REPORT OF THE

COURT SYSTEM STUDY COMMISSION

To

THE GOVERNOR

And

THE GENERAL ASSEMBLY OF VIRGINIA

House Document No. 6

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1971

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Richmond, Virginia
December 10, 1971

To: HONORABLE LINWOOD HOLTON

and

THE GENERAL ASSEMBLY OF VIRGINIA

The Virginia Court System Study Commission was created by the 1968 Regular Session of the General Assembly in Senate Joint Resolution No. 5 to make a "full and complete study of the entire judicial system of the Commonwealth . . . ." The Resolution directed appointment of fifteen men to serve on the Commission. Pursuant to his authority under the Resolution, Governor Godwin appointed Lawrence W. I'Anson, Justice of the Supreme Court, 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. The Division of Statutory Research and Drafting, represented by Mary Spain, served as Secretariat.

The Commission was directed to make its report to the Governor and the General Assembly by November 1, 1969. At that time, due to the extensive study and research required, it was able only to give a preliminary report (Senate Document No. 12, 1970) and request extension of the life of the Commission in order to complete its work. A description of the activities of the Commission prior to January of 1970 appears in that document. Among other things, an extensive research project was undertaken and some general policy decisions made.

The Commission continued its study under the authority of Senate Joint Resolution No. 27 of the 1970 Session with the same membership, Chairman and Vice-Chairman. Sally T. Warthen and the Division of Statutory Research and Drafting acted as staff for the remainder of the study, and supplied the needed administrative and legal aid.

Results of the research project were made available to the Commission in the late summer of 1970.

On March 11 through 14, 1971 the Commission, in conjunction with the Council of Higher Education's Research and Development Committee, the Division of Justice and Crime Prevention, and the federal Law Enforcement Assistance Administration, with funds from the Law Enforcement Assistance Administration and with help and endorsement from many other people and organizations interested in judicial reform, sponsored the National Conference on the Judiciary, held in Williamsburg, perhaps the largest gathering of judicial personnel, members of the bar and concerned laymen ever to come together for discussion of the administration of justice in the United States. Much time was spent, especially by the Chairman and staff, in planning the Conference. The effort was generously rewarded. Addresses by President Nixon and Chief Justice Warren Burger were highlights of an intensely informative and exhaustive discussion of the problems of and remedies for the judicial system, in the forms of lectures by the foremost authorities on court reform, and workshop discussions with citizens, jurists, lawyers and officials of other states. The Commission was afforded the opportunity to learn of and discuss court reform, both new ideas and old, from and with the best informed judges and lawyers in the country.

On the basis of its extensive research, discussions and lectures at the Conference, and many meetings, the Commission makes the following report.

RECOMMENDATIONS

serve on a full-time basis, be adequately compensated and be prohibited from practicing law. All full-time district judges should be paid a salary equal to 90 percent of a circuit judge's salary. There should be a reasonable period during which the transition can be made to a full-time judiciary and judges in office may complete their terms. In no event should the transition require longer than eight years, and by July 1, 1980, each county and city should have the services of a full-time juvenile and full-time general district court judiciary.

Appointment of Judges. Both juvenile and general district court judges should be appointed by the circuit judges serving in the district. The number of juvenile and general district judges required in each district should be set by the Judicial Council. A juvenile district judge may be appointed as judge of one or more local juvenile district courts in his district but may not be appointed as a judge of any general district court. The converse should apply to general district judges. 23

Supervision of the District System. Immediate supervision of the districts should be the responsibility of the circuit judges in the district who have appointed the district judges. The district system should, however, be under the ultimate supervision of the Supreme Court and Chief Justice and Executive Secretary of the Supreme Court to assure that the district system is uniformly administered. Examples of statewide administrative concerns would be: (a) formulation of uniform rules for juvenile and general district courts by the Supreme Court; (b) drawing of district lines and fixing the number of judges per district by the Judicial Council; and (c) staffing of the district courts under the supervision of the chief judges of the major divisions. 24

Administration of the Districts. One judge, either a juvenile or general district judge, should be designated by the circuit judges in the district as the chief judge of the district with authority to handle administrative matters for the district. The chief district judge should have responsibility for scheduling of court sessions and the temporary assignment of a judge within the district to assist another judge for reasons such as disqualification, sickness or vacation. Temporary assignments of juvenile judges to relieve general judges and vice versa should be made only if necessary and with the approval of the senior circuit judge in the district. 24

Staffing. Personnel of the district system should be State employees. Staffing for the courts should be authorized by a committee of the chief judges of the major divisions which would assume the duties, on a broader scale, of the Committee of Circuit Court Judges who oversee staffing for the county courts at this time and which would act upon the advice and recommendations of the Executive Secretary of the Supreme Court. 24

Financing. The district system should be State financed except for the provision of physical court facilities by localities and authorization for localities to supplement district judges' salaries. The revenues of the system should, however, continue 24

I. GENERAL OBSERVATIONS

The Commission has been directed to study the problems of the courts at a time when the growing crisis in the administration of justice has made the task both difficult and urgent. The conviction is growing that the American system of justice is not accomplishing its purposes. Individuals and groups in the country openly and seriously advocate undermining the authority of the courts and using coercion in the courtroom and elsewhere to obtain results favorable to themselves. Periodicals, television programs, and speeches point out deficiencies of the courts. Above all, the pressures of the sheer volume and complexity of litigation have caused delays and inequities to the litigant and to society. As President Nixon said in his address to the Conference:

> The nation has turned increasingly to the courts to cure deep-seated ills of our society—and the courts have responded; as a result, they have burdens unknown to the legal system a generation ago. In addition, the courts had to bear the brunt of the rise in crime almost 150 per cent higher in one decade, an explosion unparalleled in our history.[1]

The tremendous increase in the population which is taking place, the expansion of habeas corpus and other criminal remedies, and the opening of new areas, such as environmental law and consumer protection, have and will exert continuously increasing stress on the court system.

The approaching crisis has been most noticeable in the criminal justice system. Delays and inadequacies in criminal justice are axiomatic. Perpetrators of most criminal acts are never apprehended; [2] for those who are tried, delays at the trial and appellate level are interminable — much of the time because the accused can take advantage of weaknesses in the courts. Chief Justice Burger emphasized these problems:

> Today the American system of criminal justice in every phase — the police function, the prosecution and defense, the courts and correctional machinery — is suffering from a severe case of deferred maintenance. By and large, this is true at the state, local and federal levels. The failure of our machinery is now a matter of common knowledge, fully documented by innumerable studies and surveys.[3]

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1. Address of President Richard M. Nixon to the National Conference on the Judiciary, March 11, 1971, printed in 54 *Jud.* 404 (1971).

2. Address of Chief Justice Warren E. Burger to the National Conference on the Judiciary, March 12, 1971, 54 *Jud.* 410 (1971). See statistics in the address of Edward Bennett Williams to the National Conference on the Judiciary, March 13, 1971, 54 *Jud.* 418 (1971).

3. Address of Chief Justice Warren E. Burger, *supra.*

In Virginia, the difficulties of the courts have not yet proportions which have been evident in some other states but the burden of increasing litigation is steadily growing.

The following statistics [4] show the extent of the increase in workload over the last three decades:

Cases Commenced in the Courts of Record

Year	*Population*	*Cases Filed*
1939—1940	2,677,773	22,706
1949—1950	3,318,680	35,986
1960	3,966,949	53,153
1970	4,648,494	79,400

Although population has increased less than 100 per cent since 1940, litigation has increased 250 per cent. In order to deal with the workload, the General Assembly has increased the number of judges of courts of record during the period from 53 in 1940 to 99 in 1971.

Even with a 90 per cent increase in judges, the court system has been unable to deal with an increasing backlog:

Business in The Courts of Record, 1970

Cases pending December 31, 1969	Cases commenced	Cases concluded	Cases pending December 31, 1970
74,850	79,400	74,842	78,809

As can be seen, the backlog in the courts of record increased by nearly 4,000 cases in 1970. The problem is worse in urban and urbanizing areas than in rural areas. For example:

Court	Cases pending December 31 1969	Cases commenced 1970	Cases concluded 1970	Cases pending December 31, 1970	Change in pending cases
Ninth Circuit (Culpeper, Goochland, Louisa and Orange)	1,178	890	781	1,295	+ 117

4. From reports of the Supreme Court to the General Assembly. Earlier reports are on a year from July 1—June 30. Figures for 1939—1940 are number of cases concluded, as statistics for cases commenced are not available. As a general rule, this report uses number of cases commenced as the indication of caseload. This figure fluctuates least with the practices and workload of particular judges. It must be used with care, however, as it cannot take into account the relative complexity of different types of cases.

Court	Cases pending December 31 1969	Cases commenced 1970	Cases concluded 1970	Cases pending December 31, 1970	Change in pending cases
Twelfth Circuit (Essex, Lancaster, Northumberland, Richmond and Westmoreland)	429	541	549	423	− 6
Sixteenth Circuit (Alexandria, Fairfax, Prince William)	12,260	6,644	5,494	13,112	+ 852
Twentieth Circuit (Roanoke, Roanoke City and Salem)	1,263	1,725	1,458	1,523	+ 260
Thirty-first (Accomac, Northampton)	750	427	459	705	− 45
Portsmouth Hustings	1,299	2,290	2,160	1,583	+ 284

With the increasing urbanization of the State, the courts will be further pressed with business. Courts in urban areas are far busier than those in rural areas of comparable population. Consider the following statistics:

Circuit	Population	Cases commenced 1970
12 (Essex, Lancaster, Northumberland, Richmond, Westmoreland)	43,447	541
13 (Gloucester, King and Queen, King William, Matthews, Middlesex)	40,510	482
31 (Accomac, Northampton)	43,446	427
Total	127,403	1,450
38 (Portsmouth) and Portsmouth Hustings	110,963	3,389

Circuit	Population	Cases commenced 1970
4 (Amelia, Dinwiddie, Nottoway, Powhatan, Petersburg) and Petersburg Hustings	90,697	1,121
5 (Appomattox, Buckingham, Charlotte, Cumberland, Prince Edward)	52,490	636
24 (Lee, Scott)	44,697	473
Total	187,884	2,230
20 (Roanoke County, Roanoke City, Salem) and Roanoke City Courts	181,436	4,132

The Commission's exhaustive work has disclosed many strengths in the Virginia court system. In the past, reaction to changing times has been moderate and careful, and the system has been able thus far to keep abreast of changing circumstances. The General Assembly has been willing to add judges to prevent congestion, and the good sense of the bar and bench has precluded, so far, unfortunate incidents such as have occurred in other states. Many of the Commission members who attended the National Conference on the Judiciary received the impression from the workshops and discussions with judges and lawyers from other states that Virginia has coped with the problems of the courts more effectively than many of its sister states.

The Commission has found, however, that the organization and administration of the courts of Virginia are in great need of improvement. The need for increased efficiency is great and will become greater as the cost of justice, already painfully high, becomes higher. Moreover, the system as it is presently structured cannot be expected to cope with the growing crisis, which is only just beginning to be felt. As Roscoe Pound wrote:

> There are so many demands pressing upon the government for expenditure of public money that so costly a mechanism as the system of courts cannot justify needless and expensive duplications and archaic business methods.[5]

To increase efficiency, Dean Pound advocated unifying the courts—doing away with the morass of specialized courts with inflexible statutory jurisdiction and substituting a single flexible jurisdictional structure:

> ... instead of setting up a new court for every new task we should provide an organization flexible enough to take care of new tasks as they arise and turn its resources to new tasks when those to which they were assigned cease to require them. The principle must be not

5. Roscoe Pound, *Principles and Outlines of a Modern Unified Court Organization*, 23 *J. Am. Jud. Soc* 225, (1940). Mr. Pound was the great exponent of court organization and unification for many years, beginning with his famous speech to the American Bar Association, August 29, 1906.

> *specialized courts* but *specialized judges*, dealing with their special subjects when the work of the courts is such as to permit, but available for other work when the exigencies of the work of the courts require it. For two generations, at least, we have not fully utilized our judges, although we have often made them work very hard. Before adding more judges or more courts, we should be sure we are making the best and fullest use of those whom we have.[6]

In addition, he suggested that the whole court system be made an administrative unit with the Chief Justice as the head. With administrative personnel to aid in taking care of detail, he would be responsible for the supervision of the judicial business of the whole system:

> Supervision of the judicial business administration of the whole court (system) should be committed to the chief justice, who should be made responsible for effective use of the whole judicial power of the State.[7]

Since the 1930's, the administration of the Virginia courts of record has become increasingly centralized, following the general principles of Dean Pound's thesis. Since 1938, § 5898 of the Code (the predecessor of § 17-7), which provides for temporary assignment of judges, has been amended many times to shift the responsibility of assignment to the Chief Justice. In 1952 the office of Executive Secretary of the Supreme Court was created, to be the court administrator of Virginia. In Article VI section 6 of the new Constitution, effective July first of this year, the Chief Justice is for the first time officially designated "the administrative head of the judicial system."

Much has been done. As will be explained later in this report, however, much still can be done to streamline the administration of the courts.

In the area of unification, much less has been accomplished and Virginia has lagged behind many of her sister states. Reforms in 1936 and 1956 abolished the trial jurisdiction of justices of the peace and took steps toward unifying the courts not of record. Even with these reforms, however, the county and municipal courts are a morass of specialized jurisdiction with no central coordination and inefficient utilization of facilities and manpower. Assessment of their needs is difficult because there is no central record-keeping.

