clinics
- Stem cell research and therapeutic cloning
- Immigrants’ rights
- Religious expression:
  - School prayer and the Pledge of Allegiance
  - Displays on public property

### **The Promise, Peril, and Ethical Challenges of Scientific Advances**

- Robotics and Artificial Intelligence(s)
- Genetics and Biotechnology
- Nanotechnology

### **Election Controversies**

- Reapportionment and redistricting
- Election processes
- Judicial elections (thankfully, *not* in Virginia)

## **Access to Quality Education**

A quality education helps alleviate polarization in two respects:

1. By improving human potential and associated economic opportunity to alleviate income extremes in society, and
2. By improving citizens' understanding of and expectations from the political process and the judicial system.

Over the last half century, both state and federal courts have been involved in often controversial issues related to education. Funding lawsuits challenging state methods of funding public schools have been brought in 45 states, including Virginia. Many of the early cases, including the last in Virginia, were based on equal protection (equity) claims. Defendant states won about two thirds of these cases. Since 1989, however, plaintiffs have won about two thirds of the lawsuits, often emphasizing the right to an "adequate" education rather than equity. *Courts have yet to examine the adequacy of Virginia schools.*

What is significant for the courts is that some of these cases have put state judiciaries at odds with state legislatures (e.g., New Hampshire, Vermont), leading to various legislative proposals that would undermine judicial independence.

## **Income Disparity**

- Increasing gaps across the income spectrum since 1973
- Only those in the top 5% of all income earners have seen consistent increases in their real incomes
- Young families, even with two incomes, are likely to see their incomes grow more slowly than those of previous generations

## **Judicial Independence and Accountability**

- Courts have a role to play in our democratic society
  - Central role in supporting the rule of law
  - Final arbiters of what the law is
  - Venue for the peaceful, public resolution of disputes
- They are the least democratic branch.
- Courts have limited control over the issues that come before them.
- Their role subjects them to public scrutiny.
- They have neither the power of the purse nor the power of the sword.
- Judicial canons of ethics restrict judges' ability to defend themselves, even against unfair criticism.

## **Virginia Courts**

- The legislature selects all judges
- Legislators sit on the Judicial Council and the Committee on District Courts (judicial branch policy-making bodies)
- Circuit Court clerks and their staffs are not part of the judicial branch
- The judicial branch budget is submitted to the executive branch which may amend it. It is not filed in the General Assembly as a separate bill.
- Based on staffing standards, Circuit and District Court clerks offices are understaffed by several hundred positions.

## Possible Issues and Implications for Virginia's Courts

### *Independent Forum Issues*

1. Increasing polarization will impact the judicial selection process.
2. The environment in which the courts are operating will be impacted. Courts should be conscious of potential for political fallout.
3. Economic and social disparity cases (quality of life cases) show that the populace believes that the courts have a role in maintaining the quality of our lives.
4. Judges may be afraid to do "the right thing" due to fear of not being reappointed.
5. Campaigns are being framed around the "activist judge" concept.
6. Courts collectively need to redefine what their roles.
7. When judges insert themselves into making policy, this can be a problem.
8. Judges are attacked when decisions are not liked.
9. Having fewer lawyers in the legislature may result in less understanding of judicial independence issues.
10. Judges can't educate, explain or defend.
11. The culture is changing to one in which more advertisements exist to attract court cases.
12. The world is changing and the laws haven't caught up: the court system is expected to "fix" this.
13. Are the courts representative of the electorate or are they supposed to stand up for what is "right?"
14. Judges need to apply the law based on the facts.
15. Are there ways for judges to educate the public about the need for judicial autonomy and independence?
16. How can judges help educate without breaching their canons of ethics?
17. What is the impact of "frivolous legislation" on court caseloads and controversies (e.g., prayer in schools bills)?
18. What is the appropriate scope of accountability for judges?
19. How is the morale of judges affected by polarization?
20. The judiciary needs to consider formal and informal opportunities and mechanisms for teaching civics and the role of the courts and judges.

