

State of the Judiciary
Chief Justice Harry L. Carrico, Virginia Supreme Court of Appeals
Message to the Judicial Conference of Virginia
May 17, 1993

It is hard to believe that a year has passed since I reported to you at Williamsburg on the state of the judiciary. But the calendar tells me it is true, and so I welcome the opportunity to bring you up to date on the changes that have taken place since we last met and to review with you some of the challenges likely to face the court system in the months ahead.

The most significant change this past year occurred during the 1993 session of the General Assembly with the passage of the Family Court bill. The culmination of years of planning and study, this legislation establishes a single court to handle all matters involving children and families, combining the jurisdiction of the present juvenile and domestic relations district courts with jurisdiction over cases concerning divorce, annulment, affirmation of marriage, and adoption. It is my firm belief that, with its specialized purpose, this new court will provide a more effective and satisfactory forum for the resolution of problems affecting children and families in Virginia.

As you know, the new court is scheduled to begin operations on January 1, 1995. The chief judges around the state have already received materials to be used for the development of individual plans for the implementation of the family court within each circuit. It is important that these plans be developed during 1993. I know that there are some serious concerns about whether the necessary resources will be provided to implement the family court, and this planning period will provide the opportunity to address these concerns and, hopefully, through mutual effort, to alleviate them.

Let me say that no one wants this new court to be successful any more than I, and I am fully aware that, for it to succeed, it must have the full complement of personnel and facilities necessary to operate it. Obviously, the judicial system does not control the purse strings of this state, but I give you my assurance that I will do everything within my power to ensure that the necessary resources are provided to operate the family court system in an effective manner.

I do want to take this occasion to express my appreciation to those of you who have assisted throughout the years in bringing the concept of a family court to this point in its development. But we still have a long way to go before the concept can become a reality. We cannot rest on our laurels until the family court opens its doors for business on January 1, 1995, and I solicit the support of each one of you in this room to help make certain the event takes place as planned.

But creation of the family court is just one step, in a series of recent events that have placed greater emphasis upon the family. As many of you know, at its recent session, the General Assembly provided funding for the Comprehensive Services Act, adopted one year ago. The Act calls for major changes in the delivery of services for at-risk and troubled youth and their families. For example, rather than classifying children by funding category, the Act allows localities flexibility in determining what services best meet the needs of a particular child.

Viewed together, the family court legislation and the Comprehensive Services Act provide the most comprehensive approach to family services to date.

In keeping with the recommendations of the Commission on the Future of Virginia's Judicial System, the 1993 Session of the General Assembly voted overwhelmingly to adopt House Bill 352, relating to alternative dispute resolution services. The success of alternative dispute resolution has been demonstrated consistently throughout the country. In Virginia, pilot programs operating in Prince William County and the City of Richmond are producing similarly favorable results.

This new legislation provides for judicial referral of appropriate civil cases to an evaluation session, unless the parties opt out. In the event a session is held, the parties and their attorneys learn about the alternative methods of dispute resolution that are available and decide whether they want to use one of the methods. If, for example, the parties decide to have their dispute resolved through mediation, they will be provided with a list of court-certified mediators from which to make a selection or, if they wish, they may choose someone else. While participation in alternative dispute resolution is voluntary, many mediation centers around the state are preparing for an anticipated increase in case loads.

In addition, the Richmond pilot program, which so far has been confined to mediation alone, may be expanded to an "early neutral evaluation program." In this plan, qualified, neutral attorneys evaluate cases and assist parties in determining whether to continue litigation or to settle their disputes out of court.

In short, the number of methods available for resolving disputes is increasing, as it must if we are to continue to serve effectively those members of the public who come to the courts seeking relief but do not want or need a traditional forum. And, the task of finding new and better ways to serve the users of the court system will continue to demand our attention for as long as the courts exist.

The passage by Congress of the Americans with Disabilities Act also promises to bring new challenges to the court system. During the past year, the system has vigorously reviewed its facilities and services with a view toward identifying barriers and developing better means of access. And, as you know, the judicial system has joined with the Department For Rights of Virginians With Disabilities and the Department For the Aging in co-sponsoring the conference that will follow our regular program on Wednesday afternoon. Implementation of ADA mandates surely will not come without great effort, and educational endeavors, such as the conference to be held Wednesday, will help to ensure that these efforts are successful in providing better services to persons with disabilities.

I need not remind you that the courts of this state have a broad range of responsibilities, some not directly related to the trial of cases, yet of great importance. This past year, the Judicial Council of Virginia appointed a standing committee on commissioners of accounts and charged it with the task of finding ways to provide enhanced court supervision in this area of concern. The committee will involve itself in reviewing the law applicable to fiduciaries, establishing uniformity of practice in the filing and auditing of accounts, and conducting training programs

and developing materials to assist commissioners of accounts in performing their duties. It is the hope of the Judicial Council that these efforts will result in a more active judicial role in the provision of uniform instructions to persons who qualify as fiduciaries and in ensuring appropriate protection for the interests of the public.

So far, the changes I have reviewed share a common goal: improving service to the public. The question naturally arises, "Have we been successful?" and, perhaps, just as important, "How do members of the public rate our progress?"