Moreover, most of them utilize part-time judges, many of whom have major economic interests elsewhere. Although the courts of record are better organized and have the benefit of some central management and record keeping, they too can be improved in efficiency by enlarging circuits and abolishing specialized jurisdiction.

Other improvements on court structure and administration recommended in this report are directed to the justices of the peace and the appellate structure. The commission has attempted to heed the advice of the Chief Justice Warren E. Burger:

> The challenges to our systems of justice are colossal and immediate and we must assign priorities. I would begin by giving priority to methods and machinery, to procedure and techniques, to management and administration of judicial resources even over the much-needed examination of substantive legal institutions that are out of date.[8]

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6. *Ibid.*
7. Pound, *Op. Cit. supra* at 231.
8. Address of Chief Justice Warren E. Burger to the National Conference on the Judiciary, March 12, 1971. 54 *Jud.* 410.

Recommendation I: Special Assistants. In order to expedite processing of petitions, the Supreme Court should consider employing additional special assistants and should be authorized to pay the assistants a salary high enough to attract competent people.

Recommendation II: Intermediate Court. An intermediate appellate court should be established, to be called the Court of Appeals, and to consist of permanent appellate judges, three at the beginning, chosen with geography as a consideration, each of whom could sit with judges of courts of record in panels of three, as assigned by the Chief Justice of the Supreme Court. The panels should sit in different areas of the State, wherever the cases are arising, in existing facilities. No circuit judge should review a case decided below by a judge from his circuit.

There should be no appeals of right except those which now exist. Jurisdiction should be distributed so that the Court of Appeals has final jurisdiction in some types of cases, and that some appeals go directly to the Supreme Court.

The procedures of the Court of Appeals should be designed for high speed and low cost. Opinions of the court should be printed only in cases where jurisdiction of the Court of Appeals is final.

Recommendation III: Printing. No printing of briefs or records for the Court of Appeals should be required or encouraged. The Supreme Court should by rule abolish the requirement for appeals to that Court that the record be printed by the Clerk and instead require only that a sufficient number of legible copies be furnished to the Court.

The increasing volume of litigation over the past decades has had a great impact on the Supreme Court. In the period from 1940 to 1970 when the number of judges of courts of record increased from 53 to 99, and cases concluded in the courts of record rose from 22,706 to 74,842 [9], the structure and operation of the Supreme Court has remained the same despite multiplying caseload. In 1951, the earliest year for which statistics are available, 273 petitions for appeal and original applications were filed in the Supreme Court of Appeals and 137 were granted. In 1960, 423 were filed and 151 were granted. In 1970, 1380 were filed and 207 were granted.

Unlike most states, Virginia allows very few appeals of right. Because there is no other chance of appeal, the Supreme Court has set for itself the rule that petitions for appeal will be granted if the decision below is not plainly right. Screening petitions takes up a great deal of the Court's time, despite recent procedures adopted to improve efficiency. A petition may be presented either to the whole court or to a single justice; the appellant has a right to oral argument. If it is presented to the Court it is considered, and granted or rejected for the Court, by a panel of three.

If it is presented to a single justice, he confers with two others before denying it, making the denial a decision for the Court.

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9. Statistics are from Office of the Executive Secretary, Supreme Court of Virginia, *Business of the Courts of Record of the Commonwealth* 1970, and from the Clerk's office of the Supreme Court. For charts and further discussion of figures, see Lilly and Scalia, *Appellate Justice: A Crisis in Virginia?*, *57 Va. L. Rev.* 3 (1971).

In 1928, when the current Supreme Court was structured, and for some time thereafter, the examination of petitions for appeal was an adequate substitute for an appeal of right. As the number of petitions has grown, however, the burden of ascertaining whether justice was done between the litigants in the court below has increased to the point where, in spite of the greatly improved efficiency of the Court, it has become increasingly difficult to give each petition the thorough examination required to ferret out the less obvious errors. Thus it may be that some petitions which should be granted are denied. The fact that the standard of review may have become more strict than in the past because of the increasing volume of petitions is illustrated by the fact that though petitions and applications since 1951 have increased over 400 percent, the number granted has increased only 30 percent.[10] As the burden of petitions grows heavier, the attention given to each will necessarily decrease even more.

Faced with a growing docket of petitions and appeals, the Court has taken several steps to increase efficiency. Since 1962, each justice has had a law clerk, a recent graduate of law school, to assist him in doing research. In the last year, the Court has begun to make use of short memorandum opinions for cases for which a full-blown opinion is not warranted. The hours for hearing cases for which appeals have been granted have been extended and the time for oral argument on each case shortened. Retired members of the Court are used on panels to hear arguments on petitions. In order to streamline the process of considering original criminal petitions, the Court has appointed a special assistant to hear oral argument and write a summary and recommendation on original habeas corpus and mandamus petitions. This recommendation is examined by three justices and accepted or rejected. With the recent multiplication of petitions, the court has appointed a writ clerk to assist him. The Commission commends this procedure as a constructive improvement in the Court's efficiency. It recommends that the Court consider employing additional assistants, and use their services in processing all types of petitions. In order to insure that well qualified personnel are employed, the Court is encouraged to pay competitive salaries.

On the other hand, the Commission does not recommend that assistants or commissioners be authorized to write opinions or hear oral argument except on petitions, or perform any duties which are not readily and carefully supervised by the justices. Functions which are essentially judicial should be reserved for justices. For this reason, the Commission has concluded that assistants performing the duties described above will not be a long-term answer to the problem of the burden of litigation. If nothing more were done than the authorization of new assistants, the increasing judicial burdens would be gradually shifted to the shoulders of those who are not intended to be, or selected as, justices. As the caseload became greater, and the work of the assistants became more complicated, the justices would be less and less able to examine their work, and would be forced to accept their judgments. The quality of justice would decrease in proportion to the increase of the workload. Other attempts to increase efficiency beyond its present level should be very carefully considered to insure that the time and attention needed are devoted to each case.

Allowing the Court to remain overburdened will undoubtedly increase the backlog and overwork the personnel, but it will also reduce the time allotted to consideration of each case. Gradually each justice will become able to study only those cases for which he is writing the opinion. Robert Braucher, a recent appointee to the overburdened Supreme Judicial Court of Massachusetts, a

10. Of the 137 petitions granted in 1951, 77 of the judgments were affirmed. Of the 207 petitions granted in 1970, only 68 were affirmed. From these figures, it appears that the court has effectively been cutting down on unmeritorious appeals.

state which has not yet established an intermediate court, pointed out this danger:

> What are we losing? The obvious answer is that I cannot do a thorough job on the cases in which I am not writing the opinion. We do our best, and in a few obviously important cases we do what we should do in all. But in many cases, although five of us hear the oral argument, only one really studies the record and the briefs and reviews the precedents. At the end of that road is the virtual delegation of the power of decision to one of the five sitting judges. We struggle to avoid that, but the pace of the treadmill is relentless.[11]

The Commission has concluded that structural reforms are necessary. It does not, however, believe that increasing the size of the Court from its present seven members, as authorized by the new Constitution, will solve the problems caused by the heavy burden of business even temporarily without resulting in significant deterioration in overall quality. An increase in size without attendant procedural changes would provide more opinion writers, but since the time required for conferences and circulation of drafts would increase, it is doubtful whether any greater productivity would result.[12] Division of the Court into panels would seriously impair the predictability of the Court's decisions. Moreover, the precedental value of a decision made by a panel of five of a nine judge court, if not unanimous, is limited. Permanent separation of the Court into criminal and civil divisions, though it would not impair the precedental value of opinions, would result in a serious decline in the number of qualified men available to be justices of the criminal division, in the care with which each case is considered, and in turn in the overall quality of criminal justice. Moreover, under such an arrangement the Supreme Court would be a single court in name only.[13]

The Commission does not believe that the economies and increased productivity which would result from use of panels are great enough to offset the risk of loss of quality, uniformity and predictability if any other alternative is available.

For the reasons discussed above, the Commission has concluded after much deliberation that an intermediate appellate court, to be called the Court of Appeals, must be established in the near future in order to preserve the quality of justice in Virginia. However, the Commission is emphatically not in favor of establishing a court which will provide nothing but an additional step in the appellate process. In order to avoid doing so, it has made a study of other state systems, and has concluded that appeal to an intermediate appellate court can, for most cases, be a low-cost and speedy substitute for the present appeal to the Supreme Court. This can be done by delegating some of the appellate functions of the Supreme Court.

The Supreme Court is now charged with two major duties and responsibilities in the processing of appeals. First, it must decide questions of law which are important to the case law of the State—the body of legal precedent-and to the State as a whole. Second, it must see that justice is done between the litigants in the court below. It is far simpler and quicker to choose which cases among those filed are important generally—to perform the first duty, than it is to see whether the court below decided correctly in the particular case—to perform the second. Important legal issues, such as

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11. Robert Braucher's address to the Virginia Bar Association, White Sulphur Springs, July 9, 1971.
12. See the discussion of this point in Lilly and Scalia, *Appellate Justice: A Crisis in Virginia?*, 57 *Va. L. Rev.* 3, 21 (1971).
13. For an analysis of the use of panels, see 57 *Va. L. Rev.* 3, 34 *Op. Cit., supra* at 34.

construction or constitutionality of a statute, usually appear prominently in a petition, supported often by uncontroverted facts. Questions of justice between the parties often appear only after sharp scrutiny of the record—the evidence presented, the instructions to the jury, the objections of counsel. For this reason the Commission is convinced that the second duty, of insuring justice to the parties, can be performed by an intermediate court. The Supreme Court would then have more time to concentrate on the proper disposition of the cases which raise a significant legal issue. In some categories of cases which are seldom of importance to the jurisprudence of the State, appeal to the Court of Appeals can be final unless a judge of that court dissents to the judgment. That court will then have the responsibility for making law in certain areas. In those categories in which legal precedent is almost always of utmost importance, the appeal can be direct to the Supreme Court. In other cases, appeal from the decision of the Court of Appeals could be sought, but with a decision below as a guide the Supreme Court can with confidence and rapidity deny appeal to all cases which do not present an issue of general importance.

Specifically, the Commission recommends the following general structure:

I. Appeals directly to the Supreme Court:

- A. Corporation Commission cases.
- B. Disbarment.
- C. Cases in which there is a substantial Constitutional question as a determinative issue.
- D. Cases in which a statute or ordinance has been held invalid.
- E. Appeals related to the right to hold public office.
- F. Criminal cases involving death or over 25 years imprisonment.

II. Original jurisdiction of Supreme Court—as at present.

III. Appeals final with Court of Appeals (unless a judge dissents, or there is certification (IV) or assumption (V)):

- A. Civil domestic relations cases.
- B. Misdemeanor cases where imprisonment is not involved.
- C. Appeals from the Industrial Commission.

IV. Certification by the Court of Appeals of important questions or cases to Supreme Court.

V. Assumption of jurisdiction by the Supreme Court on its own motion, or by a petition filed in accordance with the Supreme Court's rules, of important cases pending in the Court of Appeals.

VI. Court of Appeals jurisdiction in all other cases, with possible further appeal. The Supreme Court should grant the petition of appeal only if the general importance of the case to the State at large, or to the law, warrants further review. Appeal also should be granted if a judge dissents in the Court of Appeals.

If a petition for direct appeal is filed with the Supreme Court in a case where direct appeal is not warranted (e.g., not a substantial Constitutional question), the Supreme Court could pass the petition directly to the Court of Appeals for disposition, without the necessity for refiling.

The Commission does not recommend the extension of the appeal of right. With the ever-increasing flood of litigation, it seems unwise to encourage appeal by permitting extensive appeals of right. The Commission feels that review on the merits of petitions is preferable from the standpoint of efficiency, and sufficient to insure fair treatment to the litigant, so long as the court is not too burdened to give each petition adequate attention. In order to assure that

adequate attention is given to petitions in the Court of Appeals, the Commission recommends that acquiescence of three judges authorized to sit on the Court of Appeals be required for final denial of a petition for appeal. From that denial there should be no review, except by a petition alleging that no fair consideration of the appeal was given. In order to discourage such petitions, anyone who files such a petition, whose petition is denied, should be required to pay all costs of the proceeding, including a reasonable attorney's fee set by the Supreme Court.

One disturbing fact pointed out by Messrs. Lilly and Scalia [14] is the high cost of appeal to the Supreme Court. Printing costs may run from a low of $100 to as high as $10,000 for an exceptionally long record. In the average case, the petitioner must be willing to risk at least $600 to $800 in fees and costs, besides his attorney's fees. For this reason, even a case in which as much as $1500 is at stake is not worth the cost of an appeal. Lilly and Scalia suggest the cost is a major reason why, during a period where cases concluded in courts of record have increased 41% (1960—53,153; 1970—74,842), the number of petitions filed with the Supreme Court in civil cases increased by only 12% (1960—267; 1970—308).[15]

For this reason, the Commission recommends that the Supreme Court abolish the requirement that the record be printed in any case and substitute a requirement that the Court be furnished a sufficient number of legible copies for its needs. More importantly, in order to prevent cost from being a major factor in appeals to the Court of Appeals, the Commission recommends that emphasis be placed on a low-cost, high speed appeal based on the record made at the trial and, if desired, the pleadings used at the trial. No printing should be required or encouraged.

