State of the Judiciary
Chief Justice Harry L. Carrico, Virginia Supreme Court of Appeals
Message to the Judicial Conference of Virginia
2001

This will be my twenty-second, and last, State of the Judiciary Report. Whether I like it or not, time has caught up with me and I must retire next January 31st. But, by then, I will have served on the Supreme Court for 42 years and as Chief Justice for 22, so it is time I leave quietly

As I contemplate my time as Chief Justice, what stands out the brightest in my mind is the association with my colleagues on the Supreme Court and the judges of every other court in this great Commonwealth. I have said many times that the cornerstone of any court system is its judges. Even though a court structure may be designed expertly and administered efficiently, it will be unsuccessful without capable and impartial judges.

Only qualified judges can earn for the courts the respect of the public. I can say with complete objectivity that the Virginia judicial system and its judges are second to none, and I want to convey to each one of you my heartfelt thanks for your support and friendship throughout the years. You have made the system what it is today, and you have added real meaning, a sense of fulfillment, and just plain enjoyment to my life.

It has been said that the best bridge to the future is one anchored in the proven values of the past. While change is inevitable, continuity is essential to all human institutions. The Virginia Judicial System has been blessed with a rich heritage that has served as a foundation for addressing the problems of the day as we move forward in the twenty-first century, we must seek to preserve the historic core of this rich tradition while developing new visions of how the court system must adapt to a changing society I hope that you will permit me the privilege of sharing with you some observations on and highlights of past progress before offering my views on the direction I think the court system should take in the years to come.

First, let me say I believe firmly and sincerely that whatever progress has been made is the result of the work of no one person but of the combined effort of everyone committed to improving the administration of justice in Virginia. While certain individuals might stand out for special recognition here and there during the course of the combined effort, the results would never have been obtained without the cooperation of many; many individuals, including judge administrators, legislators, and laypersons.

Modern court reform in Virginia took a sharp upturn with the reorganization of the courts in 1973. This change meant that all of Virginia's courts would be presided over by full-time, legally trained judges. An important feature of the overhaul was the state's assumption of the financing of a major portion of the court system. Significant attention was devoted to improvement of the courts not of record. In addition, salaried magistrates replaced fee-funded justices of the peace, offering improvement in the quality of services rendered. Uniformity of practice and procedures was enhanced throughout the system and the administration of the courts at the state level was strengthened.

Yet, with all the changes, there still existed a critical lack of appellate capacity in the court system. The docket of the Supreme Court was seriously backlogged, with the disposition of civil cases delayed as much as three years. Although the idea of an intermediate appellate court had been discussed for some time, the effort to implement the idea seemed to be stalled on dead center. Then, the decision was reached to make the creation of an intermediate appellate court a matter of the highest priority on the agenda for court reform in Virginia. As a result, the 1983 General Assembly adopted legislation creating the Court of Appeals of Virginia effective January 1, 1985.

The inaugural session of the court was held in Richmond on January 4, 1985. That day signified not only the culmination of years of effort to expand appellate capacity in our state, but it also marked the beginning of a new era for Virginia's judicial system. The institution of the Court of Appeals provided additional appellate opportunity for litigants and furnished the Supreme Court increased ability to develop the common law. Clearly, creation of the Court of Appeals is one of the most significant developments affecting the judiciary during the past quarter century.

Concerning the Supreme Court, by the end of 1989, it had eliminated its backlog and, pursuant to a commitment it had made earlier, began moving cases through the court for final disposition within twelve months from the date of filing of the petition for appeal. Although the caseload of the Supreme Court has nearly doubled since 1989, it is still able to fulfill its twelve-month commitment. Indeed, the time between the filing of a petition for appeal and final disposition is presently only ten months.

Another milestone in the improvement of the administration of justice in Virginia was the 1989 adoption of legislation creating the Family Court Pilot Project. The purpose of that project was to determine whether consolidating the jurisdiction of family law matters into one court would prove preferable to the division of jurisdiction between the circuit courts on the one hand and the juvenile and domestic relations district courts on the other.

After a highly successful two-year pilot program, the 1993 session of the General Assembly adopted a Family Court Bill, with few dissenting votes. This action was the culmination of years of planning and study and produced a measure that clearly would have meant a more effective and satisfactory forum for the resolution of problems affecting children and families in Virginia.

