

VIRGINIA'S COURT STRUCTURE

**REPORT OF THE
VIRGINIA COURT SYSTEM STUDY COMMISSION
To
THE GOVERNOR
And
THE GENERAL ASSEMBLY OF VIRGINIA**



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COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1970

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REPORT

OF

THE VIRGINIA COURT SYSTEM STUDY COMMISSION

Richmond, Virginia
February 2, 1970

TO: HONORABLE LINWOOD HOLTON, GOVERNOR OF VIRGINIA

AND

THE GENERAL ASSEMBLY OF VIRGINIA

I. INTRODUCTION

Throughout the 1968 Regular Session of the General Assembly, numerous questions arose concerning the structure and operation of the Commonwealth's courts. Specific legislation and proposals for study involving all levels of the court system were put forth during that Session. Innovations to relieve the workload of the Supreme Court of Appeals and the feasibility of eliminating part-time judicial service are but two examples of the many potential areas for reform, touching all levels of the court structure, which were brought forward for consideration during the Session.

While the General Assembly did take some specific legislative action, such as in the area of changes in the justice of the peace system, it resolved through the adoption of Senate Joint Resolution No. 5 to create this Virginia Court System Study Commission and to refer to it the bulk of these issues for careful investigation and the development of specific recommendations back to the General Assembly.

The scope of the study assigned to this Commission is as broad as the State's judicial system itself. The text of the Resolution makes this plain and states:

SENATE JOINT RESOLUTION NO. 5

Creating the Virginia Court System Study Commission.

Whereas, although the Constitution of Virginia permits the General Assembly to establish courts inferior to the Supreme Court of Appeals of Virginia, that Court has since the adoption of the Constitution been the sole appellate court of the State but the growth in population of the State and the increasing volume of litigation in courts at all levels makes the time propitious to consider the appellate court system of the State and the feasibility and desirability of an intermediate level appellate court; and

Whereas, the business of all courts of record of the Commonwealth has increased steadily in recent years so that nearly seventy-five thousand cases were pending before such courts at the end of nineteen hundred sixty-seven and a growing number of post-conviction appeals generated, in part, by recent United States Supreme Court decisions, in addition to the increase in other litigation in such courts has imposed a severe strain on the structure and operation of the courts and it is desirable that consideration be given to means whereby justice may be administered more effectively and swiftly in the State; and

Whereas, the courts not of record of the Commonwealth, generally, which give many of our citizens their sole impression of the workings of our judicial system, have an increasingly vital role to play in the administration of justice and must function effectively so that they can relieve the burden of the courts of record and consideration should be given especially to whether the use in numerous juris-

dictions of part-time judges and attorneys for the Commonwealth is in the best interests of efficient administration of justice; and

Whereas, decisions by the Supreme Court of the United States concerning rights of juvenile offenders may have far reaching impact on criminal cases involving such offenders and the laws relating to juvenile courts in Virginia need careful review in light of these decisions and others which may be rendered in the future; and

Whereas, the apparent increase in both petty and serious crime in Virginia is placing an increasingly heavy burden upon the Commonwealth's attorneys throughout the State, the efficient functioning of whose offices is an integral part of the administration of justice, and consideration should be given to the question of whether the part-time service which is of necessity rendered by Commonwealth's attorneys in some areas is adequate for proper prosecution of criminals; now, therefore,

Resolved by the Senate of Virginia, the House of Delegates concurring, That there is hereby created the Virginia Court System Study Commission, which shall consist of fifteen members, five of whom shall be appointed by the Governor from the public at large, five of whom shall be appointed by the President of the Senate from the membership thereof, and five of whom shall be appointed by the Speaker of the House of Delegates from the membership thereof. The Governor shall designate the Chairman of the Commission.

The Commission shall make a full and complete study of the entire judicial system of the Commonwealth including, without limitation, the matters set forth above.

Members of the Commission shall be reimbursed for all necessary expenses incurred in the performance of their duties, but shall receive no other compensation.

The Commission may employ legal and other consultants and such clerical and other assistance as may be required for the conduct of its study and in the preparation of its reports. For the expenses of the Commission and the conduct of its study in the coming biennium, there is hereby appropriated from the contingent fund of the General Assembly, a sum sufficient, estimated at forty thousand dollars.

The Commission may make such interim reports as it deems advisable and shall conclude its study and submit its final report and recommendations to the Governor and the General Assembly no later than November one, nineteen hundred sixty-nine.