### *Accessible/Responsive Forum Issues*

1. Courts have a backlog. Who are the alternative agents who can assist and relieve the courts through creative adjudication?
2. How do alternative dispute resolution options and agents gain legitimacy?
3. Is the court going to have to take a role to provide indigent representation in the civil courts?
4. Have the courts become a "blunt instrument" for people with money?
5. Effective access to justice may be limited by language barriers
6. There is a perception by indigents that a court appointed attorney is not a "real" attorney, that they are not provided with the same quality of representation.
7. While society places reliance or demands on the courts, the courts are also experiencing increasing attacks.

8. Certain classes of people may be removed from the pool of potential litigants (e.g., terrorist suspects). This may erode confidence in the court system.
9. “When I need the courts, will I have access”?
10. Juries are not being used as frequently.
11. There is an increasing number of citizens demanding information about court decision-making.
12. People (and “think tanks”) expect information instantly, particularly in the general district courts.
13. When individuals do not receive information quickly, they distrust the system.
14. Less jury involvement means less understanding by the public.
15. How is the morale of judges affected by polarization?
16. The courts will see increased number of cases regarding the mentally ill.
17. Are increased user fees a viable idea? An appropriate idea?

*Just Resolution of Disputes Issues*

1. Courts will need to deal with disparate enforcement issues.
2. Juries are not being used as frequently.

*Preserve Rule of Law Issues*

1. Courts will need to deal with disparate enforcement issues.
2. The courts are being called upon to deal with social issues that should never be in the courts.
3. Judges need to apply the law based on the facts.
4. How do we deal with different issues and capabilities of very different localities? (Different localities have different problems.)

*Protect Rights and Liberties Issues*

1. Election issues are justiciable.
2. How will the courts deal with suits regarding electronic voting? Reliability of electronic ballots?
3. Courts will need to deal with disparate enforcement issues.
4. The courts are being called upon to deal with social issues that should never be in the courts.
5. The courts are involved in broad constitutional principles - litigation can widen the net of suits for entire systems.
6. How do we deal with different issues and capabilities of very different localities? (Different localities have different problems.)

## RECOMMENDED OBJECTIVES AND TASKS

### Independent Forum Issues

*OBJECTIVE 1: Civic and Public Education—to deepen public understanding of the roles and responsibilities of the judiciary in our constitutional democracy*

Tasks:

1. Review Standards of Learning and teaching materials to ensure students receive an effective understanding of the importance of an independent judiciary.
2. Where appropriate, develop supplemental educational materials for elementary and secondary schools.
3. Prepare material on the judicial system that would be accessible to the general public through a variety of technologies (print, Web, podcast, video). This material should describe the system and the importance of an independent judiciary.

*OBJECTIVE 2: Judicial Selection and Evaluation—To assist the legislature in defining appropriate criteria and procedures for selecting and evaluating judges that will protect the quality and the independence of the judiciary.*

Task:

4. Sponsor and make available to the legislature research into the qualifications, skills, and abilities that judicial candidates should possess to carry out their responsibilities effectively and identify methodologies appropriate for assessing whether candidates possess the requisite qualifications, skills, and abilities.

*OBJECTIVE 3: Judicial Education and Morale—To educate judges regarding their roles and responsibilities in the governmental system and to assist them in developing the skills needed to perform effectively*

Task:

5. Develop programs that enhance judicial awareness of cultural, demographic, economic, and technological changes affecting the environment in which they operate.

*OBJECTIVE 4: To facilitate a more independent judiciary free from undue influences.*

Tasks:

6. Develop an civics education program for the general public and school-age children that considers:
  - a. the rule of law
  - b. role of the court and judge
  - c. explanation of the judicial selection process—election, reelection, accountability
  - d. distinctions between judicial decision-making and judicial conduct
7. Create an office and officer of public information to articulate the role of the court in a highly visible (e.g., notorious) case.
8. Depoliticize the Virginia judicial selection process.