We were poised to begin and only awaited the approval of funding we fully expected to receive from the next session of the General Assembly. While the l994 session failed to provide the funding, the lessons learned during the pilot project will serve us well in any future effort to secure the passage of this important change in our court structure. I will have more to say about this subject later on in these remarks.

Another major development in the court system has been the introduction of alternative methods of dispute resolution. Resolving disputes in a peaceful manner is a paramount obligation of government. Because disputes differ widely in nature, adjudication is not always the most appropriate means of resolving cases. Accordingly, we have embarked on a path to ensure that there is a range of options available for resolving disputes. Mediation and other similar dispute

resolution techniques furnish ways to reduce hostility between disputants, to enhance their acceptance of the outcome, and to restore a sense of control to the parties. Embodying these fundamental concepts in all resolution mechanisms will achieve a greater sense of justice in individual cases.

In 1990, we established the Department of Dispute Resolution Services within the Office of the Executive Secretary to provide a means for the development of alternative dispute resolution services in the court system of Virginia. That department has worked closely with the courts and the alternative dispute resolution community to offer the most effective and appropriate methods for resolving disputes.

Another revolutionary change that has occurred has been the electronic transformation of the world, including our own court system. Many forces shape our future, some political, others economic or demographic. Clearly, the driving force of the last twenty years has been technology. Beginning in 1980, we commenced the automation of every aspect of the business operation of the courts of our state. By careful application of emerging technologies, we have increased our productivity and heightened our responsiveness to the public's request for services, and I believe we have done so without a loss of traditional values and concepts that have formed the foundation of the court's search for justice throughout the years.

Technology has promoted a higher quality of justice by reducing costs and delays while improving convenience, accessibility, and ease of use of the courts for all citizens. It has enhanced the courts' ability to determine facts and reach fair decisions. Improvements generated by technology have complimented the tested and proven methods of administering justice.

As I leaf back through the pages of my previous State of the Judiciary Reports, I am reminded of many other projects and activities that have shaped the face of justice in our state. A sample of these include:

- The development of voluntary sentencing guide- lines and, ultimately, the creation of the Virginia Criminal Sentencing Commission, which has in turn led to reduction in the disparity of sentencing in criminal cases.
- The adoption of jury management standards and jury reform proposals focusing on increasing the overall efficiency of jury operations, reducing costs, and improving peoples' attitudes about jury duty
- The promulgation of trial court performance standards as a means of self-evaluation and assessment for the trial courts, thereby enhancing performance, credibility, and respect for judges.
- The creation of a state-wide coordinating council and, later, the Virginia Commission on Family Violence Prevention, in order to emphasize the gravity of the problem of domestic violence and generate changes and improvements in how the court system addresses the problem.
- The formation of a gender bias task force to identify areas within the judicial system that are susceptible to gender bias and to suggest ways to lessen or eliminate the bias.

- The inauguration of training programs focusing on diversity in the courts to provide interactive, creative, and constructive dialogue on this important issue.
- The publication of Virginia's Courthouse Facilities Guidelines to provide assistance to all those in the judicial system who are called upon to plan renovations or to undertake new courthouse construction to provide court facilities better suited to serve the public.
- The appointment of the Commission on the Future of Virginia's Judicial System. This "first-of- its-kind" commission undertook ground-breaking work identifying not only the conceptual underpinnings for the mission of the court system but also fashioning the visions of what the system should become over the next twenty-five years.
- The establishment of drug court programs aimed at providing intensive, community-based treatment, rehabilitation, and supervision programs to address drug abuse as the underlying cause of much criminal conduct.
- The institution of calendar management training and technical assistance programs for all levels of trial courts, for the purpose of alleviating the problem of delay and enhancing the public's perception of the courts.
- The origination of a Court Improvement Program designed to enhance court services in child maltreatment and foster care cases.
- The creation of a Judicial Ethics Advisory Committee to provide advice and assistance to judges in ensuring the highest standards of ethical behavior.
- The organization of a Pro Se Litigants Task Force directed toward improving access to legal services by self-represented litigants as well as improving how the courts deal with and process cases involving pro se litigants.