In general, the procedure will be similar to that advocated by Dean Pound:

> The procedure at these (appellate) terms could be as simple as at the old hearings in bank at Westminister after a trial at circuit. Three judges assigned to hold the term would pass on a motion for a new trial or judgment on or notwithstanding a verdict, or for modification or setting aside of findings and judgment accordingly (as at common law upon a special verdict). If, as I assume would be true, it proved necessary to limit the cases which could go thence to the Supreme Court, rules could restrict review to those taken by the highest court on certiorari. Even then, there need be nothing more in the nature of a double appeal than there is now in states where a motion for a new trial in the trial court is a necessary preliminary to review in the higher court. But heard before three judges at an appellate term it would not be a mere perfunctory step in review but a real hearing of the questions raised which should enable the case to stop there unless the points of law were serious enough to warrant certiorari.[16]

In order to streamline procedures and to minimize costs, the Clerk of the Supreme Court should perform the duties of Clerk of the Court of Appeals, and his office staff and facilities should be expanded. The Court of Appeals should sit in Richmond, in the facilities of the Supreme Court, and other parts in the

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14. 57 *Va. L. Rev.* 3, 44-46 (1971).
15. From records of the Supreme Court of Appeals. In 1969, only 258 civil appeals were sought, actually *less* than the number sought in 1960. Lilly and Scalia conclude that the small number of appeals filed are a serious reflection on the availability of appellate justice. See 57 *Va. L. Rev.* 3, 46 (1971).
16. Pound, *op. cit. supra* at 230.

State as needed, in courtrooms of the present courts of record, or other suitable facilities.

The Commission finds it most desirable to have trial court of record judges sit with a few permanent appellate judges for several reasons. First, cost can be minimized by use of personnel already available to the State. Second, the confusion of initiating a new court structure can be minimized by a gradual increase of permanent judges as the workload increases, with circuit judges filling any unexpected needs. Third, the Commission feels that maximum utilization of circuit judges will not only increase the overall efficiency of the court system, but will provide a valuable proving ground for judges who may later be considered for appointment to the Supreme Court or the permanent Court of Appeals panel. To prevent conflicts and embarrassments, no circuit judge would sit on a panel which is reviewing a decision of any member of his circuit. Appointment of judges to sit temporarily on the Court of Appeals would be made by the Chief Justice of the Supreme Court for a period consistent with the judge's duties in the court of record.

Full written opinions would not be encouraged. Opinions would not be printed except in cases where the Court of Appeals has final jurisdiction and then only with the approval of the Chief Justice. These opinions could be published in an appendix to the Virginia Reports.

The Commission believes that this proposed appellate structure would serve the highly important purposes of improving appellate justice, easing the burden of the Supreme Court and decreasing the cost and time required for appellate justice.

III. STRUCTURE OF THE COURTS OF RECORD

RECOMMENDATION I: Distribution of Workload in Courts of Record. The circuit should continue to be an administrative unit. By July 1, 1973, all city courts should be merged into the circuits. There should be no specialized courts, but specialized judges may be designated by the chief judge of the division. (See recommendation II). The Judicial Council should revise and enlarge the circuits by July 1, 1973, with due attention to equalizing the workload, at least to the extent that no circuit requires less than two judges.

RECOMMENDATION II: Administration. The office of the Executive Secretary should be increased in size so that it may effectively deal with the administrative duties of the whole court system. In addition, the State should be divided by the Judicial Council into administrative divisions, each to have a chief judge, chosen by the Chief Justice of the Supreme Court, and an administrator. The chief judge should be responsible for administration of the courts of record and courts not of record in his division, subject to overall supervision by the Supreme Court.

Following the revision of the circuits and the establishment of divisions, the membership of the Judicial Council should be enlarged and changed to include the chief judges of the divisions, a judge of the court of appeals, and two judges of the courts not of record, in addition to the members of the bar.

The present circuit court system dates from the Constitution of 1902, when the State's circuit court system was completely revised and twenty-four judicial circuits created. At the same time, corporation [17] courts were created in each city of the first class. Each circuit and corporation court was designed to have a single judge.

As the caseload increased, additional circuits and corporation courts were created, and additional judges appointed to existing courts. As a result, the original 24 circuits, each with one judge, and 21 corporation courts, each with one judge, have become 40 circuits and 20 corporation courts with a total of 99 judges. Most of the increase in judges has occurred since 1953, when there were 59 judges of courts of record.

The expansion by adding circuits and judges has kept the system from becoming hopelessly overburdened, and has kept at a minimum delays in the system of justice resulting from overloaded courts. However, the practice of adding a judge here and a circuit there to a system which was not originally designed with expansion in mind has resulted in serious inefficiencies which have greatly increased the cost of justice.

City Courts

As a result of the erratic growth of the courts, there has developed a confusing jurisdictional morass in the cities. Some cities with corporation courts have no circuit court (e.g. Danville, Charlottesville); some have both a corporation court and a circuit court (e.g. Norfolk, Petersburg, Bristol); some have only a circuit court; and others have no separate court at all. In some cities with two or more independent courts, all jurisdiction is concurrent (e.g. Petersburg, Hampton) but in many larger cities (Newport News, Norfolk, Portsmouth, Richmond and Roanoke) the jurisdiction of each court is specialized, and is divided up in a helter-skelter manner. Richmond is a prime example of how complicated jurisdiction can become.

> Hustings Court, Part I — general criminal jurisdiction within city limits, and concurrent jurisdiction over crimes arising within one mile of those limits; appellate jurisdiction over appeals from the police or traffic court.
>
> Hustings Court, Part II — generally concurrent criminal jurisdiction with senior hustings court, with certain exceptions as to administrative matters and police court appeals; concurrent equity jurisdiction with Chancery and Law and Equity Courts of the city of Richmond; concurrent jurisdiction with Law and Equity Court over common law cases.
>
> Chancery Court — exclusive probate jurisdiction; concurrent equity jurisdiction with Law and Equity and Hustings Part II courts; specific exclusion from common law and criminal cases.
>
> Circuit Court — jurisdiction is limited to matters cognizable under Va. Code §§ 8-38 et seq.; 8-752 et seq.; 8-758 et seq.; 19.1-323 et seq.; and 53-295 et seq.
>
> Law and Equity — general common law and equity jurisdiction except probate and criminal law.

A goodly amount of forum shopping can be indulged in, by the experienced

17. For purposes of this report all separate city courts (hustings, law and equity, etc.) will be referred to as corporation courts.

lawyer, between the Hustings Court Part II and the Hustings, Chancery and Law and Equity Courts, where overlapping jurisdiction is substantial, though neither logical nor regular. For the inexperienced lawyer, choosing an appropriate court to file a case is a game similar to Russian roulette. To add to the confusion of having jurisdiction divided arbitrarily among the corporation courts, there is the additional anomoly of a circuit court which is essentially limited to State matters. Not only is the jurisdiction unnecessarily confusing, but the duplication of facilities in clerks' offices, courtrooms, jury selection apparatus, and so forth is substantial and highly inefficient. Public confidence in the judicial system must certainly be undermined by the illogical division of power and multiplicity of personnel and facilities.

As it is in the city courts of the State that the greatest duplication and disorganization occurs, the Commission strongly urges that all city courts of record be merged and operated as single courts with more than one judge. Clerks' offices should be merged together, but all clerks would be permitted to finish their terms at not less than their present levels of compensation. The reorganization should be completed on or before July 1, 1973. The details of consolidation of clerks' offices, choosing a chief clerk, and so forth, should be left to the judges of the resulting circuit, as would the general division of work among them, subject to the overall supervision of the Chief Justice and, when he is appointed, the chief judge of the division. State and local financing of judges and facilities would remain unchanged.

Cities which have a corporation court but no circuit court would be merged into the surrounding circuit.

Under the current circuit system, this arrangement would work out as follows:

City	Circuit with which City Courts will be merged
Charlottesville	8th Circuit
Danville	30th Circuit
Martinsville	7th Circuit
Staunton	18th Circuit
Winchester [18]	17th Circuit

In areas where the caseload and other circumstances warrant, specialized judges of the circuit court could be designated to handle certain types of cases. For instance, one or more judges could be designated to handle all criminal matters. The advantages of specialized courts could be obtained without the disadvantages of inefficient utilization of judges, duplication of facilities, and complicated jurisdictional patterns: a specialized judge could assist in handling cases out of his specialty or be assisted by a judge outside his specialty, in order to equalize the work. One clerk's office could handle all filing, coordinate courtroom use and personnel, and perform other duties incident to trials. Assignment of a case to a specialized judge would be done merely as an intracourt administrative matter, requiring no different filing procedure of the attorney or transfer of papers from court to court.

By this unification of the city courts, the State will be taking a step towards a unified court structure, which has been strongly urged since the first decade of this century, and which has been effected in several states. Besides many other benefits, a more unified system will aid in permitting a true judicial department to develop, avoid wasting judicial manpower, avoid the waste of

18. The Winchester Corporation Court is already presided over by Judge Elliott Marshall of the 17th Circuit.

dismissing cases filed in the wrong court, and avoid transfer of papers and records from court to court.[19]

Circuit Alignment

Although it has found the circuit an effective administrative unit, the Commission has also found that the present system of circuits could be far more efficient.

The circuits were designed in 1902 for convenience in an era of horse-and-buggy travel and of slow communication before the telephone was widespread. They were made as small as possible, as the difficulty of covering a large territory was substantial, and rapid communication was impossible. Because travel has become infinitely faster and less time can be allotted for travel and more for hearing cases, some one-judge circuits created in 1902, despite greatly increased caseload, are still operating with a single judge over substantially similar territory. The twelfth and thirteenth circuits, for instance, are still identical with those created in 1902, and each still is effectively handled by one judge.

Inherent in this system based on horse travel, however, are inefficiencies which could be eliminated by realigning and enlarging many of the circuits, now possible because of ease of communication and shortened travel time. In 1902 one-judge circuits were necessary because difficulty of communication made coordination of effort almost impossible. Now, in this age of rapid transportation and instantaneous communication, one-judge circuits cannot operate with a fraction of the efficiency of larger circuits. Where circuits have only one judge, administrative difficulty arises with each vacation, sickness, or emergency. The Executive Secretary of the Supreme Court spends a considerable proportion of his time on the telephone attempting to obtain judges to take the places of sick or absent judges or those who must disqualify themselves for cause from hearing a particular case. An outside judge must be brought in to keep the docket in order and handle necessary court business in the absence of the regular judge. A circuit with two or more judges can take care of most of these problems without recourse to outside help and can perform more effectively than two circuits with one judge each. Travel can be arranged between two or more judges more conveniently, caseload can be equalized, and areas of expertise can be developed, if necessary. Larger circuits will also prevent any criss-cross of jurisdictional boundaries with the establishment of a statewide system of district juvenile and general courts not of record as recommended below, as the business within the boundaries of many of the present circuits will not justify the appointment of a full-time juvenile or general court not of record judge.

The greatest argument in favor of realignment of circuits for court of record purposes, however, appears in the caseload statistics. It appears that the number of cases which can be effectively handled by a single judge is between 750 and 950 per year, depending on the complexity of the cases and the amount of travel necessary. Yet the caseload [20] for a single judge in the courts of record in 1970 varied from 72 (Chancery Court of the City of Richmond) to 1891

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19. See Roscoe Pound, *Organization of Courts*, address to the Minnesota State Bar Association, August 20, 1914, reprinted in 11 *J. Am. Jud. Soc.* 69 (1927).

20. Statistics from *Business of The Courts of Record of The Commonwealth* (1970). Number of cases commenced is used throughout this section. Of course, these statistics do not take into account the relative complexity of each case. The Richmond Chancery Court, with chancery and probate jurisdiction, is likely to have more complex issues to litigate than the Roanoke Hustings Court, which tries a great many criminal cases. Even taking this into account, however, the difference in caseload is unreasonable. Also, compare the Bristol Corporation Court with only 260 cases in 1970.

(Roanoke Hustings Court). In the circuits, the caseload for each judge varied from 427 (31st Circuit, Accomac and Northampton) to 1574 (7th Circuit, Henry and Patrick).

Part of this inequality of caseload is due to the carryover of circuits from an earlier period, with insufficient changes as facility of transportation and communication increased the judge's capacity. Often, however, the disparities exist because of many attempts by the General Assembly to alleviate the problem of overloaded judges. When the volume of cases to be dealt with by a single judge in a single circuit reached 1,000 or better, and the judge could no longer keep up, the General Assembly has had two choices: change or divide the circuit, or add a judge. The former has been done, for instance, in the 24th and 27th Circuits (in the southwesternmost portion of the State), a process of shifting and dividing which began in 1906 and was done again in 1914, 1923, 1939, and 1957. Despite the effort, the caseload remains inequitable; there were 473 cases filed in the 24th Circuit in 1970; the 33rd, created in 1957, had 753; and the 27th had two judges handling 1,140, a total of 570 cases each. Thus, despite the shifting, only the 33rd Circuit approaches a full load. As a contrast, the judge of the 19th Circuit, a larger and equally mountainous area, carried 843 cases in 1970.