Pursuant to his authority under the Resolution, Governor Godwin appointed Lawrence W. P'Anson, Justice of the Supreme Court of Appeals, to serve as Chairman of the Commission and appointed to serve with him Joseph C. Carter, Jr., Attorney at Law, Richmond; C. Hobson Goddin, Attorney at Law, Richmond; Kermit V. Rooke, Judge of the Richmond Juvenile and Domestic Relations Court; and Rayner V. Snead, Judge of the Twenty-Sixth Judicial Circuit, Washington. The Speaker of the House of Delegates appointed Delegates John N. Dalton, Radford; C. Harrison Mann, Jr., Arlington; Julian J. Mason, Bowling Green; Garnett S. Moore, Pulaski; and C. Armonde Paxson, Charlottesville. The President of the Senate appointed State Senators Herbert H. Bateman, Newport News; Edward L. Breeden, Jr., Norfolk; J. C. Hutcheson, Lawrenceville; M. M. Long, St. Paul; and William F. Stone, Martinsville.

The Commission elected Senator Long to serve as Vice-Chairman of the Commission. The Division of Statutory Research and Drafting, represented by Mary Spain, served as Secretariat.

To conduct and complete a study as comprehensive as that called for by Senate Joint Resolution No. 5, time and research are essential. During the past

eighteen months, the Commission has held numerous meetings, has investigated many areas of our judicial system, and has arranged for a major research program. These activities will be described in more detail below. The Commission was able, with respect to several fields, to reach conclusions and develop policy positions which are submitted below. The Commission believes that this Report reflects a sound and substantial step toward meeting the directives of the Resolution, but that additional time will be needed to permit further research and study. A full report and recommendations can be prepared in the light of such research and taking into account the results of action on the pending Constitutional amendments which affect the judicial system.

II. ACTIVITIES OF THE COMMISSION—RESEARCH

A. INITIAL PHASE AND CONSTITUTIONAL ISSUES

At the time the Commission undertook its investigations of the State's court structure, the Commission on Constitutional Revision had begun the work assigned to it by the 1968 General Assembly. Both Commissions were concerned with the judicial system—the Commission on Constitutional Revision because of its careful review and revision of the Judicial Article of the Constitution and this Commission by the terms of its entire study Resolution.

A major issue vitally affecting the constitutional revision work and this study concerned the proper method to relieve the work load of the Supreme Court of Appeals and possible reforms in the appellate system. From our formation through the 1969 Special Session, much of our work and discussion was devoted to these matters. We consulted with members of the Commission on Constitutional Revision and with counsel for that Commission.

Until the close of the 1969 Special Session of the General Assembly, however, the proposed revision was not resolved in final form. Article VI of the Constitution, as proposed to be amended by Chapter 27 of the Acts of Assembly of 1969, contains several reforms in the judicial system, including grants of authority to the General Assembly to expand the size of the Supreme Court of Appeals and create additional appellate courts as well as new provisions which establish a procedure for review of questions involving disabled and unfit judges.

At this point in time, the proposed revisions still face further action by the General Assembly and must be accepted by the people. Therefore, the Commission feels it would be premature to recommend solutions directed to relieving the work load of the Supreme Court of Appeals at this time. Until the constitutional language is finally settled, the options open to the State for methods to resolve these problems are not fully known. The Commission has undertaken much research in this field and believes it can be utilized with more effectiveness following final decision of the constitutional issues. In addition to research undertaken by the Commission itself, study in this area by the special research staff to be described below is under way and proceeding satisfactorily. It is the hope of the Commission that the study will be extended to permit full utilization of the fruits of this research in a manner which will take cognizance of constitutional changes if such be finally approved.

B. COMMITTEE WORK AND PUBLIC HEARING

Much of the Commission's attention was focused on constitutional issues during the time that the Commission on Constitutional Revision was working and during the Special Session of the General Assembly, and a special working committee of the Commission carried out several research projects on the appellate court system and related Constitutional issues.

At the same time, however, the Commission had also established working committees which were investigating other specific areas of the court structure.

Special assignments were given to specific Commission members concerning such issues as courts not of record other than juvenile and domestic relations courts, the juvenile and domestic relations courts, and the justice of the peace system. Initial reports suggested the necessity and value of careful scrutiny in these areas and study committees were requested by the Commission to give these fields special consideration. The work of the committees continued throughout the period that constitutional revision was being undertaken. Following the close of the Special Session, the Commission decided to hold a public hearing focusing on the issues covered by these three committees - courts not of record, juvenile and domestic relations courts, and justices of the peace.

