State of the Judiciary
Chief Justice Harry L. Carrico, Virginia Supreme Court of Appeals
Message to the Judicial Conference of Virginia, Virginia
May 11, 1992

To put it mildly, the year since we last met has been one of great change in this state as well as across the nation and throughout the world. It would be unrealistic to think the judicial system has been unaffected by all that has happened. Yet, of all our institutions, the judiciary must give the perception of stability and provide a sense of direction despite the changes that may occur around it.

Each year, the presentation of the State of the Judiciary report affords me the opportunity to reflect upon the changes of the past year and to anticipate what the months ahead might bring. There is a temptation to use the occasion to offer a litany of past successes. But, such an exercise would be unhelpful if not placed in context of the broader set of values upon which we rely for our stability and by which we chart our direction.

The mission of the Virginia judicial system is to resolve disputes justly. "Just resolution" is a term that cannot readily be defined but is better understood as the objective of a judicial system in which all proceedings are conducted in an expeditious and fair manner, with equal application of the rules of law to all users of the system. And how have we advanced this objective in our recent endeavors?

In an effort to improve the quality of justice for Virginia families involved in litigation, the 1989 General Assembly, at the request of the Judicial Council, adopted legislation creating a Family Court Pilot Project. The project began on January 1, 1990, and continued in ten courts throughout the Commonwealth through December 31, 1991. The implementation of the project proceeded smoothly, and I want to express my appreciation to all those who participated for their commitment to this experiment.

The advisory committee I appointed to oversee this project is busy collecting information and preparing an evaluation report for submission to the Judicial Council on June 23. At that time, the report will also be distributed throughout the state for public comment. The Judicial Council plans to receive comments over the summer and to take action on the report in October. It is our hope that a symposium can be convened in November that will allow broad-based discussion of the Council's final recommendations.

While the results of the Evaluation Committee's analysis are still unknown, I have been impressed by the number of responses to survey questions we received from litigants.

Over 2,700 completed survey forms have been received, a response rate indicative of the fact that people appreciate being asked about their court experiences.

The responses reflect a general feeling about the importance of family issues and the need to treat them in a comprehensive manner. Notable among specific responses are comments about the duplicative effect of trials de novo and the cost of commissioners in chancery. Also, questions

have been raised about whether the adversarial system is a viable means of resolving family disputes, given the fact that, quite often, continuing relationships must be maintained between the parties long after the legal issues ostensibly have been resolved. These are all issues which bear directly upon the quality of the way in which we dispose of a body of cases vitally important to our society. And they are issues that should receive full attention in the Judicial Council's report.

In keeping with a recommendation of the Futures Commission, a federal grant allowed us to establish, in the spring of 1991, a department of dispute resolution services within the Office of the Executive Secretary. During its initial year of operation, the department has focused upon four broad objectives, which include creating a network or clearing-house on alternative dispute resolution in Virginia, increasing the level of awareness of the bench, the bar, and the public concerning alternative mechanisms and their use, developing programs for implementation of alternative dispute resolution services throughout the state, and strengthening ties to community ADR providers in order to facilitate a closer relationship between the courts and the communities. A Dispute Resolution Services Advisory Council has been established to serve as a forum for the exchange of ideas and to formulate recommendations on ADR issues. While the use of mediation and other alternative means are not suited for every type of case, it is clear there are some types of cases for which they are more suited than traditional procedures. When viable options are identified, they should be made available to the public without delay.

To this end, the Judicial Council has endorsed a legislative proposal developed by a joint committee of the Virginia State Bar and the Virginia Bar Association which would provide a uniform process for court referrals to alternative dispute mechanisms. This proposal encourages the use of dispute resolution proceedings that promote open communication between the parties, full exploration of all the options available to resolve the dispute, and more participation by the parties in the outcome of the controversy.

I am hopeful that this legislative proposal will be adopted by the 1993 session of the General Assembly. I believe that the legislation would improve the quality of the result in an appreciable number of cases, encourage early settlement of litigation through referral of cases to a process that is more appropriate for the type of dispute involved, and insure a uniform and consistent integration of alternative dispute resolution processes into the court system. I would like to encourage each of you to learn more about ADR and how it might be used in your court.

In keeping with our objective that proceedings be conducted in an expeditious manner, I want to mention again this year the calendar management and delay reduction efforts being undertaken throughout the state. As you know, the Case Processing Time Guidelines went into effect on July 1, 1991. With these guidelines, the Council proposed voluntary, aspiration-based goals to address the necessity of reducing both the delay in and the cost of litigation.

By the end of 1991, calendar management efforts were underway in at least eight of our circuits. After learning of the enthusiasm with which the bench and the bar in these areas have undertaken docket improvement programs, I am firmly convinced that we are on the right course. However, report after report confirms that delay can only be reduced when judges assume a leadership role and accept responsibility for managing court dockets.

Furthermore, our experience is evidence of the fact that no single docket management approach is

effective for all the courts in Virginia. The judges of each circuit, working with the bar, must find the most effective program for their area. While any change tends to create some concern, I am pleased with the initiative being shown by both bench and bar on the delay reduction issue, and I encourage even greater effort in the year ahead.