If a judge is added to a one-judge circuit without shifting circuit boundaries, even more disparity results. If one judge is adequately handling 900 cases but can no longer cope with the caseload when the number rises to 1,000, the General Assembly is urged to add a new judge; a new judge will reduce the caseload per judge to 500, a substantially lower number than can be handled effectively. Yet the alternative to this inefficiency is to delay until the backlog becomes impossibly large.

The larger the circuit, the more easily the problem of a growing caseload can be handled. Assuming 1,000 cases is the breaking point:

Number of judges	Number of Cases	Caseload per judge if one judge added
1	1000	500
2	2000	667
3	3000	750

If modern speed of travel and ease of communication is recognized, circuits can be devised which justify as many judges as possible, and at least two, to increase overall efficiency, and reduce future problems of dealing with overloaded circuits.

For the reasons stated above, the Commission recommends that circuits be realigned and increased in size. However, it feels that it is not the most qualified body to recommend a specific plan for realignment. It believes that the Judicial Council, which has greater expertise in the nature of the caseload in different areas, the difficulty of travel, and the specific problems involved, and which has already developed expertise as the recommending body for the creation of new judgeships, should be authorized and directed to change the circuits by July 1, 1973 in accordance with the guidelines set out above, and revise them from time to time if revision is necessary.

The Commission is cognizant that authorizing the Judicial Council to set and change circuit boundaries is a significant departure from present practice, but it considers the step a significant improvement in the court system. The General Assembly, with its heavy and growing volume of legislation and limited staff, has not been able to give the creation of circuits and the changing of circuit boundaries the consideration and study the subject requires. The

necessity of resorting to the General Assembly has made changing [illegible] cumbersome, and thus circuits have become more rigid than efficiency should dictate. Moreover, much of the political importance behind circuit boundaries has decreased with the dwindling powers of appointment of circuit judges. The circuit is becoming a matter solely of the proper distribution of judicial business. In recognition of the decrease in its importance as a political unit and the necessity for flexibility in the court structure, the new Constitution omits all reference to the judicial circuits and refers only to courts of record.

The Commission believes that the changes in the courts of record recommended above will increase substantially the efficiency, flexibility and cooperation in the court system.

ADMINISTRATIVE IMPROVEMENTS

The Chief Justice, and to a lesser extent the Supreme Court, have for some time had limited administrative duties in the court system. In 1952, a court administrator, called the Executive Secretary of the Supreme Court (Code §§ 17-111.1 and 17-111.2) was appointed to assist the Chief Justice and the Supreme Court in their administrative duties. With the ratification of the new Constitution, which made the Chief Justice officially the chief judicial officer, the potential for central organization, and thus increase of the responsibility of the Executive Secretary, has grown.

The centralized record keeping and administrative functions of the Executive Secretary have been indispensible to the smooth functioning of the State's judicial system and to its self-examination. However, the Executive Secretary's office is presently understaffed, and therefore cannot complete effectively all of the tasks assigned to it. Among other duties, the Executive Secretary is responsible for helping the Chief Justice make temporary assignments of judges; preparing the budgets for the courts of record, the Supreme Court operation (including judges, clerk's office, library, Executive Secretary, and special assistants), the Judicial Council and Conferences, and the Judicial Inquiry and Review Board; handling payroll and personnel records for the Supreme Court operation; collecting and publishing data on courts of record and justices of the peace; and serving as secretariat for the Judicial Council (transcription of meetings, mail, planning of meetings, process of vouchers, preparation of reports and publications), for the Judicial Conferences of Court of Record and Courts not of Record (planning of meetings, reservations, process of vouchers), and for the Judicial Inquiry and Review Board (process of complaints, correspondence, transcription of hearings, filing).

To perform these functions, the Executive Secretary has a small corner in the Supreme Court building and a staff of two. In addition, a grant from the Federal Law Enforcement Assistance Administration has enabled the court to employ a fiscal officer to assist in preparing the budget and other fiscal responsibilities. If the additional burdens of administering an intermediate appellate court and a district court system (see discussion below) are assigned to the Executive Secretary, substantial increases in staff and space will be necessary.

In order to insure effective and efficient administration of the courts, many other responsibilities should be transferred to the Executive Secretary. All payrolls, expense vouchers and personnel duties for the court system should be processed in this office, instead of partly in his office and partly by the comptroller, with neither being fully informed. The Supreme Court and Judicial Council should be enabled to assess the state of courtroom and other judicial facilities, clerks' offices and personnel, now locally provided, through central

record keeping and reporting. If this were possible, some attention to these needs of the judicial system would be possible. However, unless substantial enlargement of the office is effected, the Executive Secretary will find it increasingly difficult to perform his current duties, and will be unable to consider additional ones.

The Commission urges the Supreme Court, the Judicial Council, and the Executive Secretary cooperatively to consider strengthening the central administration of the court system to increase efficiency of operation and cooperation of effort. The Commission even more strongly urges that more space and funds be made available to the Executive Secretary so that the important record keeping and other administrative functions can be adequately carried out.

In addition to increasing the capabilities of the Executive Secretary, the Commission proposes that the State be divided by the Judicial Council into administrative units, or divisions, each with a chief judge to be chosen from among the judges of the courts of record in the division by the Chief Justice, and to be charged with assignment of judges and general administration of the division, subject to the overall supervision of the Chief Justice. The chief judge should not be chosen by seniority, but by ability and willingness to administer, and should serve an eight-year term as such, to coincide with his term on the court of record. His caseload should be reduced in order to give him time for concentration on the administrative needs of his division. Each chief judge would have an administrator chosen by the Executive Secretary to assist him.

The administrator would be charged with record keeping and reporting duties in accordance with the directions of the Executive Secretary of the Supreme Court. For instance, statistics as to caseload of courts of record, now compiled by the Executive Secretary, could be compiled by division administrators and forwarded in usable form to the Executive Secretary's office for inclusion in reports. To avoid problems in obtaining personnel, storing records, and possible use of computers, the administrators' offices should be located permanently in populated areas, regardless of the residence of the chief judge.

In general, the circuit would be an administrative unit, handling the division of responsibility and supervising its staff on its own, subject to the overall administrative power of the chief judge and Chief Justice. The senior judge of the circuit would have administrative responsibilities.

Routine administrative duties among the circuits within the division would be handled by the chief judge of the division. He would be responsible, with the aid of his administrator, for assigning judges to preside over courts whose judges are ill, cases where the judges have disqualified themselves, or courts whose dockets are overcrowded. If any judge refused unreasonably to serve, the chief judge would have the option of reporting him to the Chief Justice, who in turn could refer the matter to the Judicial Inquiry and Review Board. In addition, he would have the final authority within the circuits for certain types of decisions, such as to designate a specialized division in a multi-judge circuit, on the advice of the judges of that circuit.

All powers of appointment within a circuit would be exercised by a majority of the judges of that circuit. If a tie resulted, the chief judge of the division would be the tie breaker in most cases.

The Judicial Council should be changed and increased in size effective July 1, 1973, to include the division chief judges and a judge of the Court of Appeals as its complement of court of record judges in place of the three circuit judges and two other judges of courts of record which currently serve, and two court not of record judges.

The power to assign circuit judges to serve on the Court of Appeals, and to make special statutory assignments, such as three judge courts for disbarment or annexation cases, would remain with the Chief Justice of the Supreme Court. Any other powers of assignment which should be statewide in scope would also be retained. In addition, the Chief Justice would retain the authority to supervise division chief judges and overrule them if necessary to preserve the efficiency and quality of the court system.

The Commission is hopeful that the reorganization of the courts of record along the lines stated above, and the creation of administrative divisions, will substantially aid in correcting the unequal division of labor and provide a more effective and efficient system.

IV. COURTS NOT OF RECORD

RECOMMENDATION I: Organization into a District System. The courts not of record should be reorganized and brought within the framework of the unified court structure. They should be administered under a system of geographic districts. District lines should be drawn by the Judicial Council on the basis of circuit lines so that a simple, workable administrative pattern applies to the whole court structure. Each district should include sufficient territory to utilize at least one full-time judge dealing with juvenile and domestic relations work and one or more additional full-time judges dealing with matters other than juvenile and domestic relations work.

RECOMMENDATION II: Juvenile District and General District Courts. Under the district system, there should be only two types of courts. First, Juvenile District Courts in each county and city should assume the jurisdiction and functions of present county, city and regional juvenile and domestic relations courts. Second, General District Courts in each county and city should perform all the work of present county and city courts other than juvenile and domestic relations work. Specialized city courts, such as civil, police and traffic courts, should be replaced by the General District Court of the city. Establishment of specialized sessions of any General District Court should be permissible as an administrative matter. Town courts should be abolished and their functions assumed by the county district courts.

RECOMMENDATION III: Full-time Juvenile and Full-time General District Court Judges. All juvenile and all general district court judges should serve on a full-time basis, be adequately compensated and be prohibited from practicing law. All full-time district judges should be paid a salary equal to 90 percent of a circuit judge's salary. There should be a reasonable period during which the transition can be made to a full-time judiciary and judges in office may complete their terms. In no event should the transition require longer than eight years, and by July 1, 1980, each county and city should have the services of a full-time juvenile and full-time general district court judiciary.

RECOMMENDATION IV: Appointment of Judges. Both juvenile and general district court judges should be appointed by the circuit judges serving in the district. The number of juvenile and general district judges required in each district should be set by the Judicial Council. A juvenile district judge may be appointed as judge of one or

more local juvenile district courts in his district but may not be appointed as a judge of any general district court. The converse should apply to general district judges.

RECOMMENDATION V: Supervision of the District System. Immediate supervision of the districts should be the responsibility of the circuit judges in the district who have appointed the district judges. The district system should, however, be under the ultimate supervision of the Supreme Court and Chief Justice and Executive Secretary of the Supreme Court to assure that the district system is uniformly administered. Examples of statewide administrative concerns would be: (a) formulation of uniform rules for juvenile and general district courts by the Supreme Court; (b) drawing district lines and fixing the number of judges per district by the Judicial Council; and (c) staffing of the district courts under the supervision of the chief judges of the major divisions.

RECOMMENDATION VI: Administration of the Districts. One judge, either a juvenile or general district judge, should be designated by the circuit judges in the district as the chief judge of the district with authority to handle administrative matters for the district. The chief district judge should have responsibility for scheduling of court sessions and the temporary assignment of a judge within the district to assist another judge for reasons such as disqualification, sickness or vacation. Temporary assignments of juvenile judges to relieve general judges and vice versa should be made only if necessary and with the approval of the senior circuit judge in the district.

RECOMMENDATION VII: Staffing. Personnel of the district system should be State employees. Staffing for the courts should be authorized by a committee of the chief judges of the major divisions which would assume the duties, on a broader scale, of the Committee of Circuit Court Judges who oversee staffing for the county courts at this time. The committee would act upon the advice and recommendations of the Executive Secretary of the Supreme Court.

RECOMMENDATION VIII: Financing. The district system should be State financed except for the provision of physical court facilities by localities and authorization for localities to supplement district judges' salaries. The revenues of the system should, however, continue to be allocated among the State and localities as at present. Those localities now financing salaries of court personnel should be required to pay to the State an amount equal to their contribution to salaries at the time of conversion to the district system.

I. *Organization into a District System*

The courts not of record are essential to the State's judicial system and must be brought within the unified court structure. The vast majority of citizens gain their sole impression of the judicial system in the local court not of record. The great majority of disputes which reach the courts are settled at this primary court level. If these courts fail to operate efficiently, fairly and with dignity, two dangers may be realized—the public can lose confidence in the courts and the court structure itself can be weakened when disputes not being satisfactorily settled in the courts not of record are carried to and overburden the courts of record. These dangers are intensified by the pressures on the court structure coming from an increasing population and growing volume of criminal and civil litigation. These pressures reach the courts not of record first

and must be largely absorbed there if the courts of record and appellate courts are to be able to concentrate on the more difficult and significant types of cases.

At present the courts not of record operate with two handicaps that can be removed by including these courts in a unified court structure. *First*, there is a serious *lack of organization and judicial supervision* of these courts; no comprehensive mechanism exists to provide these courts information, guidance or uniform rules of practice on any statewide basis; and no means are available to assure that these courts operate in a reasonably uniform and fair manner from one locality to the next. *Second*, there is no way to avoid heavy reliance on *part-time judges* under the present system.

Lack of Organization and Judicial Supervision

Effective judicial supervision is virtually impossible in view of the number and variety of the courts not of record existing today. Present law establishes four series of these courts: county, city, town and juvenile and domestic relations courts. They are distinguishable by the type of locality served, laws establishing them, degree of State supervision and methods of financing.

County courts are established by general State law and basically State financed. County court judges are appointed by and are under the supervision of the circuit court judges. City courts are also established by general State law but are subject to special city charter provisions. The city courts may be known as municipal, traffic, police, civil or criminal courts or by other designations. They are to a large degree financed and supervised locally with the incidental result that State level statistics and information on these courts are very scarce. The juvenile and domestic relations courts are established by general State law in each county and city with special authorization for localities to operate these courts on a regional basis. The State has assumed financial and supervisory responsibility for county and regional juvenile and domestic relations courts and partial financial responsibility for the city juvenile courts. Town courts are recognized under general State law but created by individual town charters. They operate without State supervision or financing. Table I at the end of this chapter shows the breakdown for county, city and juvenile domestic relations courts which total up to 170 courts not of record in 96 counties and 36 cities. Table II at the end gives data on the number of town courts showing an estimate of 90 town courts having town judges and at least an additional 14 town courts presided over by the county court judge.