### **Access / Responsiveness**

*OBJECTIVE: To rehabilitate the public perception of the accessibility and effectiveness of the courts.*

Tasks:

9. Seek to increase the fee for court appointed attorneys to the national median.
10. Initiate / augment a court-sponsored, school-based education program on the courts with court visits.
11. Become part of the orientation process for newly-elected members of the General Assembly, explaining the effect of such things as frivolous legislation on court caseloads and educating non-lawyer legislators on aspects of the judicial process relevant to their work in the legislature.
12. Expand the use of user-friendly forms and information about the process for simple legal procedures (not just online), for example—name change petitions, expungements, appeals of denials of voting rights, etc.
13. Design a program of counseling for judicial burn-out, personal problems, or low morale.
14. Establish shorter periods of jury service so more citizens can participate, learning more about the judicial system from the exposure. Also find means of giving more notice of jury duty.

15. Increase judicial education on dealing with the mentally ill and on the services available (or lacking) for such individuals.
16. Continue to expand the use of mediation and ADR in all courts.
17. Encourage annual court days for dialog with the general public (like town meetings).
18. Make the Supreme Court website gender neutral.
19. Create a central courts information system accessible at multiple points, including courthouses.

**Focus Group Participants**  
**November 16, 2006**

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# Report of the Focus Groups on Trends Affecting Virginia's Courts



**Intergovernmental Relations:  
Who's in Charge**

## INTERGOVERNMENTAL RELATIONS: WHO'S IN CHARGE?

Governing in the 21st century will be increasingly complex and dynamic. Although states have taken on more responsibility for implementing federal programs, the balance of power is shifting to the federal government. At the same time, the relationship between citizens and state government will continue to evolve and change, placing new demands on state government. Is cooperation among the states an effective strategy to prevent or address federal preemption of state powers?

### Federalism and American Justice

Despite the significant growth of the federal government during the 20th century, both in size and in areas of influence, many governmental responsibilities are still left to the states for reasons of both policy and practicality. This is certainly the case with the American system of justice, in which the state court systems collectively handle many times the volume of cases that the federal courts do, even disregarding a very large volume of comparatively simple traffic and ordinance violations that are within states' jurisdiction.

Where should the state courts fit in our federal system?

Total Incoming Cases in Federal Courts*, by Case Type, 2004		Total Incoming Cases in State Courts, by Case Type, 2004 (Trial & Appellate)	
Case Type	Thousands	Case Type	Millions
Bankruptcy	1,654.8	Traffic	54.7
Criminal	70.7	Criminal	20.7
Civil	255.9	Civil	16.9
Appeals*	60.5	Domestic	5.7
TOTAL	2,041.9	Juvenile	2.1
*excludes U.S. Supreme Court & U.S. Court of Appeals for the Federal Circuit		TOTAL	100.0
<i>—Federal Judicial Caseload Statistics</i>		<i>—Examining the Work of State Courts, 2005</i>	

### Trends in State Government

- Volume of subjects addressed has increased
  - The number of bills introduced in state legislatures has more than tripled in 20 years.
- Nature of issues has changed
  - New issues: Stem cells, homeland security, international trade, etc.
- Shifting balance of power with the federal government
  - More state responsibilities, with attendant costs
  - Federal control, direct and indirect, not necessarily with more funding
- Changing relationships with citizens
  - Demand for greater efficiency and accountability
  - New high-tech interactivity in policy-making

### Doing More with Less: Increased burdens associated with federal law

- Conditions of grant in aid, including durational goals for compliance with federal laws and regulations

- Reductions in program funds but not requirements (e.g., drug courts, domestic violence, child placement, legal services, etc.)
- Extension or expansion of existing mandates
- Cuts or revenue obstacles for state / local funds
- Compelled program coverage without full or adequate funding
- New, underfunded national expectations (e.g., ADA, homeland security)

Federal funds support many programs with connections to the courts, including ones in criminal and juvenile justice. Even when money for such programs was more plentiful, state courts struggled to obtain *any* funds, let alone a fair share, because federal funds usually pass through executive branch agencies that may not be obligated to consider judicial branch perspectives or needs.

### **Doing More with Less: Virginia’s Revenue System**

- Basic Taxes: Property, Income & Sales
- Good system compared to others nationally but
- Antiquated
- Riddled with exemptions
- Over-reliance on “user fees” (surcharges)
- Lack of fundamental vision

Modernization of state tax systems is made more difficult by federal policies. For example, even though increasing amounts of commerce are conducted electronically, a federal moratorium has prohibited states from collecting taxes on electronic transactions completed out of state.