This public hearing was held on July 21, 1969 and was preceded by extensive distribution of a list of questions and issues drawn up by the Commission to elicit particularly relevant and helpful testimony. The hearing was productive and the suggestions brought forth were of real value to the Commission.

C. THE VIRGINIA COURT SYSTEM RESEARCH PROJECT

During the course of the committee work on these various subjects, it became apparent to the Commission that there existed a need for extensive background research and the gathering and analysis of factual data concerning the court structure. The opportunity arose in the middle of 1969 to establish a specific research staff and project. The federal Omnibus Crime Control Act provided funds to be matched by states to conduct state-wide studies of criminal law. Virginia has participated in these programs and developed an extensive proposal for study approved by the Justice Department. As one phase of the overall study of criminal law within the State, it became possible to establish the Virginia Court System Research Project.

The Project is the result of an agreement among the Virginia Consortium on Law Enforcement and Crime Prevention, the Virginia Council of Higher Education and this Commission. These three groups agreed to establish the Project and fund it. Contributions of \$18,100 (federal money), \$20,000 and \$30,000 were contributed, respectively to fund the Project. The Project has been undertaken as a joint enterprise by members of the faculties of the University of Virginia, the College of William and Mary, Washington and Lee University and the University of Richmond.

The staff of the Project has met and worked with the Commission in developing the scope and subject matter for the project. An initial but incomplete Project Report, recently submitted to the Commission, was reviewed in light of Commission comments and is now being revised and completed for consideration by the Commission.

The arrangements to establish the Project and to fund it necessarily involved time and effort on the part of the groups involved. The actual work of the research staff could not be undertaken in full force until late in the year. The Commission believes that the Commission's own study and the work of the Project staff must be continued into the next year to permit a complete and comprehensive report to be developed.

III. STATEMENTS OF POLICY AND RECOMMENDATIONS

The Commission submits for consideration by the General Assembly a Joint Resolution to continue the study, to permit the completion of the Research Project and to authorize the Commission to conclude its investigations and prepare a final report and legislative proposals in light of the findings of the Project and action on the pending Constitutional amendments. The present membership of the Commission should be retained to preserve the continuity of the work which is in process. The funding of the study, however, can be reduced since the Research Project has been funded. The suggested Resolution, therefore, carries an appropriation of a sum not to exceed \$10,000 rather than the sum sufficient appropriation of \$40,000.

of Senate Joint Resolution No. 5. It should be noted that funds remain unexpended from the present appropriation. The text of the proposed Resolution appears in the Appendix.

While it is not possible at this time to submit a final report, the Commission wishes to present several basic policy findings and conclusions on which the final report will be predicated in part.

The Commission believes that reforms in the lower court structure, as well as in the courts of record, should be initiated and that it is important to provide groundwork for establishing a better system for the administration of justice through our courts not of record, juvenile and domestic relations courts, justice of the peace system and courts of record as early as possible. The importance of these phases of the court structure, which serve as the basis of our entire court system and most directly affect the public, cannot be stressed too heavily.

Comprehensive legislation to improve all phases of the court structure cannot be submitted until the work of the Research Project is complete and factual background information and specific cost figures are available on which to base legislative proposals. Enough work has been accomplished during the past months, however, to formulate certain basic policy conclusions which we believe should underlie more detailed recommendations to be submitted at a later date.

- (1) Judges of courts not of record and of courts of limited jurisdiction should be required to serve on a full-time basis and prohibited from practicing law. This reform should be accomplished as soon as practicable and in no event later than 1980.
- (2) There should be a mandatory State-wide system of district juvenile and domestic relations courts, and judges of juvenile and domestic relations courts should serve on a full-time basis and be prohibited from practicing law.
- (3) Juvenile and domestic relations courts should be supervised by an appropriate judicial officer in order to promote uniformity of practice and proper staffing and supplementary services.

These are proposals on which the Commission has reached basic agreement and which will be incorporated into reforms to be proposed in detail later.