Given this fragmented structure, it is understandable that there is no effective mechanism to offer training programs, information and uniform rules and procedures to the courts not of record or to obtain comparative data on the workloads and operations of the courts. The supervisory powers of the circuits over the county courts (§ 16.1-41) are discretionary with the circuits and even this provision is lacking with regard to city courts. The Judicial Conference for Courts Not of Record, begun in 1962, offers one approach, but the Conference had a budget of $47,160 for the biennium 1970-72 and can finance only annual meetings for the judges of these courts. The Conference does not attempt to reach town judges. The juvenile courts work to an extent with the Department of Welfare and Institutions, but this relationship varies greatly from county juvenile courts staffed by part-time county judges to the more formal regional courts.

This lack of organization may have been acceptable when these courts were first developing and the localities they served were more isolated. Today, however, the localities are much less independent of each other. In many cases they share the same local judge with one or more other jurisdictions. Just as the judges travel so does the public. Residents in one area travel constantly in

adjacent and distant localities. They know and are critical of discrepancies in the enforcement and interpretation of laws among localities.

Moreover, these discrepancies and inequities will increase as laws change and grow more complex and until some means exists to assist these courts throughout the State. The types of aid which a unified judicial administration can provide would include uniform rules and procedures to guide the courts, information and training on changes in the law and a fair allocation of available auxiliary staffing for the judges. These are essential kinds of assistance which all courts not of record require and which too few of them can obtain or afford so long as more than 270 courts operate independently. At present some courts operate without any of these necessary aids and it may be assumed the system as a whole is wasteful of the resources that are available. Inevitably manpower and State and local funds are wasted in operating this number of courts. No consideration is being given to the overall workload of the courts not of record and no procedure exists to gather in one place information on the caseloads and costs of these courts.

Part-time Judges

Most of these courts rely on the services of part-time judges. The caseloads of most of the courts do not require or justify the expense of a full-time judge and there is no method established at present to provide all localities the services of a full-time, completely professional judiciary.

The public's confidence in the courts depends directly on its impression of the judiciary. If there is any hint of self-interest or any lack of professionalism on the part of the judge, the public's confidence in the courts is diminished. There has been much criticism of the system's dependence on part-time judges by judges, members of the bar and the Council of the Virginia State Bar as well as by sources outside the legal profession. Critics cite situations where a part-time judge's decision in a case can best be explained as an attempt to please a client of his private law practice, or where a jury is influenced by the fact that the lawyer for one party is a judge. The mere appearance or suspicion of self-interest is damaging to the judiciary. Other equally vexing problems arise because of the system's reliance on part-time judges. The part-time judge, whether he practices law or works in business, does not have time and is not paid to devote the time needed to be an effective jurist, to keep abreast of new developments in the law outside his locality and to concentrate his efforts on the problems of administering, staffing and improving his court.

These problems are particularly acute in the juvenile and domestic relations cases, where the judge must develop the highly specialized knowledge and orientation now required to deal with these cases effectively and in accordance with constitutional and statutory requirements. In many localities, the dominant concern of the local judge is the private practice of law, from which he derives a substantial portion of his income. His second concern is his judicial function in those areas of practice with which he and most other lawyers are familiar and in which he is professionally comfortable, the areas involving civil, police and traffic cases. Subordinate to all other professional interests, receiving the benefit of whatever is left of his time, concern and ability, is his assignment in connection with juvenile and domestic relations cases. Consequently his performance, however conscientious, is unpredictable, lacking consistency or uniformity and, in instances, is in violation of the basic requirements of due process.

The part-time judiciary also contributes, along with the complicated system of courts not of record; to the administrative inefficiency of the present system. It is impossible to provide the same training, staffing and facilities to a

large number of part-time judges with other careers and outside commitments that can far more efficiently be made available to a smaller, more professional full-time judiciary.

Present law does not contain any procedure for assuring eventual establishment of a full-time judiciary. It does permit two types of arrangements which point up the need for better utilization of the judiciary but which fall far short of achieving a full-time judiciary: first, regional juvenile and domestic relations courts; second, appointment of the same judge to serve two or more courts.

Recognizing the weaknesses of the juvenile courts in many areas, the General Assembly authorized localities to agree on the creation and operation of regional courts to serve their combined population. Since expense was of vital importance to the localities most acutely in need of such courts, and by way of inducement, the State agreed to pay the entire expense of operating these courts with the exception of the physical plant, the court quarters. To date, nine such courts, serving a combined population of 748,720 in 32 localities, have been established, and two others involving 13 localities are being formed. (See Table III and the Map at the end of this chapter which outline the present regional system.)

The regional court plan represents a notable first step in the direction of progress, but it also has demonstrated that, although combinations of localities can unite to employ a qualified and dedicated juvenile court staff, such combinations develop too slowly and do not in many cases involve those areas most in need of service. The regional system does not require full-time regional judges although regional judges who serve full time are prohibited from practicing law. Thus the regions do not promise the establishment of a fully professional juvenile court judiciary.

Appointment of one judge to several courts represents a second attempt to move away from a part-time judiciary. In approximately 80 counties and cities, the same judge serves the county or municipal and juvenile courts. This approach weakens the juvenile court structure. Forty-one counties and cities share the same court not of record judge with one or more other counties and cities, an increase of 17 since 1969. Many of these judges may be serving juvenile courts as well as the county or municipal courts for the localities involved. Many of these judges serve part-time.

There is no discernible pattern to these developments except that they do not affect the major urban areas in the State. The populations of the localities involved range from 5,248 to 58,789 in the regional courts and from 2,529 to 50,901 in the shared judge category. Populations of the regions vary from 62,495 to 125,180. Nor is there any particular geographic pattern. The regions and proposed regions reach from Frederick to Halifax and Bristol to Lancaster.

Given this background, it is apparent that joint court staffing is increasingly attractive. The pattern emerging, however, is one of random and piecemeal development unrelated to overall administrative improvement of the system on any Statewide basis. The existing legislation is meeting special local problems ad hoc rather than leading to a full-time judiciary or a better system to use the State's resources.

The Commission has concluded that this trend to joint court staffing should be organized now at the State level. Otherwise, continued piecemeal developments will result in some localities being isolated by surrounding regions, in a series of unrelated circuits, regions and multi-court judicial appointments and in perpetuation of the system's reliance on part-time judges.

The district court system proposed below assures that courts not of record will be served by full-time judges, and it can be initiated by legislation which

the Commission recommends be adopted in 1972. The closely related problems involving part-time Commonwealth's attorneys are not addressed in this legislation because of the Constitution's basic requirement that a Commonwealth's attorney be elected in each county and city. The Commission urges that the General Assembly work toward the establishment of a system of full-time Commonwealth's attorneys in addition to adopting the district court concept, and prohibiting the practice of criminal law in any court in the Commonwealth by Commonwealth's attorneys as proposed in the Commission's interim report.

District System

The Commission proposes that a system of districts be established to provide a comprehensive statewide administrative framework for courts not of record and a basis for employing economically throughout the State full-time juvenile judges and full-time judges for all other aspects of the work of courts not of record.

The districts would be geographic units encompassing all counties and cities and should complement the circuits in order to maintain a unified administrative structure. The Judicial Council should be directed to review circuit lines from the standpoint of court of record and court not of record workloads. Ideally each circuit should be large enough to utilize not only two circuit judges but at least one full-time juvenile judge and one or more additional full-time judges dealing with all other court not of record matters. The Council should be authorized to establish districts which include more than one circuit, but no circuit should be divided in drawing district lines. Thus even if the Council failed to revise circuit lines substantially, it should still be required to establish districts by utilizing and combining circuits. The Council should complete its work within a year and publish district lines prior to July 1, 1973.

Apart from the requirement that the districts complement the circuits, the only standard which should be spelled out in the directive to the Council is that each district should be of sufficient size to employ at least one full-time juvenile and one or more additional full-time judges for other cases. Maximum criteria are unnecessary. The Commission sees no drawback in having District 16 parallel Circuit 16 serving a population of 709,803. Within a large district it may be the general rule to appoint judges full time to single counties or cities in the same manner as under the present systems. The effect of the district system on such larger circuits will be the ability to provide better overall Statewide judicial administration and more flexibility in the temporary assignment of judges to relieve crowded dockets. Minimum criteria of population and caseload levels can best be developed by the Council in the course of its study, and rigid statutory criteria would hamper the Council.

The Commission's review of present circuits and possible combinations of circuits for district purposes indicated that a district system of approximately 30, and possibly many fewer than 30, districts could be devised. From an administrative standpoint, the circulation of information and utilization of resources would be greatly improved when handled through 30 districts rather than over 270 courts. For the court system as a whole, the realization of a full-time judiciary through this reorganization would eliminate the most serious criticism of the courts not of record.

The proposed reorganization parallels that of other states such as North Carolina and Oklahoma where action has been taken to consolidate and streamline the lower courts. In one respect, this proposal differs in that it maintains a separate juvenile and domestic relations court structure within the district framework. The Commission believes that the progress made to date in forming an expert juvenile court judiciary in the larger urban areas and

through the regional courts should be accelerated by providing full-time juvenile judges statewide. The growth in juvenile crime and domestic relations cases in recent years points up the need to give special attention to this difficult area of the law. Procedures governing juvenile cases are unique. The laws governing the rights and conduct of juveniles are in flux and involve the court as guardian as well as judge. These factors dictate the need to preserve and build on the separate juvenile court structure already established in Virginia and to assist these special courts through a district administrative system.

Careful thought was given by the Commission to various proposals to transfer divorce and adoption cases to these courts, to raise them to court of record status, or to shift to a family court system. Although recognizing the potential merits of these suggestions, the Commission concluded that at this time all efforts should be concentrated on proposals most directly related to strengthening these courts in their present operations, both for immediate improvement of these courts and as sound preparation for an expansion of their responsibilities.

II. *Juvenile District and General District Courts*

The present number and variety of courts not of record should be reduced. There should be one Juvenile District Court in each county and city replacing county, city and regional juvenile and domestic relations courts. There should be one General District Court in each county and city in place of county courts, various city courts and town courts. These District Courts should come into being July 1, 1973, when district lines have been established by the Judicial Council. Specialized city courts established by charters, such as traffic and civil courts, would be absorbed into the General District Court of the city. The establishment of special sessions in any general district court should be left to judicial administrative determination rather than being spelled out in statutes. Town courts should be abolished, and their work handled in the district courts of the county. They are no longer required as a matter of convenience since travel within a county is easy. They are in many instances staffed by part-time judges who may be non-lawyers — a violation of the principle of § 16.1-8 requiring judges of courts not of record to be licensed to practice law — or town mayors or enforcement officials — an undesirable merger of executive and judicial branch functions. In other instances town courts are already using county court judges or have been replaced by the county court. Under the district system, as under present law, fines collected by the county courts for violations of town ordinances would be payable to the town treasury so that little economic change is involved.

The net result should be a system of local juvenile and general district courts serving each county and city with court records maintained and cases heard in each locality. Questions involving separate courtroom facilities for the juvenile and general courts, separate clerks and staffs and similar issues should be handled as administrative matters. In some localities entirely separate juvenile and general court facilities will be more workable. In others it will be possible for both courts and both judges to use the same courtroom, clerk and staff. The district legislation should leave these matters to the judicial department.

Localities within a district should have authority to combine their courts where they agree that court facilities in one locality can meet the needs of more than one county or city, subject only to the approval of the chief district judge. Such agreements were possible prior to 1956, and there is no reason to prohibit them under a district system as long as district lines are followed. Such agreements could save some localities the expense of providing and maintaining separate court facilities.

III. *Full-time Juvenile and Full-time General District Court Judges.*

Establishment of full-time juvenile and general court judiciaries should be accomplished under the district plan by July 1, 1980. During the eight years between the effective date of the district legislation and July 1, 1980, there should be sufficient time for the terms of all incumbent judges to expire and for the many able part-time judges now serving these courts to determine whether they wish to practice law or serve on the bench and to arrange their affairs accordingly.

No new appointment should be made during the transition period for a term to expire after July 1, 1980, so that as of that date new appointments will be made throughout the district system. After that date all terms should be for six rather than four years, all district judges should be paid a salary equal to 90 percent of a circuit judge's salary, and all district judges should be prohibited from practicing law.

During the transition period district judges may serve on a part-time or full-time basis. Those serving on a full-time basis during the transition period should be entitled to a salary equal to 90 percent of the circuit court judge's salary and be prohibited from practicing law. New appointments during the transition should be made as far as possible on a full-time basis, but should be permitted on a part-time basis to give the judges and the system the greatest possible opportunity to work toward a full-time system smoothly. There should also be authority during transition to designate a part-time judge as a full-time judge in the course of a term with his consent. This provision would permit a part-time judge to become entitled to the salary of a full-time judge and take over the work of a retiring part-time judge, provided he consents and agrees to be bound by the prohibition against practicing law.

These flexible procedures, the attraction of adequate salaries and provision of a reasonable time for transition should permit an orderly development of full-time juvenile and general district court judiciaries.