While we should all be proud of the projects and improvements in the administration of justice that have occurred over the years, they would mean little unless they produced results. These activities represent merely a glimpse of what the judicial system has been doing to improve itself. The primary question is how well are we performing our primary mission? In recent public surveys, nearly 80% of all Virginians surveyed offered a positive rating of the court system. Eighty-six percent of those surveyed believed that court employees show courtesy and respect to the public and 80% felt that judges' behavior instills public confidence in the courts. Eighty-four percent thought the courts protect the constitutional rights of defendants and 81% reported that court employees are dependable and accurate in their work. The vast majority of those who actually used the courts, more than 81 %, felt the process is fair, and a remarkable 73.9% said they were satisfied with the outcome of their court experiences. From these numbers, I think we can conclude that Virginians support, have confidence in, and view with respect the courts of our Commonwealth.

I know we all share pride in the distinguished history of the Virginia judicial system and we all are grateful for the rich heritage that has been handed down from past generations. But what will we pass on to succeeding generations? We are responsible not only for maintaining our present system but also for forging a pathway to the future. How, then, can we ensure that our system, will be strong and responsive to the changing needs of our state and her citizens? May I now share with you some of my thoughts for the future of Virginia's judicial system'?

I continue to believe that a major focus in the near future for the judicial system should be the creation of a family court. The concerns that have been identified over the years continue to persist and have even intensified. Multiple problems within the same family are still allocated to different courts for resolution. Rehearing cases in circuit court that have already been fully heard in the juvenile and domestic relations district court causes unnecessary delay, expense, and trauma for both juvenile and adult participants.

Domestic relations cases are some of the most demanding and most important to come before our courts. Accordingly, ·we should have a court that is structured to provide the best forum possible and staffed by judges and court personnel who are trained and skilled in dealing with such matters.

Evaluations of the Family Court Pilot Project in 1990 and l 991 clearly indicated that litigants rated family courts as being the most user-friendly and as furnishing a superior way of handling these very difficult cases. The creation of a family court would be accomplished by transferring from the circuit court to the juvenile and domestic relations district court jurisdiction over all family-related legal issues and by renaming the juvenile and domestic relations court the family court.

The family court, of course, would retain its traditional juvenile court jurisdiction. But mediation would be an integral part of the family court, thus reducing the adversarial nature of court processes in family disputes. It is my hope that funds soon can be found to allow the creation of a family court and that this will be a high priority for the General Assembly in the coming years as we seek a better way of resolving issues related to children and families.

To ensure the selection of those persons most qualified to fill the increasingly diverse role of judges, I believe that Virginia should adopt a selection process for judges using judicial nomination commissions. Over the years, we have struggled to find the method of selection that will produce the best judges. Concerns for judicial independence and public accountability are reflected in the different selection methods used around the country, including executive appointment, legislative election, and partisan or non-- partisan popular election.

Clearly, Virginia's present method of judicial selection has produced a qualified bench. This method avoids many of the objections raised by popular election of judges, although it does not completely remove politics from the selection process.

As the size of the Bar grows and the number of attorneys in the General Assembly declines, it is more difficult for the General Assembly to identify the best judicial candidates. An alternative means of enlisting and screening judicial candidates is needed to assure the continued quality of the bench.

A choice made in an open atmosphere and based solely upon objective qualifications is bound to result in greater confidence in the selection process. Merit is stressed as the main factor and political considerations are reduced to the greatest extent possible.

Since becoming Chief Justice, I have called each year for the creation of a judicial nominations commission. It is with great disappointment that I will be leaving office without having accomplished what I believe to be the centerpiece of all judicial reform. It is my hope that one day partisan politics will be put aside and that both parties will work together for the cause of good government through the establishment of a judicial selection process based solely upon merit. Such a change would be a crowning accomplishment for any legislature and would be one of the greatest improvements that could be offered to the citizens of our Commonwealth.

Equally important in attracting the most qualified men and women to the bench is the assurance that they will be adequately compensated. The strength of the judicial system largely reflects the quality and commitment of its judges. The General Assembly must recognize the importance of maintaining a strong judiciary and must consider carefully those factors that contribute to a lawyer's decision to commit to public service.

Judicial salaries must be adequate to permit qualified persons to choose service on the bench without excessive financial hardship. While the salaries of judges will never equal the pay of the most successful private attorneys, we must not allow the gap between private and public service compensation to become so great as to preclude the choice of a judicial career.

I have never understood why judges have not fared better when, in other areas of public service, the Commonwealth has been willing to pay higher salaries to attract the most qualified individuals. This has been true for law school and medical school faculties and other areas that require specialized skills in the delivery of a particular governmental service. To me, it is perfectly clear that this same level of specialized skill is essential to the delivery of quality judicial services. This truism obviously is recognized in the federal system, where the compensation of judges is substantially higher than for Virginia's judiciary.