### **Federal Preemption of State Authority**

Four general categories of preemption in recent federal legislation

1. Usurping state choices on social policies.
2. Preventing states from protecting health, safety, and the environment.
3. Overriding state consumer protection laws.
4. Seizing power from state courts.

### **Cooperation and Collaboration**

- U.S. Advisory Commission on Intergovernmental Relations (ACIR)
  - Was the nation’s leading repository of experience and information on intergovernmental structure, finance, process, and practice
  - Killed by Congress in 1995 after GOP “revolution”
  - Comparable state entities have since declined or vanished
    - ◆ The General Assembly abolished Virginia’s ACIR in 2004
- State-Federal Judicial Councils
  - Vehicles for direct and personal communication concerning matters of mutual interest and concern:
    - ◆ Elimination of actual and potential conflicts between the two judicial systems.
    - ◆ Development of methods to improve the operation of both systems.
    - ◆ Improvement of the quality of representation and ethics of attorneys practicing in the two systems.

- ◆ Exploration and development of methods to utilize scarce judicial assets to benefit the two systems and the citizens of the State and District.
- ◆ Sharing of materials and information that may apply to or affect both systems.
- ◆ Fostering of closer cooperation for resolution of joint problems.
- Opportunities for Interstate Collaboration
  - Regional and national interstate compacts, e.g.:
    - ◆ Interstate Compact for Adult Offender Supervision
    - ◆ Interstate Compact for Juvenile Offenders
    - ◆ Interstate Compact for the Placement of Children
  - Interstate leadership organizations among state judiciaries
    - ◆ Conference of Chief Justices (CCJ)
    - ◆ Conference of State Court Administrators (COSCA)
  - Supportive Non-governmental organizations (NGOs)
    - ◆ National Center for State Courts (NCSC)
    - ◆ Council of State Governments (CSG)
    - ◆ National Conference of State Legislatures (NCSL)

### **Efficiency and Consumerism**

- Information technology & changing expectations
  - Online communications
  - Online transactions
- One-stop shopping through seamless 3<sup>rd</sup> generation websites (courts, DMV, corrections, social services, etc.)
- Privatization aided by technology

### **Is there a cost?**

Future advances in court services may satisfy consumer demands, but they are likely to further reduce direct public contact with the courts. The decline of jury trials and basic civic education adds to this problem, contributing to public ignorance of proper court roles and functions.

### **Increasing and Competing Demands on Virginia's Courts**

- Workload pressures in the courts
  - Caseload increases
  - Pressure to work faster but need to work smarter
  - Staff shortages
- No activism but polarizing issues do become cases:
  - Death penalty
  - Child custody involving gay parents

## **Possible Issues and Implications for Virginia's Courts**

### *Politics and Policy Issues*

1. The courts are in a reactionary position.
2. Allocating more resources to the courts is not as politically popular as perhaps other initiatives.
3. Should there be a disparity in the ways that courts are funded based on the wealth of the local community?
4. Are transaction fees feasible to enhance technology services?
5. Is the expanding role of the courts (in regards to social issues) a power struggle or a legitimate need?
6. Local governments may complain about the state when they can't gain political support.
7. Courts do not have an active constituency? (or do they?)
8. Will the legislature perceive that the courts are operating outside their appropriate scope?
9. Judges and the courts may not be comfortable asking for what they need.
10. Courts are becoming more like other government agencies.
11. Has the Chief Justice become the chief lobbyist for the courts?
12. How could the courts create a more positive image?
13. Courts may need a dedicated public relations function.
14. Is there a danger of judges becoming more political?
15. Courts can not defend their decisions in public.
16. Rate of payment is too low for indigent defense and public defenders.
17. The judiciary pays for itself, in theory.

### *Local and State Interaction Issues*

1. Should there be a disparity in the ways that courts are funded based on the wealth of the community?
2. District level personnel are not funded or supplemented at all by the localities.
3. Courthouses are locally-owned facilities; this presents additional funding challenges.
4. Courthouse security measures are determined by local sheriff's offices.
5. Local governments may complain about the state when they can't gain political support.
6. The judiciary pays for itself, in theory.