By the way, I am pleased to report to you that the Supreme Court remains current in its docket. It also continues to fulfill its commitment to get a case in and out of the court within one year from the time the petition for appeal is filed and the opinion is handed down. Indeed, at the moment, the average time between filing and final disposition is nine months. And we have managed to maintain our up-to-date status despite an 18 percent increase in filings in 1990 and a 12 percent increase in 1991.

The caseloads continue to grow in circuit and district courts as well. In 1991, 216,915 cases were commenced in the circuit courts of Virginia, an increase of 5.3 percent above the figure for 1990. The average commenced caseload per judge totaled 1,632 cases as compared to 1,027 just 15 years ago. In general district courts, 3.2 million cases were filed in 1991, representing a 2.6 percent increase over the previous year. The juvenile and domestic relations district courts report a 4.8 percent rise in new cases for 1991, resulting in a total of 339,456 filings for that year.

While the workload has continued to increase, the availability of resources has not kept pace. I should note, however, that even in these difficult financial times, the General Assembly authorized three new judgeships and added 63 new staff positions at its 1992 session. Furthermore, the two percent salary increase which was scheduled to go into effect on December 1, 1990, was funded for December 1, 1992. I remain hopeful that, as economic conditions improve, the General Assembly will recognize other, long-term needs of the court system and enable us to keep pace with the demands of ever-increasing caseloads.

In addition to resolving disputes justly and administering the court system effectively, the courts must make themselves more accountable and more responsive to the concerns of the citizenry. As was suggested by the Futures Commission, we must reevaluate what we do and adopt a more user-oriented perspective in all the relationships between the bench and the bar on the one hand and the public on the other.

In order to listen to the users of our system and to improve public confidence in the courts, we have, with the approval of the Judicial Council and a grant from the State Justice Institute, started a consumer research and service development project. The purpose of this project is to provide mechanisms for citizens to make known their viewpoints on the operation of the courts, their perceptions of needed services, and their ideas for suitable changes.

To assist in carrying out this purpose, a statewide advisory panel has been organized, consisting of judges, clerks, magistrates, customer service experts, researchers, and just plain citizens. The panel has the responsibility to review feedback compiled through a variety of research and survey techniques and then to provide its insight into needed changes in services. All this information will be incorporated into our planning process to assist the courts, the Judicial Council, and the General Assembly in identifying measures to improve the way we do business.

I told you last year that no program directed to building public confidence in the courts could be

more important than one improving the method this Commonwealth employs to select judges. I added that no one could be more proud than I of the men and women who occupy the benches of Virginia and that I would defend to my utmost their reputation for integrity, proficiency, and ability.

I said, however, that a change in the method we use to select judges is absolutely essential to continue the high quality of the Virginia judiciary. Accordingly, I recommended the creation of a Judicial Nominations Commission, clothed with the authority to screen and nominate all candidates for judicial office. And I said I was making the recommendation for the serious consideration of all those concerned with providing the people of this Commonwealth an independent, accessible, and responsible forum for the just resolution of disputes.

Unfortunately, the proposal met the same fate as all earlier efforts to secure an improved selection method. The proposal passed the Senate, but foundered in the House of Delegates. Yet, I am not disheartened or discouraged. I cannot help but believe the change will come one day, perhaps sooner than some think.

So, I say again this year, but with even more emphasis, that a change in the method we use to select judges is absolutely essential. I recommend once more, but with a stronger voice, the creation of a Judicial Nominations Commission to screen and nominate all candidates for judicial office. And I resubmit the proposal, but with greater belief in its merit, for the serious consideration of those concerned with maintaining a qualified judiciary in Virginia.

At the outset of these remarks, I told you that it would be unrealistic to think that the judicial system would be unaffected by all that has happened in the past year. When I first wrote those words, I did not know how prophetic they might be — the jury had yet to return its verdicts in the Rodney King case and Los Angeles had yet to be turned upside down by the riots that followed. I have no doubt that the events in Los Angeles will affect every judicial system in the country. How they will be affected and to what extent remains to be seen, but you can be sure we will receive closer attention from the public than ever before. Therefore, we must, more than ever, try to give the perception of stability and provide the sense of direction that, as I noted earlier, are uniquely our responsibility.

We must consider the interests of the public in everything we do. After all, the courts exist for the benefit of the public, and public support is vitally essential to the continued existence of the judicial system. It should be our constant goal to conduct ourselves in ways that cultivate the public's support and earn its respect.

One important way is to give courteous, expeditious, and efficient treatment to all members of the public who use the courts. They are entitled to respect from all with whom they have official contact, be it with clerk's office personnel, bailiffs, lawyers, or judges. I am firmly convinced that a party who is treated courteously in court is apt to think he received justice even though he loses his case.

In closing last year, I expressed my appreciation to you for the spirit of cooperation you had displayed in the arduous economic circumstances in which we found ourselves. I told you I did not know when the difficult times would end, and I can make no better prediction now. But I

believe they will end, hopefully sooner rather than later, and I have faith that, in the meantime, your cooperation will continue as before. And, for that, I am deeply grateful.