The desirability of utilizing full-time judges has been stressed in other reports. The problems which arise because of the practice of law by judges in localities adjacent to their jurisdiction are well known. The need for well organized, properly staffed courts not of record has been stressed before. The Commission views its task in the coming months as that of finding the most practical and workable means, in terms of developing legislative proposals and examining cost factors, to implement these basic policy findings. Practical decisions involving court workloads, staffing needs, sizes of districts and costs, necessarily must be made to achieve a system which will utilize a full-time judiciary to the best advantage of the Commonwealth.

Certain related matters which came before the Commission merit action at this Session of the General Assembly:

- (1) Legislation should be adopted which will require the Executive Secretary of the Supreme Court of Appeals to prepare a standard form for use by justices of the peace to report their revenues and expenses, and which will strengthen these reporting requirements.

Presently, § 14.1-137 provides that justices of the peace along with certain other fee officers are to file annual reports on their fees and compensation after their term anniversary date. The forms are to be provided by the local governing bodies and are to be filed with the clerks of the courts of record of the respective jurisdictions and then forwarded by them to the Executive Secretary of the Supreme Court of Appeals.

Counsel for the Research Project reported that the Executive Secretary had received, as of September 5, 1969, reports covering only 128 out of an estimated 1,000 justices of the peace. The style of the reports is not uniform and the information is not easily correlated.

Legislation is carried in the Appendix to amend present law to provide that the Executive Secretary shall have the duty to prepare a standard form and forward it to the courts not of record for distribution. The filing date is to be on or before May 1 each year with the clerk of the court of record. This date will permit the preparation of the report at the same time income tax information is being prepared. Forms thereafter shall be forwarded to the Executive Secretary by May 15 for compilation and dissemination. Failure to file a report shall be cause for the forfeiture of fees by any justice so long as he remains in default and such fees should revert to the State or locality as do other costs. The legislation should carry an emergency clause so reports for 1970 can be required. Since justices are already required to keep the pertinent records, no hardship will be involved in initiating the new filing system this year.

- (2) Provisions should be adopted to prohibit judges of courts not of record and Commonwealth's attorneys from practicing criminal law in any court in the Commonwealth.

An important part of the rationale for seeking to establish a full-time judiciary concerns the situation where a judge or Commonwealth's attorney of one locality acts as defense counsel in another jurisdiction while his official duties are to act as judge or prosecutor.

Untenable situations of having to judge or prosecute a former client can arise. While this practice is limited, we believe it should be clearly proscribed. Legislation is carried in the Appendix which prohibits criminal defense practice by these officials and provides that no court shall permit appearances in criminal cases by such officials.

IV. CONCLUSION

The work of the Commission is well underway, the results of the Research Project will be available before long, and it is the hope of the Commission that the study will be continued through the next biennium to permit the preparation of a complete and comprehensive report.

Respectfully submitted,
Lawrence W. F'Anson, *Chairman*
M. M. Long, *Vice-Chairman*
Herbert H. Bateman
Edward L. Breeden, Jr.
Joseph C. Carter, Jr.
John N. Dalton
C. Hobson Goddin
J. C. Hutcheson
C. Harrison Mann, Jr.
Julien J. Mason
Garnett S. Moore
C. Armonde Paxson
Kermit V. Rooke
*Ravner V. Snead
William F. Stone

* See additional statement which follows.

STATEMENT OF RAYNER V. SNEAD

I agree with the Commission and concur in the Report but would suggest that the following recommendations should be incorporated into a program for improving our court system.

1. Juvenile and domestic relations courts should be established on the same geographical basis as circuit and county courts.
 - a. This would facilitate the administration and supervision of all these courts.
2. Judges of the juvenile and domestic relations courts should have jurisdiction to serve in the county courts and the county judges should be given jurisdiction to serve in the juvenile and domestic relations courts.
 - a. Two or more judges working together can serve the public more efficiently than the same judges working separately.
3. There should be one clerk of courts in each county or city who would service all the courts therein.
 - a. This is more convenient to the public than separate clerk's offices.
 - b. It is more economical.
 - c. It is more efficient. (This has been tested and proven in several counties—Fairfax, Madison, Rappahannock.)

