

**REPORT OF THE
JOINT SUBCOMMITTEE**

Established to Review the Judicial Retirement System

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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Kathy J. Reynolds

INTRODUCTION

Senate Bill 713 passed the Senate of Virginia in the 1985 session of the General Assembly. SB 713 would have amended the judicial retirement formula by eliminating the 3.5 weighting of years served in the judiciary for all judges appointed to the bench after January 1, 1986. As this proposal would have a significant impact upon compensation of future judges, the House Appropriations Committee deferred action on the bill in 1985. It asked the Retirement Subcommittee to study the proposal further and advise the full Committee at the 1986 session of the General Assembly.

As Chairman of the Retirement Subcommittee of the House Appropriations Committee, Delegate Owen Pickett invited Senator Willey to appoint three members of the Senate Finance Committee to join the five house members in the study. The Joint Subcommittee held meetings on October 22nd and December 2nd, of 1985.

During the course of its study, the Joint Subcommittee heard testimony and received assistance from representatives of the following organizations:

- o Supreme Court Of Virginia
- o Virginia State Bar
- o Virginia Bar Association
- o Judicial Council of Virginia
- o Virginia Trial Lawyers' Association
- o Virginia Bar
- o Court Of Appeals Of Virginia
- o Virginia Association Of Defense Attorneys
- o District Courts Committee

This report of the Joint Subcommittee is organized into seven sections as follows:

Section I	Highlights Of The Present Judicial Retirement System
Section II	Overview Of Previous Legislative Studies
Section III	Age And Service Of Virginia Judges
Section IV	Comparisons To Retirement Systems In Other States
Section V	Fiscal Impacts
Section VI	Joint Subcommittee's Recommendations
Section VII	Minority Report
Section VIII	Appendices

Testimony received at the Joint Subcommittee's October 22nd meeting is attached as an Appendix to this report.

I. HIGHLIGHTS OF THE PRESENT JUDICIAL RETIREMENT SYSTEM

The Judicial Retirement System (JRS) was established in 1970. It requires membership of any justice or judge of a court of record in the Commonwealth, any members of the State Corporation Commission or Industrial Commission, any judge of a district court (other than a substitute judge), and any executive secretary of the Supreme Court assuming such position between December 1, 1975 and January 31, 1976.

Contributions To The System

The present employer contribution is 29.44% of payroll. The 5% member contribution is also paid by the Commonwealth for a total contribution paid by the employer of 34.44%. On a payroll base of approximately \$19.8 million, the Commonwealth's payment to the JRS is estimated to be \$6.8 million in 1985-86. During the 1986-88 biennium, the total contribution paid by the Commonwealth is projected to rise to 37.08% of judicial payroll.

Member contributions have been paid by the Commonwealth since October of 1983. They are deposited in members accounts, earn 4 percent interest compounded annually, and can be refunded upon termination if a member wishes to forfeit any claim to a future retirement benefit.

Creditable Service

Creditable service is weighted by a factor of 3.5 for each year served on the bench. Unweighted service rendered in a VSRS covered position may also be included. Service in the armed forces may be purchased and included as unweighted service.

Normal Retirement Date

Normal retirement benefits may begin at age 65, with a minimum of 5 years of creditable service (1.4 years of actual service), or at age 60 with at least 30 years of creditable service (8.6 years of actual service). Early retirement may begin at age 55 with at least 5 years of creditable service (1.4 actual), except that a member's annual benefit is actuarially reduced by 0.5% per month for each month between actual retirement and the member's normal retirement date.

Retirement Benefit

The JRS annual retirement benefit is computed according to the following formula:

$$(AFC - \$1200) \times 1.65\% \times (\text{Years of Service} \times 3.5)$$

Where AFC stands for Average Final Compensation and is equal to a member's 36 highest consecutive months salary average.

For example, a judge retiring after 12 years of service on the bench at age 65 with an average final compensation of \$60,000 would receive the following annual benefit from JRS exclusive of Social Security benefits:

$$(\$60,000 - \$1200) \times 1.65\% \times (12 \times 3.5) = \$40,748$$

This judge would also be eligible to receive the maximum Social Security benefit which is currently \$8,604 per year.