It is my fervent wish that the General Assembly will provide judicial compensation that, at the very least, ensures that Virginia circuit court judges are paid on a level equivalent with United States district judges. With this enhancement, we will be able to attract and retain the best and brightest from the legal field and will continue the longstanding tradition of quality judicial services in this Commonwealth

If it is necessary to have a system of merit selection and attractive compensation in order to continue to provide a quality judiciary, it is also logical to conclude that a judicial performance evaluation program is necessary to maintain that same level of quality. As most of you know, the General Assembly asked the Judicial Council to study the question of judicial evaluation and make recommendations. A task force headed by Justice Barbara M. Keenan made a thorough study and filed a report recommending an evaluation program, and the Supreme Court endorsed the report. Then, at its recent session, the General Assembly called upon the Supreme Court to inaugurate a judicial performance evaluation program.

A pilot project will be needed to work out all the details of how an evaluation program should function, but the General Assembly did not provide funding for such a project. As soon as we are able to secure funding, it is my belief we should go forward with the creation of a program that will assist each judge in the career-long objective of self-improvement and also instill greater

public confidence in the judicial process without compromising the independence of the judiciary.

Another area that needs attention is the magistrate system. As many of you know, the 2002 session of the General Assembly has directed that the Committee on District Courts study the recruitment, selection, training, and management of magistrates.

It is my belief that this is a good opportunity to consider the complete functioning of the magistrate system. This is an extremely important area of service to the public. We must look at whether the system should employ only full-time magistrates, whether magistrates should be required to have a legal education, whether there are additional services that could be provided by magistrates, and how best to provide training and accountability for them.

The compensation of magistrates should also be reviewed and made commensurate with the important responsibilities of the office. In a sense, the magistrate stands on the front line of the judicial system. A magistrate is the first judicial officer encountered by a citizen who becomes involved with the law. This officer is vested with the authority to make decisions that may curtail peoples' liberty interests. The manner in which the citizen is treated by the magistrate, will largely determine the citizen's attitude toward the legal system as a whole. It is my belief that we must develop ways to improve the supervision, control, and quality of the magistrate system.

For years, we have made efforts to improve compensation for court-appointed attorneys. It is well established that indigent criminal defendants have a constitutional right to a lawyer at public expense. There is disagreement, however, on whether such defendants are best served by court-appointed counsel or public defenders.

I am now convinced that it will never be possible to provide the appropriate level of compensation to the private bar for these services and that, as a result, the level of quality of court-appointed representation will decline. For this reason, I believe that indigent representation should be provided by appropriately staffed and funded public defender offices throughout the state. Court-appointed counsel would continue to handle those cases in which the public defender's office has a conflict of interest or when workloads preclude the office from accepting assignments.

A statewide system would offer the best possible means of providing a higher level of services for indigent defendants and would be more apt to attract sufficient funding for the provision of such services. And I suggest that the sooner a statewide system is provided, the better.

As you know, the Judicial Council has adopted voluntary time standards for the processing of civil and criminal cases. In my judgment, continued efforts must be made to develop and improve calendar management practices for the processing of all cases. The court system should resolve disputes in a timely and efficient manner. Unwarranted delay impedes the search for justice.

Most studies have shown that the way to reduce delay is by adoption of strong calendar management practices. The judicial commitment to timely disposition of cases naturally extends

to the relationship of the court with the lawyers appearing before it. While lawyers and their clients should be reasonably accom-modated, it is the court, not the lawyers or litigants, that must control the movement of cases once they are filed. Research has shown that a docket can be, kept current when the judge supervises the scheduling and progress of all phases of a case through systematic case management. The judge must have both the desire and the determination to press attorneys and litigants into resolving cases in the least time required for full consideration of the issues presented.

I have spoken earlier about the progress made by the introduction of alternative dispute resolution measures in the court system. These efforts must be continued and expanded. While the development of mediation services, both within the court system and by private providers, has steadily increased over the years, lack of funding has continued to be a serious restraint. It is my hope that efforts will be made to provide the court with resources sufficient to review and screen cases that might be appropriate for alternative dispute resolution as well as to provide the funding necessary for the direct provision of these services by providers. Our job is to find the method of dispute resolution that is best suited to a particular dispute and to make that method available to the litigants. Truly, the court system of the future must include a multi-door courthouse.