Town court judges should be permitted to complete their terms begun prior to July 1, 1973, and the town courts should be abolished and their jurisdiction transferred to the county courts as these terms expire.

IV. *Appointment of Judges*

Effective July 1, 1973, when the district boundaries are established, district court judges should be appointed by the circuit court judges of the district. Court of record judges already make these appointments under present law in all counties and some cities. Cities having charter provisions authorizing appointment of municipal judges by the local governing body would be the only localities affected substantially by this provision, which should override charter provisions. A uniform appointment procedure is essential in order to assure a unified court structure and proper judicial supervision by the circuits. If more than one circuit is used to form a district, all circuit judges in the district will act on district appointments. In the event of a tie vote, the chief judge of the division would be the tie breaker in most instances.

All district judges should be licensed to practice law in Virginia with the sole exception that judges in office on July 1, 1973 and not meeting this requirement may continue service.

A district judge should be a resident of one of the localities whose court he is appointed to serve while in office, but he need not reside in the district at the time of appointment.

The responsibilities of the circuit judges in the district should include the

selection of judges and appointment of judges to so many courts in the district as will make up a full-time caseload. There should be a prohibition against appointing any juvenile judge to a general district court or general district judge to a juvenile court. It should be the duty of the Judicial Council to determine the number of judges required in each district since it would be drawing district lines. After July 1, 1980 this question would involve only full-time judges, but during the transition period when appointments of both part-time and full-time judges are involved the Council should be responsible for reviewing appointments to assure progress is being made toward a full-time judiciary.

The question whether a judge is a full-time judge during the transition period and thereby entitled to a full-time salary and subject to prohibitions against practicing law should be determined by the Council. The only limitation on the Council's authority should be a provision to assure that no judge's salary is reduced or new limitations imposed on him during a term of office.

Substitute judges should be authorized and not subject to prohibitions on the practice of law. One substitute should be authorized for each district to be appointed by the circuit judges for a term as other district judges. The committee of division chief judges discussed below should be authorized to approve appointment of additional substitute judges.

V. *Supervision of the District Courts*

The inclusion of the district courts in a unified court structure should permit needed statewide supervision of the district courts on issues which involve more than local impact by these courts. The drawing of district lines by the Judicial Council to assure that full-time judges are available to all citizens in the State is one such issue.

Another State issue is the need for uniform rules of practice and procedure in these courts so that citizens in all localities are assured fair and equivalent treatment. Uniform rules have been recommended by the American Bar Association, National Conference of Judicial Councils and Conference of Chief Justices of the State Supreme Courts. The Supreme Court, which has the responsibility for preparing rules of procedure for the court system, should be directed to prepare uniform rules for the juvenile and general district courts following consultation with the Executive Committee of the Conference of Courts Not of Record. Such rules should cover, for example, continuances, reductions in charges, maintenance of dockets, appearances by laymen and lawyers, separate trials of traffic cases and judgments entered only on motion of counsel.

A third matter warranting a broad rather than local approach concerns staffing for these courts, which should be supervised by the committee of division chief judges discussed below in part VII.

Immediate supervision of the districts should be the responsibility of the circuit judges who appoint the district judges and serve in the same area. Their responsibility should be stated in the district legislation. Given rules of procedure and a simplified court structure, the circuit judges should be able to perform this role far better than at present under the statute authorizing but not requiring them to do so. Specific supervisory duties of the circuit judges should include designation of a chief district judge, approval by the senior circuit judge of temporary assignments of juvenile and general district judges to assist each other only when necessary for proper administration, and responsibility as under present law for requiring localities to provide and maintain adequate court facilities for district courts.

Generally, the inclusion of district courts in the State court system should

simplify the circulation of information throughout the system. Information needed to evaluate the work and efficiency of these courts can be obtained through organized districts directly responsible to the circuits and finally to the Supreme Court. Training opportunities and current information on changes in law can be more readily provided to an organized, full-time judiciary. In expanding the budget for the Executive Secretary of the Supreme Court, provisions should be made for holding mandatory State and regional conferences for juvenile and general district court judges.

VI. *Administration of the Districts*

The circuit judges should biennially designate one judge to serve as chief judge for the district. He could be a juvenile or general district court judge and would oversee administrative matters for the district. In addition to serving as spokesman for the district in communicating and reporting to the State and judicial department, he should be specifically authorized to schedule sessions of court and make temporary assignments of district judges to courts within the district where needed because of disqualification, vacation, illness and the like. This latter authority should be limited by a requirement that such assignments be made, if possible, without using juvenile court judges to assist general courts and vice versa so that a discrete juvenile court judiciary is protected. As noted previously, the senior circuit judge should have to approve cross assignments of juvenile and general court judges. The chief district judge would also be authorized to request the Division Chief Judge for assistance from another district.

VII. *Staffing*

After July 1, 1973 when district lines have been established by the Judicial Council, personnel of the district courts should become State employees and eligible to participate in State retirement programs. Provision should be made to protect any special term of appointment, employment contract or retirement status of court personnel who are presently local employees.

Staff decisions should be made in the judicial department and not fixed legislatively. Primary responsibility for authorizing the number of court employees and setting the qualifications and salaries of district court personnel should be assigned to a committee composed of the chief judges of the major divisions which should act upon the advice and recommendations of the Executive Secretary of the Supreme Court. This committee should be formed in 1973 when the divisions are established and replace the committee of circuit court judges which presently oversees staffing for the county courts. This committee would provide a geographic balance and Statewide overview of staffing needs and problems while the Executive Secretary would act as the administrative advisor and supply staffing, information and recommendations to the committee.

Personnel authorized by the committee would be selected, appointed and subject to removal by the senior judge of the court which they serve. If an employee served more than one court, he would be appointed or removed by the senior judges of the courts involved with the chief judge of the district having the decisive vote in case of a deadlock.

The statutes should give the committee broad latitude to authorize joint court staffing. For example, it should be possible to authorize a separate clerk for any district court or a clerk to serve more than one district court or the circuit court clerk to act as clerk for the district. In the latter case, he would not be subject to appointment and removal by district judges.

Particular note should be made of the specialized staffing required in juvenile courts. Trained probation workers are of unique value and essential to

a complete juvenile court staff. The present law vests partial administrative responsibility for screening and fixing salaries for probation personnel in the Department of Welfare and Institutions. The responsibilities of that agency with respect to court staffing should be shifted in 1973 to the Committee of Division Chief Judges. This change is appropriate and reasonable once an effective judicial administrative structure is in operation. The probation officer should be responsible solely to the court he serves. The assistance of the Department to the juvenile courts would continue to be of great value but should be a matter of administrative arrangement between the courts and Department rather than of legislation.

VIII. *Financing*

In shifting to a State financed district court structure, the State will pay out of the appropriation for criminal charges the salaries of city as well as county court personnel (including Arlington in the city classification insofar as finances are concerned). The State will also provide supplies to the city courts as it does for county courts at present. Localities should continue to provide courtroom facilities and be authorized to supplement district judges' salaries.

Revenues will be distributed as under present law with fines for county, city or town ordinance violations payable to the localities. Fees collected in the counties will continue to be paid to the State as under present law while cities will continue to retain these revenues.

To offset the cost to the State of assuming the financing of the municipal courts, payments by the cities of an amount equal to the amount paid prior to July 1, 1973 for salaries of municipal court employees will be payable to the State treasury. Thus the State will be assuming the cost, in net terms, of supplies for municipal courts and of any increase occurring in the future in the cost of staffing for these courts.

These proposals fall short of a total unification of the financing of courts not of record. This compromise is submitted to provide a fair financial incentive to the localities to give up local control over their courts and in recognition of the fact that local fines, if they were collected by the State, could not be used to support the court system because of present Constitutional requirements that fines paid to the State be credited to the Literary Fund. The Commission recognizes that the present methods of financing courts not of record contain discrepancies and inequities and that not all of these problems are solved under the legislation proposed. Some localities now pay more of the costs of their courts than others and may or may not receive revenues from fines and fees that more than offset such costs. The Commission hopes that more equitable and uniform State financing can be achieved once the district court system is operating.

The allocation of costs and revenues between the State and localities should, however, be of less importance to the individual citizen and taxpayer than his basic concern for the overall efficiency and quality of the court system. No specific cost analysis of the present system or the proposed reorganization can measure the waste inherent in a fragmented system or the savings which will be realized through reorganization. Moreover, the financing and revenue aspects of the proposal, which are generally advantageous to the localities and which will involve a shift of costs to the State, do not involve any demonstrable overall cost to the taxpayer and should prove to result in real cost savings through a more efficient and productive system.

TABLE I

Present Courts Not of Record (From the *list of Courts and Members*, Judicial Conference for Courts Not of Record, January 14, 1971)

Courts	*Localities*		*Judges*
96 County Courts and 71 County Juvenile and Domestic Relations Courts staffed by county court personnel	6 counties with more than one judge (excluding judges of separately staffed juvenile and domestic relations courts)		16
	Arlington	3	
	Bedford	2	
	Chesterfield	2	
	Fairfax	4	
	Henrico	3	
	Prince William	2	
	58 counties with one judge		58
	24 counties sharing a judge with another county (18) or a city (6)		12
	8 counties sharing a judge with two counties (6) or a county and city (2)		2⅔
2 Separately staffed County Juvenile and Domestic Relations Courts	Arlington	2	4
	Fairfax	2	
52 Municipal, Civil, Police, Criminal, Traffic and Juvenile and Domestic Relations Courts staffed by other municipal court personnel	12 cities with more than one judge (excluding judges of separately staff juvenile and domestic relations courts)		28
	Alexandria	2	
	Chesapeake	2	
	Danville	2	
	Hampton	2	
	Lynchburg	2	
	Newport News	2	
	Norfolk	3	
	Petersburg	1	
	Portsmouth	1	
	Richmond	6	
	Roanoke	3	
	Virginia Beach	2	
	15 cities with one judge		15

Courts	Localities		Judges
	8 cities sharing a judge with another city (2) or a county (6)		4
1	1 city sharing a judge with two counties		1/3
17 Separately staffed City Juvenile and Domestic Relations Courts	Alexandria	1	17
	Danville	1	
	Hampton	1	
	Lynchburg	1	
	Newport News	1	
	Norfolk	3	
	Petersburg	1	
	Portsmouth	1	
	Richmond	3	
	Roanoke	1	
	Virginia Beach	3	
9 Regional Juvenile and Domestic Relations Courts	23 counties and 9 cities participating		9
Totals			
170 courts	96 counties and *36 cities		166 judges

*The information in the Table is taken from the January 14, 1971 Conference List which covers all counties but omits Bedford and Salem Cities. The report of the Secretary of the Commonwealth shows Bedford as having a Juvenile Court and Salem as having both Municipal and Juvenile Courts. Judges of Bedford and Roanoke Counties serve these courts.

Town Courts (Table prepared by
Wilfred J. Ritz, 1971 memorandum,
p.22)

COURTS USED BY VIRGINIA TOWNS FOR THE ENFORCEMENT OF TOWN ORDINANCES

Summary Based on Letter Survey Conducted in Late 1969 and Other Available Data

	Survey Totals*		Estimated Totals**
Towns Using the County Court	40]		
Towns With Separate Town Court, Presided over by County Judge	2]	.....	104
Towns With Separate Town Court, Presided over by County Judge, Who Has Been Appointed by Town Council for One or Two Year or Indefinite Term	12]		
Towns With Separate Town Courts, Presided over by Mayor of Town (4 Mayors are attorneys and 32 are not)	36]		
Towns With Separate Town Courts, Presided over by a Person Other than the County Judge or Mayor (15 judges are attorneys and 8 are not)	23]	.....	90
Totals	113		194

* Data compiled from 113 returns from 194 letters sent to Mayors of Towns.

** In addition to data obtained from survey, totals are based on other available data. The 194 towns are those listed in the 1967-68 Report of the Secretary of the Commonwealth.