Maximum Retirement Allowance

The annual JRS benefit may not exceed 75% of a member's average final compensation. In the above example the maximum would be \$45,000. Generally, this maximum is reached after approximately 13.5 years of service on the bench. Thus a judge does not accrue additional retirement benefits for judicial service beyond 13.5 years. However, service beyond 13.5 years may increase a judge's AFC.

An additional limitation on annual benefits stipulates that the annual retirement allowance not exceed a member's average final compensation, less one-half of the annual social security benefit. In the previous example, this second maximum would be set at \$51,396. As a practical matter, this maximum has no effect upon JRS benefits.

II. OVERVIEW OF PREVIOUS LEGISLATIVE STUDIES

In the last twenty years, the General Assembly has conducted three studies of Virginia's judicial retirement benefits. In 1967, the Virginia Advisory Legislative Commission (VALC) reviewed the three separate retirement systems then in operation for Judges, General Assembly Clerks, and County Court Clerks. Again in 1970, VALC reviewed the three systems and recommended that they be consolidated into a single system entitled the Judicial Retirement System. In 1980 the Virginia Retirement Study Commission reviewed the state's retirement systems generally, and briefly considered the merits of the weight applied to judicial years of service. A brief summary of the three studies follows:

- A. Retirement Systems For Judges, Commissioners, and Clerks, Report of the Virginia Advisory Legislative Council - House Document No. 16, 1967.

Background

HJR 124 of the 1966 Acts of Assembly authorized the VALC to study the three state retirement programs which remained outside the jurisdiction of the Board of Trustees of the VSRS. VALC undertook a two-year study during the 1966 - 1967 interim period between regular sessions of the General Assembly.

The three systems, each with separate trust funds, provided retirement benefits for 1) Judges, Commissioners, and Assistant Attorneys General, 2) Clerks of the House and Senate, and 3) County Court Judges. Salient features of each of the three systems are listed in Table 1.

TABLE 1
JUDICIAL RETIREMENT PROVISIONS IN 1966

<u>Fund</u>	<u>Type of Member</u>	<u>Normal Age / Years of Service</u>	<u>Normal Benefit</u>	<u>Member Contr.</u>
I.	Supreme Court	65/12 or any age/25	75% of Cur. Sal.	2% - 3%
	Circuit Court	65/10 or 62/25	75% of Cur. Sal.	2% - 3%
	Commissioners	65/10 or 62/25	75% of Cur. Sal.	2% - 3%
	Ass't. A.G's	65/20	50% of Cur. Sal. - S.S.	2% - 3%
II.	Clerks	65/20	75% of Cur. Sal.	2% - 3%
III.	County Judges	70/15 or 65/20	75% of Cur. Sal. - S.S.	2% - 3%

In addition to the wide variation in retirement provisions, the 1967 study expressed concern at the unsound actuarial condition of the three funds. Of the three funds studied only one (the County Judges Fund) had any assets as of June 1966, and they were inadequate to cover current payouts to retirees.

Findings

The 1967 study recommended that VALC be authorized to further pursue its review of judicial retirement and consider the following alternatives:

- 1) Make membership mandatory.
- 2) Increase employee contributions to the same rate paid by VSRS members.
- 3) Adopt a pre-funded approach to providing judicial retirement.
- 4) Make length of service requirements consistent among all judges.
- 5) Revise the mandatory retirement age.
- 6) Make retirement allowance sensitive to length of service, rather than a flat 75% of salary (emphasis added).
- 7) Treat Social Security benefits consistently.

In terms of the Joint Subcommittee's review, the most significant finding of the 1967 study is listed above as number 6. Prior to 1970, judges terminating judicial service without the required minimum service credit had to forfeit a retirement benefit, even while their age at retirement would have otherwise made them eligible.

In 1967, the VALC study recommended that any new retirement system for judges should follow normal retirement principles and provide benefits sensitive to years served on the bench. In this way, a judge serving just short of the minimum number of years required for a full retirement benefit, would still be entitled to some lesser benefit. This recommendation opened the door for subsequent discussion of a weighting factor applied to years of judicial service.

B. A Judicial Retirement System for Virginia, Report of the Virginia Advisory Legislative Council – House Document No. 22, 1970.

As recommended in its 1967 study, VALC, again reviewed the three systems for judges operated outside the purview of the VSRS Board of Trustees. It deemed these systems to represent a haphazard approach to judicial retirement which created inequities and ignored sound retirement policy. It recommended a single retirement system for all judges to eliminate inconsistencies and to provide level funding and sound financial planning.