An area that is not often considered a part of the judicial system is that of administrative law. The Office of the Executive Secretary currently maintains a list of hearing officers who preside over most administrative matters handled through the Administrative Process Act for any number of executive branch agencies. Over the years, various complaints have been made about this system, stemming primarily from the fact that hearing officers are private attorneys who are called upon relatively infrequently to serve in this judicial capacity and, thus, lack experience, training, and expertise on the issues they are considering.

From time to time, there have been calls for the creation of an administrative law judge system similar to the federal plan. Today, I join that call and suggest that the best method of adjudicating matters that must proceed pursuant to the Administrative Process Act is through a statewide system employing professional administrative law judges compensated by the state.

As I mentioned earlier, technology has been the driving force behind the administration of the courts for some time. That will continue to be true in the future, but even more so. We must be willing to explore new ways of using technology to improve the administration of justice. While it is necessary to proceed cautiously, we must not hesitate to venture forth when the opportunity for technological improvement presents itself. There are two primary restraints in this regard. The first is funding. It is difficult for government in general, and the court system in particular, to secure sufficient funds to provide all the technologically advanced services that are available and appropriate for our use. It is my hope that ways will be found by the General Assembly to provide the resources to allow the courts to keep pace with the private sector. In the long term, these funds would be tremendous investments in the efficiency of the courts in providing justice.

A second restraint on the utilization of technology stems from the inflexibility of existing laws and rules. We must free our minds to think not just in traditional ways, but in how we might more readily accept the utilization of technology to further the fact-finding and decision-making

process. This may necessitate changes in existing laws and rules. But when made by virtue of a thoughtful process, these changes can help us get to the truth better and faster and provide a more effective judicial system.

Finally, I would envision that in the future the court system would devote greater attention to serving self-represented litigants. The court system must be accessible to all. On many occasions, cost, expense, and procedures make courts inaccessible to a large portion of the public. I am hopeful that the recommendations that will be forthcoming from our Pro Se Litigants Task Force, headed by Justice Elizabeth B. Lacy, will serve as a basis for major changes in how the courts serve self-represented litigants. I encourage all of you to review those recommendations and endeavor to implement them.

One additional observation seems appropriate. In discharging its primary function of dispute resolution, the court system has an additional objective of maintaining itself as an independent and respected branch of government. The doctrine of separation of powers, deeply rooted in political and constitutional theory, insulates the judiciary from external pressures, protects its ability to make unpopular decisions, and preserves the rule of law.

The maintenance of the judiciary as an independent branch produces two concomitant responsibilities. First, just as we are due recognition of our independence by the other two branches of government, we must respect their independence and not intrude upon the powers and responsibilities properly belonging to them. Second, the judicial system must be willing to manage itself in such a way as to ensure effectiveness, accountability, and public respect. All the suggestions I have made for action are dedicated solely to these ends.

However, while maintaining our independence, it is incumbent upon us to continue working to promote effective relations with the other two branches of government. Over the years, I think we have developed a good working relationship with them. And, in the current budget crisis, they have both been helpful to us.

I think that in working through this crisis, both the other branches recognized that the court system performs a core function of government. The budget the Governor submitted after he took office reduced substantially the cuts, we faced under the original bud- get proposals. Then, the General Assembly took the difficult but necessary steps to ensure that the court system had the funding sufficient to continue its operation in an effective way I want to express my sincere appreciation to the Governor and to every member of the General Assembly for their efforts on our behalf.

I am certain that in the years to come we will continue to maintain the cooperative spirit that exists today between the judiciary and the other two branches of government. I am absolutely certain that, working together, we can do what is best for the public and provide a court system worthy of the respect of all Virginians.

I have attempted to share with you a little of what has been done and something of what remains to be done. No matter how much we do or how successful we may be, there still remains much to be accomplished. Each of us has a responsibility to do our small part in improving the lives of

others through our chosen field of endeavor.

Let me conclude with the words of Oliver Wendell Holmes, who reminded us of our obligation with this language, "Law is the business to which our lives are devoted and we would show less than devotion if we did not do what in us lies to improve it and when we perceive what seems to us the ideal of its future if we hesitate to point it out and to press toward it with all our hearts." It has been my privilege to work with you in a business to which our lives have been devoted. Together, we have done what in us lies to improve it, and we have not hesitated to press toward the ideal of its future with all our hearts.