APPENDIX OF LEGISLATION

SENATE JOINT RESOLUTION NO. —

Continuing the Virginia Court System Study Commission

Whereas, the Virginia Court System Study Commission, created by Senate Joint Resolution No. 5 in 1968, initiated a comprehensive study of the structure and operations of the courts of the Commonwealth and reported the initial results and findings of that study to the Governor and 1970 General Assembly; and

Whereas, the Commission, in conjunction with the Virginia Law Enforcement Administration and State Council of Higher Education, has financed an extensive research project, known as the Virginia Court System Research Project, and has received a first report from the Project staff which indicates that further investigation and research is necessary to complete a full factual review of the court system; and

Whereas, the pending amendments to the Constitution of Virginia will have effect on the State's court system, particularly at the appellate level; and

Whereas, the results of constitutional revision and completion of the Research Project will require additional time and will contribute to the conclusion by the Commission of a complete and thorough study; now, therefore, be it

Resolved by the Senate, the House of Delegates concurring, That the General Assembly of Virginia continue the Virginia Court System Study Commission for the purpose of completing the work which it has initiated and reporting further on suggested revisions in the court structure of the Commonwealth.

The original fifteen-member Commission shall be continued. The successor to the official who initially appointed any member who is unable to continue to serve shall be authorized to make an appointment to fill the vacancy.

The Commission shall continue its study and submit an additional report which takes into account the completed research undertaken by the Virginia Court System Research Project and changes in the Constitution which affect the judicial system, if such be adopted.

Members of the Commission shall be reimbursed for all necessary expenses incurred in the performance of their duties, but shall receive no other compensation.

The Commission may employ legal and other consultants and such other assistants as may be required for the conduct of its study and the preparation of its report. For the expenses of the Commission and the conduct of its study, there is hereby appropriated from the contingent fund of the General Assembly, a sum not to exceed ten thousand dollars.

The Commission may make such interim reports as it deems advisable and shall conclude its study and submit its final report and recommendations to the Governor and the General Assembly no later than November one, nineteen hundred seventy-one.

A BILL to amend and reenact § 14.1-137, as amended, of the Code of Virginia, relating to financial statements required of certain justices, constables and clerks.

Be it enacted by the General Assembly of Virginia:

1. That § 14.1-137, as amended, of the Code of Virginia be amended and reenacted as follows:

§ 14.1-137. Statements required of certain justices, constables and clerks of justices. -Every justice of the peace, constable, civil justice, clerk of a civil justice court and justice of a juvenile court, other than a juvenile court who is such by virtue of his being a judge or justice of a county or municipal court, shall annually, ~~within fifteen days after the close of each anniversary of the beginning of the terms of their respective offices,~~ *on or before May one*, report under oath to the clerk of the circuit court of the county, and in cities to the clerk of the corporation or hustings court, and if the city has no corporation or hustings court then to the circuit court of the city, on forms provided by the ~~local governing body,~~ *Executive Secretary of the Supreme Court of Appeals*, all fees, allowances, commissions, salary or other compensation or emolument of office derived from the State or any political subdivision thereof, or from any other source whatever, collected by him, also charged and not collected by him during the year ending December thirty-first next preceding. The clerk of the courts to which such reports are initially made shall, ~~as soon as practicable after the receipt thereof,~~ forward such reports *by May fifteen* to the Executive Secretary of the Supreme Court of Appeals who shall correlate the information contained in such reports, ~~and~~ disseminate it to all courts of record *and the Governor, and hold such information accessible to public inspection.*

It shall be the duty of the Executive Secretary to prescribe and prepare the form for use in making such reports and to forward forms to courts not of record and of limited jurisdiction for distribution to the officers herein required to make

In the event of the failure of any officer herein required to report by May one to file such report, all fees received by him for the period during which he is in default shall be deemed excess fees and be payable as are other excess fees as provided in this article.

~~But~~ Nothing in this article shall apply to any such officer when the total compensation received by such officer from all sources is paid by a city, town, or county.

2. An emergency exists and this act is in force from its passage.

A BILL to amend the Code of Virginia by adding a section numbered 19.1-7.1, relating to limitations on the practice of criminal law by judges of courts not of record and Commonwealth's attorneys.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding a section numbered 19.1-7.1, as follows:

§ 19.1-7.1. No judge, associate judge or assistant judge of a court not of record or court of limited jurisdiction of the Commonwealth or Commonwealth's attorney shall appear as defense counsel in any criminal case or act as defense counsel in any phase thereof in any court in the Commonwealth; and no court shall permit the appearance of any officer in such capacity as defense counsel in any criminal case before it if such appearance is prohibited by this section.

The prohibitions on the practice of criminal law by such officers contained in this section shall be in addition to any other such prohibitions prescribed by law.