It further recommended a system separate from VSRS to provide different and more generous retirement benefits to judges in recognition of their shorter careers, and older ages at appointment. It advocated retirement benefits, consistently applied to all members, comparable to those provided by the predecessor systems, even though these systems were considered generous by comparison to judicial benefits in other states.

A compensation package attractive to accomplished attorneys in private practice was more important to the VALC membership than one based upon benefit levels found in other states. VALC opined "that service in the judiciary system must compare favorably with private practice not only from the viewpoint of the successful older lawyer but also in the opinion of the younger lawyer". The VALC findings are listed below:

Findings

- 1) A single system should replace the three predecessor systems and make membership mandatory for all judges, Commissioners of the State Corporation Commission, and Commissioners of the Industrial Commission.
- 2) Members of the predecessor systems should be guaranteed benefits and conditions under the new system which are at least as good as the old systems.
- 3) Normal retirement should be between age sixty and sixty-five.
- 4) Employee contributions should be the same as in VSRS.
- 5(a) Annual retirement benefits should be calculated using the following formula:

(5 highest consecutive years salary - \$1200) X 1.5% X (years of service x 3.5) -
not to exceed 75% of 5 highest consecutive years salary.

- (b) The formula should explicitly reward length of service.
- (c) A length of service multiplier of 3.5 should compensate for members being employed at later ages with shorter careers, and to "maintain benefits at a level closely comparable to those provided under present systems" (emphasis added).
- 6) Disability retirement should be provided for members with at least 10 years of creditable service.
- 7) Options for alternative payouts of retirement benefits should be provided.
- 8) Members terminating service should have the option to withdraw member contributions.
- 9) Death benefits should be comparable to the VSRS.
- 10) Group life insurance should be provided comparable to VSRS.
- 11) The state's annual contributions should be on a pre-funded basis. The state's annual employer contribution rate was estimated to be 27% of payroll, for an additional cost of \$700,000 in 1969.
- 12) Assistant Attorneys General and Clerks of the House and Senate should be covered under VSRS. Present members should retain all rights and obligations incurred under the predecessor systems.
- 13) Retired judges should be subject to mandatory recall until age 70.
- 14) Retired judges should be proscribed from practicing law which requires appearance in any court in Virginia. Retired Commissioners should be proscribed from practicing before their Commission.

Most of the above recommendations were enacted and serve as the basis for the present Judicial Retirement System. The 1970 VALC study laid the groundwork and provided the impetus for enactment of the Judicial Retirement System in its present form.

C. Report Of The Virginia Retirement Study Commission, House Document No. 31, 1980.

Pursuant to HJR 257 of the 1979 session of the General Assembly the Retirement Study Commission conducted a comprehensive review of the Commonwealth's retirement programs. The Commission made several recommendations regarding VSRS benefits, many of which were enacted into law.

It conducted only a limited review of the Judicial Retirement System based on a suggestion that the 3.5 weighting of years of service be eliminated. Once satisfied that the average age of judges appointed to the bench was rising, not declining, the Commission withdrew the suggestion.

No further legislative study of the weighting factor has been conducted until the present time.

III. AGE AND SERVICE OF VIRGINIA JUDGES

A key issue regarding the relative degree of weighting provided to judicial service in the JRS benefit formula is the extent to which the demographic characteristics of judges have changed since the system was established in 1970. A major concern is that if judges are now being appointed at younger ages, then the 3.5 weight applied to judicial service might provide a richer retirement benefit than was originally contemplated by the General Assembly in 1970.

The 1980 Retirement Study Commission examined this issue and was satisfied that the demographic characteristics of the judiciary had not changed in a way that might cause JRS benefits to improve inadvertently. The Joint Subcommittee has examined the same issue, based upon data furnished by the Executive Secretary of the Supreme Court. The Executive Secretary's data represent snapshots of the JRS membership at three separate points in time, July 1979, February 1982, and February 1985. They were presented to the Joint Subcommittee on October 22nd, and are summarized below by court level:

TABLE 2

CHARACTERISTICS OF JUDICIAL RETIREMENT SYSTEM MEMBERSHIP

Circuit Court Judges

	<u>1979</u>	<u>1982</u>	<u>1985</u>
Average Present Age	54.29	55.17	55.16
Average Age At Appointment	44.53	44.32	44.40
Average Age At Appointment Of Those Taking The Bench Within Last 5 Years	46.92	46.22	47.52
Average Years Of Service Of Those Retiring Since 1/1/74	16.33	16.32	17.22

General District Court Judges

	<u>1979</u>	<u>1982</u>	<u>1985</u>
Average Present Age	52.76	52.94	52.62
Average Age At Appointment	44.95	45.65	44.95
Average Age At Appointment Of Those Taking The Bench Within Last 5 Years	47.80	46.83	45.13
Average Years Of Service Of Those Retiring Since 1/1/74	17.45	14.82	14.50

Juvenile & Domestic Relations District Court Judges

	<u>1979</u>	<u>1982</u>	<u>1985</u>
Average Present Age	51.95	50.97	51.93
Average Age At Appointment	43.23	41.94	42.97
Average Age At Appointment Of Those Taking The Bench Within Last 5 Years	44.75	42.71	44.19
Average Years Of Service Of Those Retiring Since 1/1/74	14.57	11.90	13.81

Data from Table 2 would indicate that, since 1979, there has been no significant change in the age at appointment of Virginia's judges. This measure has remained very consistent over the six year period. In addition, the average age at appointment of judges taking the bench within the last five years has consistently been higher than the appointment age of the entire group. Thus recent appointees tend to be older at appointment than their colleagues before them. This, combined with normal turnover patterns, would indicate that the average appointment age of the entire group should rise slightly over time.

IV. COMPARISON TO JUDICIAL RETIREMENT SYSTEMS IN OTHER STATES

A. Basic Features of Judicial Retirement Systems

Judicial retirement systems among the states exhibit a wide variety of formulae, membership and age/service requirements. The American Judicature Society published a description of each state's judicial retirement system, written by Timothy Pyne, in 1983. From this work, factors that determine each state's judicial retirement benefits were obtained.

While each state operates a unique retirement system, several general patterns were observed. These general patterns are described below.

Formulae

The two general types of formulae prevalent among the states are: a) the flat percentage of average final compensation; and b) the product of rate, service years, and average final compensation (AFC). In systems using a flat percentage of AFC, an individual must meet the required age and years of service to qualify for the benefit. Benefits in these systems are usually not sensitive to length of service, so that a retiring member with twice the minimum years of service credit would receive the same benefits as a retiring member with the bare minimum years of service. However, several states using a flat percentage method have refined the formula to provide a step percentage method which varies with certain threshold years of service, e.g., 50% AFC at 10 years and 75% of AFC at 15 years. In total, 14 states use some variation of the flat percentage formula.

The majority of states (34), including Virginia, use the second formula type, the product of a rate times the years of service times the AFC. In systems using this formula type, the benefit level varies directly with each year of service. These formulae provide partial benefits for early retirement and reward extra years of service. In some states, the rate either increases or decreases for certain periods of service, e.g., 3.5% of AFC for the first ten years and 4% of AFC for each year in excess of ten. Virginia is the only state to use weighted service years.

Average Final Compensation

Two definitions of average final compensation are used in the various judicial retirement systems: a) current salary or b) average salary. Current salary refers to an individual's salary at the time of retirement. However, some states define current salary as the salary of the office from which the individual retired. Obviously, this second form of current salary is considerably more generous, as it tracks salary increases to sitting judges. Furthermore, it allows judges to resign and defer their retirement benefit, if they have attained the required years of service but not the required age to draw a full benefit, without accepting a reduced benefit derived from a dated salary figure. Thirty states use some form of current salary to calculate the retirement benefit.

Average salary is typically calculated over 3 to 5 years using either the highest consecutive months or the most recent consecutive months. In total, twenty states, including Virginia, use a salary average in deriving their benefit.

Maximum Benefit

Of the thirty four states using a formula directly related to length of service, eighteen place a maximum on their retirement benefit. The maximum ranges from 50% to 100% of AFC. Those states which use a flat percentage formula have, in effect, a rate that serves both as the minimum and the maximum level of benefits.