As I reported to you last year, we began in 1991 an innovative program designed to increase the level of public confidence and respect for the courts. Through the establishment of a consumer research and service development project, users of the courts and other members of the public were surveyed to ascertain their viewpoint on the operation of the court system and its perceived needs. While the survey results were generally favorable, there were serious complaints listed, and it came as no surprise to me that delay stood at the very top of the list.

I am more convinced than ever that we must press forward with our delay reduction efforts. You will recall that the Judicial Council's case processing time guidelines became effective July 1, 1991. The objectives outlined in the standards call for leadership from the bench in establishing cooperative efforts among the courts, the clerks' offices, the local bars, and others to ensure improved access to justice by eliminating unnecessary litigation costs and delay. Programs to improve caseload management procedures are ongoing in at least fifteen circuits and districts already. And, in several other courts, efforts have been initiated to assess the problems caused by delay and to determine where changes in local case processing practices are needed. These efforts include programs designed to assist judges in monitoring more actively the progress of case files. In addition, several experimental programs aimed at expediting case processing are currently being developed.

But to return to the survey results, they show that while there are areas that need improvement, the public has a favorable impression of Virginia's court system. Interestingly, those persons who completed exit surveys immediately upon leaving court gave higher ratings to the system than those responding to telephone surveys who may or may not have had previous courtroom experience. But, although we have reason to be proud of our judicial system, we must not relent in our efforts to reduce delay and to make other needed improvements.

While my remarks to this point have focused mainly on what has occurred this past year, my report would be incomplete without an acknowledgment of the challenges to come. And although there is much ahead we cannot predict, there are some things that a reasonable degree of foresight can reveal.

For instance, there can be little doubt about the expanding role technology is to play in the court system. A prime example is found in the recently completed work on the Law Office Public Access System (LOPAS). Similar to the LEXIS or WESTLAW programs, LOPAS allows attorneys participating in the pilot project to access state court information via personal computer. Once connected, the user has access to the court automated information system for material from any court on the program, including opinions of the Supreme Court and the Court

of Appeals. And, the information can be downloaded to the users' personal computers immediately. Clearly, the next step in this progression is direct two-way communication between courts and attorneys in their law offices.

Further, with the easing of the economic situation, we have been able to extend the automated case management system into various courts throughout the state. In addition, we have begun the process of contracting for the installation of a new jury management system. A sophisticated program, it will permit the expeditious summoning, selection, and payment of jurors at lower cost.

These are only examples of the extent to which technology can help enhance the administration of justice in our state. Undoubtedly, other new and innovative ways of using technology will become available in the future, and we should not be reluctant to venture into promising areas of improvement.

On another subject, I am sure you are aware that Virginia has an active State/Federal Judicial Council and that the Virginia judiciary has long cooperated in endeavors aimed at improving the relationship between the two systems operating in this state. In recent years, efforts to increase cooperation between state and federal courts have moved to the national level. These efforts reached a high water mark last year in a conference Judge William Sweeney and I attended in Orlando, Florida.

There, for the first time in history, the chief justices of the state courts and the chief judges of the federal courts, joined by trial judges and representatives of other segments of the country's legal system, totaling some 330 in all, sat down together to discuss their mutual concerns. I was a member of the planning committee, so it would be immodest for me to say it was a splendid conference.

Recently, Chief Judge Sam Ervin of the Fourth Circuit Court of Appeals and I agreed it would be beneficial to conduct, here in Virginia, a "mini-Orlando" conference on state/federal relationships, and our state has received a grant from the State Justice Institute for this purpose. Accordingly, next year, Virginia will play host to a conference that will include state and federal judges from all levels of the judiciary in each of the states in the Fourth Circuit. It is my hope that this conference will greatly enhance the cooperation that has been generated over the years by the work of the Virginia State/Federal Judicial Council.

Finally, no report on the state of the judiciary would be complete for me without repeating my recommendation for the creation of a Judicial Nominations Commission. I remain of the firm belief that a change in the method we use to select judges is absolutely essential to ensure the continued high quality of the state's judiciary. I realize, of course, that similar proposals have been considered and rejected by the General Assembly in past years. However, I continue to be hopeful that, at some point in the future, efforts to create a nominating commission will be renewed with vigor and pursued to fruition. In the meantime, I intend to keep pressing for a change.

We don't do things in a big hurry here in Virginia. It took seventeen years to secure approval of

an intermediate appellate court, and the family court proposal had been under consideration for some forty years before it was approved at the last session of the General Assembly. So I have learned not to get impatient.

And I hope you will not get impatient about other matters, including your own financial situation. As you know, the General Assembly approved a three percent salary increase for judges at its 1993 session. I had hoped the percentage would be greater, but things did not work out that way. Perhaps, the state's economic situation will improve by the time the General Assembly convenes again and it will look favorably upon a request for improved compensation for judges.

In this, as in all matters having as their goal the improvement of the administration of justice in Virginia, I request your cooperation and support, knowing I shall have both merely for the asking. And, for this assurance, I am deeply grateful.