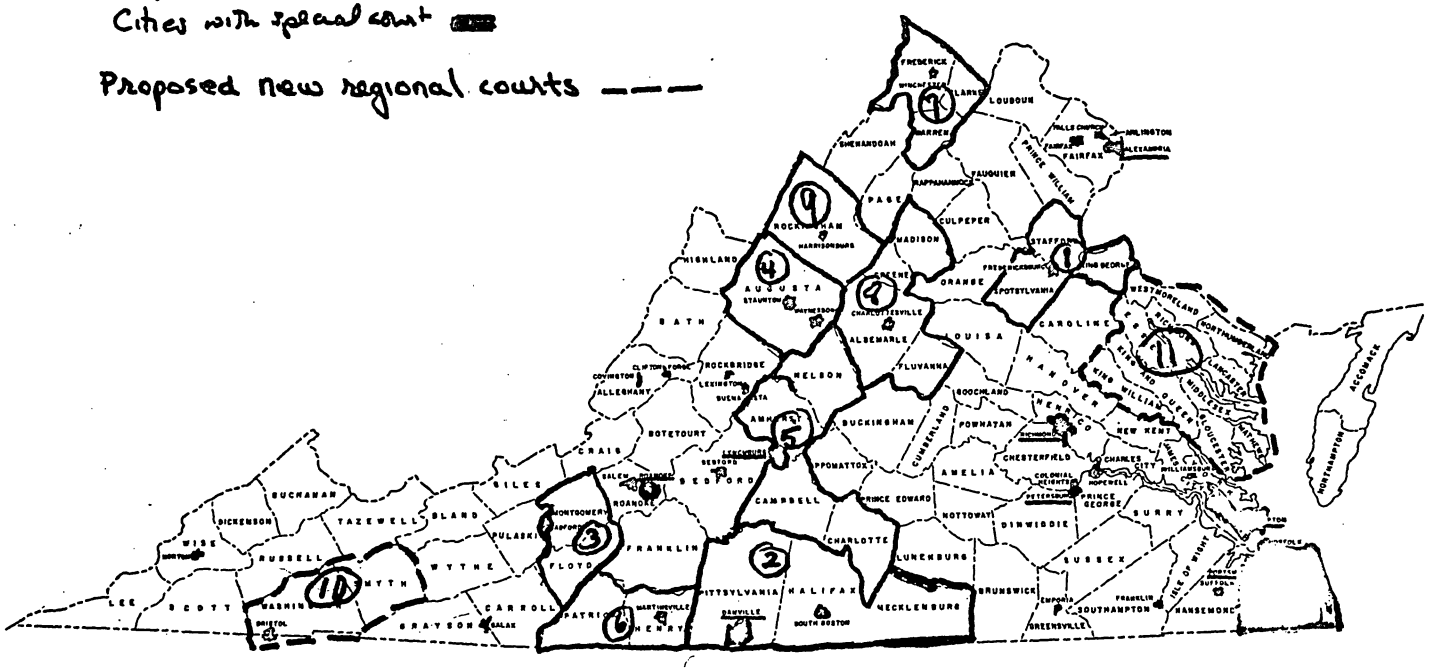
TABLE III

Regional Juvenile and Domestic Relations Court

Court	Localities	1970 Population	*1968-69 Children's Cases Disposed
First (39th circuit)	Fredericksburg	14,450	271
	King George	8,039	61
	Spotsylvania	16,424	210
	Stafford	24,587	262
		63,500	804
Second (34th circuit)	South Boston	6,889)	495
	Halifax	30,076)	
	Mecklenburg	29,426	627
	Pittsylvania	58,789	556
		125,180	1,678
Third (36th circuit)	Radford	11,596	125
	Floyd	9,775	98
	Montgomery	47,157	449
		68,528	672
Fourth (parts of 18th and 29th circuits)	Staunton	24,504	297
	Waynesboro	16,707	212
	Augusta	44,220	349
		85,431	858
Fifth (parts of 5th, 6th and 29th circuits)	Amherst	26,072	285
	Campbell	43,319	555
	Charlotte	11,551	71
	Nelson	11,702	98
		92,644	1,009
Sixth (7th circuit)	Martinsville	19,653	303
	Henry	50,901	357
	Patrick	15,282	118
		85,836	778
Seventh (part of 17th circuit)	Winchester	14,643)	124
	Clarke	8,102)	35
	Frederick	28,893	268
	Warren	15,301	54
		66,939	481
Eighth (8th circuit)	Charlottesville	38,880	564
	Albemarle	37,780	216
	Fluvanna	7,621	88
	Greene	5,248	31
	Madison	8,638	37
		98,167	936
Ninth (part of 25th circuit)	Harrisonburg	14,605	439
	Rockingham	47,890	
		62,495	439

* These figures appear in Table 2.52 of the Project Report and are based on classifications of cases by counties and cities.

Juvenile Dom. Rel.
Courts
Regional ———
Cities with special court ■
Proposed new regional courts – – –



OFFICE OF THE GOVERNOR
DIVISION OF STATE PLANNING AND COMMUNITY AFFAIRS

(more)

RECOMMENDATION I: Appointed Magistrates. Justices of the peace should be redesignated magistrates. These judicial officers should be included in the State court structure, appointed by the chief district judge and supervised by the district judges. The number of magistrates authorized for each district should be fixed by the Committee of Chief Judges of the major divisions, but in no instance should there be less than two magistrates in each county and city. The executive Secretary of the Supreme Court and the judicial department should be assigned specific responsibilities to provide training, information and supplies to the magistrates.

RECOMMENDATION II: Compensation. Magistrates should be paid a salary determined by the Committee of Chief Judges based on population and workloads and within a range of $300 to $10,000 annually. All fees of magistrates should accrue to the State. A fee should be instituted for the issuance of a summons for trial in criminal cases payable to the State.

RECOMMENDATION III: Special Magistrates. Present provisions of law which authorize the appointment of special justices in certain localities should be amended to permit appointment of special magistrates in any county or city. Such special magistrates should be paid by the locality and their fees payable to the local treasury.

RECOMMENDATION IV: Issuance of Summons or Warrant. Present law should be amended and clarified to require trial on the basis of a summons except in unusual cases and to reduce the number of warrants issued unnecessarily. Reciprocal agreements should be entered into with other states to eliminate cash bond procedures utilized with regard to out-of-state violators.

I. *Appointed Magistrates*

Justices of the peace should be redesignated magistrates (a) to escape the history of criticism and confusion that has characterized the public's opinion of these judicial officials and (b) to reflect the fact that their role has changed and the reforms recommended in this report.

Criticism

Criticism of the justice of the peace in the past centered on his role as a judge or trier of cases and the impropriety of a judge or justice being paid on a fee basis with his income depending on convictions. This obvious bar to the impartiality essential in a judge was removed in 1936. In that year, Virginia adopted the Trial Justice Act, established the system of salaried lower court judges which is the basis of the present county court structure, and took from the justice of the peace his authority to try cases. Following this change, the justice of the peace still performed essential judicial functions and continued to be paid on a fee basis, but since his status in the court structure had lessened, his activities were largely ignored.

Criticism again mounted during the 1960's with the realization that justices of the peace were growing in number and were performing important judicial functions without proper qualification, training or supervision.[21] Justices of

21. See, *The Justice of the Peace in Virginia: A Neglected Aspect of the Judiciary*, 52 Va. L. Rev. 151 (1966), for a thorough discussion of the history and development of the justice of the peace system and of the problems involved in the present operation of the system.

the peace number approximately 800 today.[22] They are authorized by law to issue arrest warrants and paid a fee of three dollars for each warrant issued. They are responsible for deciding difficult legal questions involving a growing and complex body of constitutional law, such as the presence of probable cause for arrest, but they have little training to decide such questions. More importantly they are paid only if the warrant is issued and not for deciding the question. Their income depends on the number of warrants issued and on their rapport with the police who determine the volume of their business. They issue search warrants and decide bail matters, and again their income and fees depend on the volume of their business and relationship with enforcement officers. Their image in the public mind is not good and is far from that of an impartial judicial officer. Their image is a confused one because they are in fact more tied to the enforcement agencies than to the courts in their daily operations and their pocketbooks. Public opinion is important since the justices give many State citizens and non-resident motorists their sole impression of Virginia's court system.

The same fee system that causes much public criticism raises constitutional problems. The Supreme Court of the United States has said that judges with a personal monetary interest in the outcome of a case are disqualified from trying it and that the issuance of warrants in criminal cases is a judicial function which requires an impartial decision. It is foreseeable that the courts could hold that a justice of the peace whose income and volume of business is dependent on the police cannot act impartially when asked by the police to issue a warrant.[23]

Reform

In 1968, over 30 years after trial jurisdiction was removed from justices of the peace, the General Assembly enacted several changes in the justice of the peace statutes in response to growing criticism of the system. Requirements that the justices report their income and expenses were strengthened. Minor changes were made in the fee structure. Provisions governing the authority of the justices were clarified. Judicial supervision of the justices was emphasized. These changes, however, fell short of any basic reform designed to eliminate the fee system and bring the justices clearly under the responsibility and supervision of the judicial department. The recommendations submitted by the Commission are designed to accomplish these basic reforms and should be accompanied by a change in the name of these officials to magistrates to indicate that a substantial reform is taking place.

Magistrates should be appointed by the chief district judge for four-year terms, removable by him, and subject to supervision by the district judges.

Two magistrates should be appointed in each county and city and so many additional magistrates in a locality as are authorized by the Committee of Chief Judges of the major divisions. The present system of electing and appointing justices of the peace has contributed to having an excess of justices and to the difficulty of providing proper judicial supervision for the justices, and it should be replaced. Appointment and immediate supervision of magistrates should be vested in the district courts whose work is closely tied to the work of the magistrates and who operate on a local basis. Under the proposed district

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22. Incomplete reports from justices of peace to the Executive Secretary of the Supreme Court for 1969 made pursuant to § 14.1-137, cover approximately 570 justices, but omit 13 counties not reporting and several additional localities not required to report because they employ and pay special justices.

23. *Tumey v. Ohio*, 273 U.S. 510 (1927); *Aguilar v. Texas*, 378 U.S. 108 (1964). See, 52 *Va. L. Rev.* 151, *supra*, for discussion of this constitutional issue.

system, district judges serving full time will have the professional background and status to enable them to provide supervision, assistance and training to the magistrates.

A minimum of two magistrates per locality should be required in view of the need of enforcement officers to be able to find a magistrate at night and weekends. Additional magistrates should be authorized for any locality by the Committee of Chief Judges only to the extent necessary to perform the work required. In many areas of a county where little work is required, a magistrate will be needed because of distances and geography. The Committee should have adequate authority to provide for such situations.

As judicial officers, magistrates should be brought within the administrative structure of the courts. The Executive Secretary of the Supreme Court, who is presently responsible for correlating financial reports from the justices of the peace, should continue this function and be authorized to provide training sessions, material and supplies for the magistrates in conjunction with the district courts.

The magistrate system should be instituted January 1, 1974, after the district court system has been established and begun operation. Justices in office as of that date should be permitted to complete the terms for which they had previously been appointed or elected. All future appointments of magistrates should be made as outlined above by chief district judges and on the salary basis discussed below.

II. *Compensation*

Magistrates should be compensated on a salary basis and the fee system of pay abolished. The Committee of Chief Judges should fix the salaries of magistrates within a broad statutory range of $300 to $10,000 taking workloads and the territory and population served into consideration. To offset the expense to the State of these salaries, all fees collected by the magistrates should be paid to the State.

The dependence of the present justices of the peace on fees for their income gives the most grounds for criticism of the system today and should be eliminated. Salaries paid by the State are the only practical alternative. It is impossible to fix a specific salary for magistrates and a broad range of possible salaries should be authorized. Some magistrates will issue warrants and perform few duties requiring only a fraction of their time. Others will be full-time adjuncts of the court system. Both will be required, and a minimum of $300 and a maximum of $10,000 should cover both situations. The Committee of Chief Judges, which would succeed to the duties of the present Committee of Circuit Judges as discussed above, should be the most qualified body to determine specific salaries taking into account the work and responsibilities of the magistrates.

In this connection it is noted that circuit judges should continue to be given broad latitude in the appointment of these officials as bail commissioners. In most instances magistrates having a relatively part-time role should not be appropriate for such duties, and the circuit judges should have discretion to appoint bail commissioners and select those magistrates serving more as full-time court officers.

The combination of a salary system coupled with careful supervision and training by the judicial department should divorce the magistrate from the enforcement agencies. Whether or not warrants are issued should be irrelevant when the Committee determines salaries. The volume of work performed by the magistrate should be only one of several factors determining his pay, and the judiciary should have more control over the volume of his work and his relationship to enforcement agencies.

Since the work and pay of magistrates would vary greatly, it is recommended that the magistrates not be included within the State's retirement programs. Inclusion would involve inequities among magistrates and between magistrates and State employees who generally must be full-time employees to participate in these programs.

Incomplete reports on fees collected by justices of the peace in 1969 indicate these fees exceeded $1.1 million and should be more than sufficient to offset the cost to the State of this proposal. All fees collected should be payable to the State including fees on local warrants. In addition, a fee for issuance of summons to trial in criminal cases should be set and made payable to the State. A fee of one dollar is recommended; and since over 435,000 summons have been issued for traffic violations alone in past years, the funds generated should be more than sufficient, when added to existing fees, to maintain an efficient system of magistrates.

III. *Special Magistrates*

Under present law, § 19.1-32.1, court of record judges in Arlington, Fairfax and Alexandria are authorized to appoint special justices in place of justices of the peace. Special justices are paid salaries by the locality and their fees accrue to the locality. The provision should be amended and extended to cover all localities so that the local governing body and circuit judges may agree to shift to a special magistrate system. Such an approach ties in well with localities having formal violations bureaus and will permit magistrates to participate in local retirement systems. The special magistrate system also would assure the elimination of the fee system and provide for judicial appointment and direct supervision of these officials.

IV. *Issuance of Summons or Warrant*

Code §§ 16.1-129 and 16.1-129.1, which deal with the issuance of summonses and warrants, should be clarified in order to obtain uniformity throughout the State. Judges in some areas will not try any charge unless a warrant has been issued, while others try charges on summonses. Establishment of a uniform rule requiring trial on a summons except in unusual circumstances will do away with the time consuming effort, in some jurisdictions, by law-enforcement officers taking every offender before a justice of the peace for issuance of a warrant. Frequently this is done for the sole purpose of providing greater fees for justices of the peace; in other cases, the county judge requires a warrant so that he will be able to write the judgment in the case on the warrant. Misdemeanors committed in the presence of the arresting officer and all offenses involving the use of a motor vehicle should be tried on the basis of a summons, unless the defendant or his counsel request that a warrant be issued, as now provided for by law. Bail should be issued by magistrates based on the summons while the defendant is present. No person after having been released on a summons should be allowed to post a cash bond subsequently with any magistrate, except a special magistrate of a city or county. To help satisfy judges who prefer warrants, the uniform summons should be designed to leave room for a judgment to be written on it.