### *Public / Customer Service Issues*

1. Court consumers want the court's technology to be comparable to the private sector.
2. Are transaction fees feasible to enhance technology services?
3. Do consumers understand the rationale for security measures?
4. By limiting access to cell phones in court are inefficiencies resulting?
5. The inability on the part of court users (attorneys) to access computers in the courthouses limits the ability of technology to assist with scheduling and other functions.
6. Judges/courts may not be comfortable asking for what they need.
7. Courts can not defend their decisions in public.
8. Courts must deal with very diverse populations (language, cultural).

### *Expanding Scope Issues*

1. Court are in a reactionary position.
2. Should there be a disparity in the ways that courts are funded based on the wealth of the community?
3. How does the courts expanding scope (e.g., drug courts) affect increased/redistributed funding needs? Resource needs?
4. Courts must deal with very diverse populations (language, cultural).

### *Funding Issues*

1. Allocating more resources to the courts is not as politically popular as perhaps other initiatives.
2. Should there be a disparity in the ways that courts are funded based on the wealth of the community?
3. Courthouse are locally-owned facilities which creates additional funding challenges.
4. Are transaction fees feasible to enhance technology services?
5. How does the courts expanding scope (e.g., in drug courts) affect increased funding needs? Resource needs?
6. Judges and the courts may not be comfortable asking for what they need.
7. The rate of payment for indigent defense and public defenders is too low.
8. The judiciary pays for itself, in theory.

### *Federal Issues*

1. What are the implications from the development of the Department of Homeland Security and its role in relation to the courts?
2. Caseloads are increasing generally and more cases are moving in the federal courts. What is the balance here?
3. Federal courts use their power against the state in a officious way (e.g., bankruptcy court).

### *Access Issues*

1. Court consumers want the court's technology to be comparable to the private sector.
2. Do consumers understand the rationale for security measures? Does this have an impact on the public image of the courts?
3. By limiting access to cell phones in court are inefficiencies resulting?
4. The inability on the part of court users (attorneys) to access computers in the courthouses limits the ability of technology to assist with scheduling and other functions.
5. Courts must deal with very diverse populations.

### *Resource Issues*

1. Most resource intensive cases are being shifted elsewhere (ADR).
2. Legal culture is changing in some localities.
3. Courts should be in control of their own dockets.
4. How fast should cases be pushed through? What is too fast?

## **RECOMMENDED OBJECTIVES AND TASKS**

### **Policy / Politics**

*OBJECTIVE: To keep the Supreme Court of Virginia out of the lobbying process.*

Tasks:

1. Expand government relations staff and responsibilities.
2. Conduct public relations to educate the public about the benefits of courts to local communities.
3. Develop a “composite” index for funding of localities (including population, economy, crime rate and type, caseload, and indigent population).

### **Local / State**

*OBJECTIVE: To establish policies and funding measures that promote an equitable and efficient judicial system throughout the Commonwealth.*

Tasks:

4. Establish a single source of state and local funds that will provide funding for court personnel and operations.
5. Establish a formula based on need and workload for dispersing funds and determining staff levels.
6. Authorize a state-wide study to determine and audit or inventory adequate courthouse facilities.

### **Public / Customer Service**

*OBJECTIVE 1: To make the courthouse less intimidating to court users.*

Tasks:

7. Train security personnel on customer service perspectives.
8. Have “greeters” (for large jurisdictions) or kiosks with brochures to explain the building and court procedures.

9. Allow electronic devices in the courthouse with directions that they are to be turned off and not used without explicit court permission (as when attorneys must determine availability for calendaring purposes).

*OBJECTIVE 2: To make basic court information easily accessible on the Internet.*

Tasks:

10. Include a link on the locality's homepage to the individual courts having jurisdiction there.
11. Include court hours, telephone numbers, names of judges and clerks, directions, and any restrictions on items allowed / not allowed in court.

*OBJECTIVE 3: To make telephone contact quick and painless.*

Task:

12. Include in the answering menu a number to bypass the system (to reach an operator or other living being).

*OBJECTIVE 4: To make reasonable accommodations for those who do not speak English.*

No specific tasks recommended.

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November 28, 2006**

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