To solve the problem of the out-of-State violator, the State should enter into reciprocal agreements with other states to honor traffic summonses, similar to such agreements with the District of Columbia and Maryland. By this method, the policy of issuing a summons for every traffic offense can be extended to nonresidents, and the unfortunate requirement of cash bond done away with.

Recommendation I: Record. Each court of record should be required to have in its courtroom electronic recording equipment adequate to record the proceedings. The clerk's office should be required to employ enough typists to prepare the records wherever needed. Whenever an independent court reporter is employed, the court should require him to certify that the record will be available within four weeks of request.

Recommendation II: Grand Jury proceedings. A grand jury proceeding should not be held in any case in which there has been a preliminary hearing in the court not of record and probable cause found.

Recommendation III: Speedy trial of criminal matters. Section 19.1-191 should be amended to make uniform the requirements of a speedy trial, and to provide some pressure for early disposition of criminal matters.

The need to expedite court business and to minimize delays in the system of justice, is of utmost importance and urgency. The bulk of this report addresses itself to revisions in the court structure which, it is hoped, will enable the courts to handle their business with greater efficiency and expedition. The Commission also has a few detailed and less sweeping suggestions directed specifically to minimizing delay.

One area which has caused continuous problems has been the preparation of a record for appeal. Verbatim recording of the proceedings is optional in civil and mandatory in felony cases. Difficulty often arises in obtaining a transcript, as a busy court reporter may take weeks to prepare one. In areas where reporters are scarce, and the court and parties have no alternative method of preserving the record, delay is inevitable. Requests to the Supreme Court for extension of time for certification of the record are common, and at times hearing of a case on appeal must be delayed because the record has not been prepared.

In many courts, electronic equipment has been obtained for the courtroom, providing an alternative method of preserving testimony. The Commission suggests that this equipment be made mandatory for every courtroom of a court of record. In addition, the clerk of every court of record should be made responsible for having available enough typists to prepare within a reasonable time any transcripts which are needed. Where a court reporter is in attendance, the judge should obtain from him a statement that the record will be available within four weeks of request, and in serious felony cases where a transcript is required under § 17-30.1, within four weeks of trial. If he is unable to give assurance that the record will be available within that period, the judge should have the proceedings recorded on the electronic equipment installed in the courtroom.

Another cause for delay in the criminal justice system is the necessity of a grand jury proceeding, which is required by § 19.1-162. A preliminary hearing before a court not of record is also required under § 19.1-163.1 for all persons charged of a felony, unless waived in writing by the accused. The result of these provisions is that the same case must be heard, and the same witnesses called upon, three separate times: for the preliminary hearing, for the grand jury proceeding, and for the trial. The wastage of time, and the burden upon the system and upon the witnesses, is greater than the small benefit which may be derived from having the two separate proceedings to determine whether a trial is in order.

For these reasons, the Commission recommends that a grand jury proceeding be held only in cases where there has been no preliminary hearing, or no finding of probable cause has been made at the preliminary hearing. Thus, where the accused is not in custody, or where he has been released because no reason for holding him has been found, a grand jury proceeding may be utilized. In all cases where the legality of custody and trial have been established by hearing before a judge, the grand jury would not be used and the defendant would be tried on information rather than indictment.

Contingent upon changing the grand jury system as outlined above, the Commission recommends revision of the statutes which set the standards for a speedy trial, now expressed by terms of court, to require trial (with certain exceptions) within 120 days of indictment *or* finding of probable cause. Although 120 days is a considerable time, the time period now outlined by the statute can be longer. Revision of the statute as outlined will make the time period clear and uniform, and will bring some pressure to expedite criminal matters. In addition, it should be remembered that the attorney for the defendant, as an officer of the court, also has a responsibility to expedite criminal trials, and to refrain from filing pleadings or requesting continuances for dilatory purposes.

The Commission is aware that many groups believe that the problems of criminal justice cannot adequately be solved until a public defender system is implemented. A committee of the State Bar is currently studying the desirability and feasibility of establishing such a system. As the Commission has been unable, because of limited time, to examine this subject in depth, it is looking forward with interest to the report of this committee.

VII. JUDICIAL SELECTION

Recommendation: The House and Senate Committees on Courts of Justice should continue to cooperate closely in reviewing the qualifications of applicants for the bench, and in investigating and recommending relative to election and reelection of judges and creation of new judgeships.

Selection of individuals of integrity and ability for the bench is of utmost importance in building an effective judicial system. Much study has been devoted to the subject by persons and groups interested in court reform. Although agreement has not been universal, much acclaim has been given to the "Merit Plan of Judicial Selection," known also as the American Bar Association plan or the Missouri plan, as it has been endorsed by the Association and is used in the major cities in Missouri. This plan calls for a nonpartisan commission made up of both lawyers and laymen which recommends a list of applicants to the Governor for each judgeship. The Governor makes the appointment from the list for a term, after which the judge is subject to periodic votes of confidence by the people in which the question presented is: "Shall John Smith be retained as judge of the Jamestown Hustings Court?" The plan is designed to keep politics out of the selection of judges insofar as is possible, and give the judges some security of tenure, yet to give the people some voice in the retention of their judges.[24]

The current method of selection of judges for courts of record in Virginia is by interim appointment by the Governor and election by the General Assembly for a term: eight years for circuit and corporation court judges and twelve for Supreme Court justices. The Commission feels that this method has been satisfactory, and that no basic changes are needed. Virginia judges are almost always reelected, giving them security of office and no necessity for campaigning for election. Politics does not in general play an inordinate part in selection, and well qualified judges have, in general, been selected. On the other hand, periodic election gives the General Assembly some power to deal with incompetent or unsuitable individuals.

With the growth in population and the growth in the judiciary it has become increasingly difficult for the General Assembly to investigate the candidates for judicial office. These problems have become more acute since annual sessions of the legislature, among other things, have put more of the judicial selection responsibility on the General Assembly. For these reasons the Commission commends the present procedure of the House and Senate Committees on Courts of Justice, which have been cooperating in the tasks of investigating candidates for election and reelection to judgeships and examining the needs for additional judgeships. The Commission believes this

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24. Mr. Dalton feels that the report should recommend this method of choosing all judges.

procedure effectively assists the General Assembly in choosing and retaining effective and suitable judges.

Respectfully submitted,

Lawrence W. I'Anson, Chairman

M. M. Long, Vice-Chairman

(a) Herbert H. Bateman

Edward L. Breeden, Jr.

Joseph C. Carter, Jr.

John N. Dalton

C. Hobson Goddin

(b) J. C. Hutcheson

C. Harrison Mann, Jr.

Julien J. Mason

Garnett S. Moore

C. Armonde Paxson

Kermit V. Rooke

Rayner V. Snead

(c) William F. Stone

(a) Concurring statement filed below.

(b) Senator Hutcheson agrees in principal with the dissenting statement of Senator Stone.

(c) Dissenting statement filed below.

Concurring Statement of Senator

Herbert H. Bateman

Exhaustive efforts over the last three and one half years have resulted in a report of the Virginia Court System Study Commission. If all knowledgeable people were of one mind as to the nature and degree of any problems in our judicial structure, and in the solution to them, there would have been no need for the study now completed. There has been diversity of opinion and my colleagues on the Commission have been generous in listing to mine, as I hope I have been in listening to theirs.

The report of the Commission in some regards goes further than my judgment, based upon my experience, would dictate. Yet, while the report is not what I might have written were it my prerogative to have dictated its contents, I do endorse it and concur in its recommendations.

Administration of justice is a fundamental responsibility of state government in Virginia. In my city and area the present structure of our judicial system functions well. However, measured against the needs and challenges of a state wide system of administering justice in the most efficient, well conceived manner, I choose to defer to the collective judgment of the members of the Commission and, therefore, concur in the recommendations of the Commission.

Dissenting Statement of Senator William F. Stone

My membership on the Court System Study Commission has demonstrated to me beyond a shadow of doubt that our Judicial System is on an equal plane of performance with any State of the Union and far surpasses most of the other States.

The greatest contributing factor to law and order is the respect that our citizens have for the judges who administer justice in our judicial system. Over the years, our State has grown in population and our legal problems have become more complex, but the General Assembly of Virginia has been conscious of these problems and has continued to increase the number of trial judges as a need was demonstrated. These men appointed and reappointed have, in the main, been hard working legal scholars whose fairness, honesty and integrity have seldom been questioned. The comparison of our State system with other state judicial systems leads me to believe that we should proceed very cautiously before we make any radical changes in our present system. The Bar over the years has had a close working relationship of esteem and admiration for the members of our Supreme Court. I hesitate to take any steps that will remove these seven Justices from their availability to the Bar at large.

The majority report of the Court System Study Commission contains many recommendations for departures from what is now in our present judicial system. I can agree with most of the recommendations; however, I respectfully dissent from the majority report in the following particulars:

I. I do not feel that the time has yet come to establish an Intermediate Court of Appeals in Virginia. There is no indication that either a majority of the Judiciary or Bar desire such a revolutionary change in our judicial system.

In some states the Intermediate Court became a necessity. However, in most of these states every litigant had an appeal as a matter of right to the Supreme Court of such state. This, of course, is not the situation in Virginia. The adjoining state of North Carolina has recently adopted the Intermediate Court system. In North Carolina every defendant convicted in a court of record and the aggrieved party in any final order in a civil matter is entitled to appellate review as a *matter of right.* Thus as late as 1968 the seven Justices in North Carolina prepared written opinions in 465 cases, and in addition heard motions and petitions numbering between 300 and 400. This meant that each member of the Supreme Court of North Carolina had to write approximately 66 opinions.

In contrast to North Carolina, 1380 petitions for appeal were filed with our Supreme Court in 1970, of which our Court received 207. This means that each of our seven Justices had to write less than 30 opinions in a year.

It is beyond question that our Supreme Court has been heavily burdened hearing petitions for appeal. However, in my opinion, this problem can be solved much easier and with less expense to the State by methods other than the creation of another third structure system of courts. Recently our Court has started writing more *per curiam* opinions on matters not involving any new points of law. This helps conserve the time of the Court and has been accepted by the Bar with acclaim. Due in part to the Federal System, our Court has to process far too many habeas corpus proceedings. The appointment of a special assistant to hear oral arguments and write summaries on original habeas corpus and mandamus petitions has eased this burden to a great degree.

The majority report would have the Supreme Court of Appeals of Virginia limited to the following appeals:

I. Appeals directly to the Supreme Court.

A. State Corporation Commission cases.
B. Disbarment proceedings.
C. Cases in which there is a substantial constitutional question.
D. Cases in which a statute or ordinance has been held invalid.
E. Appeals related to the right to hold public office.
F. Criminal cases involving death or life imprisonment.

II. Original jurisdiction of the Court at present.

Thus, as a matter of practical effect, all the remainder of the appeals would go to the Intermediate Court. I have been unable to find from any source the number of cases coming to the Court under the above two categories, but I strongly suspect that it would not comprise as much as 25% of the present case-load of our Supreme Court.

Instead of creating an entirely new costly system of Intermediate Courts, which has not been requested by either the Bench or organized Bar, I suggest that for the near future the Court may lighten its workload by:

1. Continuing to write more *per curiam* opinions on matters not involving new points of law.

2. Continuing to use to the fullest extent the present special assistant for the processing of habeas corpus and mandamus proceedings.

3. Adopt a system such as is now being used in Kentucky, Michigan and other states where judicial personnel with the same qualifications and pay scale of Supreme Court Justices be appointed to hear petitions on appeal. These "hearing officers" would read the briefs, hear the oral arguments and thereafter make findings of fact and recommendations to the full court as to whether or not an appeal should be granted. In the event any Justice did not agree with the recommendations, the full Court could review and then accept or reject the recommendation. This procedure in varying forms is being used in several states with great success. It saves the Justices much time, is less expensive and after being used, has been accepted by the Bar and litigants of these states without general complaint.

4. In the event the full utilization of the above suggestions does not remedy the present situation, then as a last resort, the Supreme Court membership may be increased to nine members as provided by the new Constitution of Virginia. This, in my opinion, would be better than creating an entire new system as suggested by the majority report.

II. At the present time it is estimated that one out of every six persons is employed by local, state or Federal governments. It is also predicted that within the next decade one out of every four persons will be working for one of the governments above mentioned. The ever increasing number of people seeking government employment is becoming a luxury that our over-burdened taxpayers can ill afford. Once on the State payroll, the demand then becomes continuous for more paid holidays, retirement benefits, insurance protection and increased salaries. The most valid criticism that I have heard against our State government, and one that I feel is justified, is that our government has too many employees. For this reason, I strongly oppose the recommendation of the majority to place Justices of the Peace on a salaried basis.

My final objection is allowing the Judicial Council to re-arrange circuits. I do not believe that the General Assembly of Virginia will want to surrender its time honored right to decide the judicial make-up of circuit court boundaries.