B. Analysis of Judicial Retirement Benefits

Methodology

In order to compare the level of retirement benefits in the fifty states, several data elements were needed. Salary figures were obtained for each of the last five years (1981-1985) from the National Center for State Courts. Judicial salaries were gathered for three court levels: Supreme, Appellate, and Circuit. Benefit comparisons at the district court level were not made since state systems vary in organization and responsibility at this court level. In states reporting a range of salaries for the same position, the midpoint of the range was used. Local salary supplements and expense allowances were excluded from the salary because no information was available on how these forms of compensation would effect the retirement benefit.

Each state's age and service requirements, member contribution rates, and ability to transfer other types of service credit were obtained from Judicial Retirement Systems by Timothy Pyne. Each state's retirement formula, as described in the Pyne text, was reduced to a mathematical representation. Using a computer program, each state's formula was applied to its corresponding salary, age, and service requirements. Computed benefits were then ranked for comparison.

Assumptions

To simplify the analysis, certain assumptions were made which closely resemble the features of retiring judges in Virginia. First, each state's benefit is computed for a prototype judge in the first year of retirement on July 1, 1986. The prototype judge is assumed to be 65 years of age at retirement, with 15 years on the bench, the last five years in the same court. Also, at the supreme and appellate level, the prototype judge has four years of other service credit to transfer if the state's system allows such transfers. At the circuit court level, the prototype judge has 1/4-year of transfer credit, if allowed.

C. Findings Using Actual Salaries

Annual Retirement Benefits

The estimated annual retirement benefit and ranking for the prototype judge in Virginia's Judicial Retirement System would be:

TABLE 3
ANNUAL RETIREMENT BENEFITS
Actual Salary

	<u>Benefit</u>	<u>Rank</u>
Supreme Court	\$50,640	6
Appellate Court	\$48,108	6
Circuit Court	\$47,031	4

Annual Value of Salary Plus Annuity

Another method to compare judicial retirement systems is to estimate the cash value of the retirement system as a fringe benefit. The present value of the future retirement benefit plus a judge's current salary can be combined as a measure of total compensation, assuming all other fringe benefits are of equal value.

To approximate the annual value of the benefit, the retirement annuity must first be calculated. An annuity is the amount of money which, when invested at retirement, will provide each state's computed annual benefit over a member's expected lifetime. To determine the portion of the annuity which must be contributed for each year of active service, the annuity is divided by a factor which reflects interest earnings and length of service. The resulting amount, the annual contribution toward annuity, can be considered the present annual value of an active judge's future retirement income.

One additional adjustment must be made before ranking annual contributions or total compensation. In states which require member contributions for the judicial retirement system, current salary must be reduced by the annual member contribution. On this measure, Virginia's annual compensation and ranking would be:

TABLE 4

ANNUAL VALUE OF SALARY PLUS ANNUITY
Actual Salary

	<u>Compensation</u>	<u>Rank</u>
Supreme Court	\$92,298	5
Appellate Court	\$87,683	6
Circuit Court	\$85,691	4

Effects of Social Security

Virginia's judicial retirement system is supplemental to Social Security. Since some states do not participate in social security, those retirement systems are assumed to be more generous, as they provide their members' sole retirement income. To compare the effects of social security, salaries for participating states were reduced by the annual member contribution. In addition, their computed retirement benefits were increased by the maximum social security benefit.

The adjustment for social security participation had little effect on benefit or compensation rankings. In terms of retirement benefits, Virginia gained only one place since only one state ranking above Virginia did not participate in social security. In terms of annual value of compensation, the future annual retirement income attributed to social security exceeded the annual member contributions by only \$300. This had little effect on overall rankings.

D. Findings Using Salary Neutral Approach

Since the retirement benefit is a function of salary, each of the above rankings are influenced by each state's salary level. In order to isolate the relative generosity of the formula, exclusive of salary considerations, the same rankings were recalculated using a constant salary. In this case, Virginia salaries were applied to each state's benefit formula. This method addresses the question: If each state paid the same salary, where would their retirement benefit rank? Using constant salaries, Virginia's benefits remain the same, but its ranks change as other states' benefits are adjusted to reflect the neutral salary.

TABLE 5

ANNUAL RETIREMENT BENEFITS
Salary Neutral

	<u>Annual Benefit</u>	<u>Rank</u>
Supreme Court	\$50,640	12
Appellate Court	\$48,108	12
Circuit Court	\$47,031	11

Each of the states which moved ahead of Virginia have a maximum benefit based on current salary. Virginia's maximum is applied to an average three year salary, thereby deriving a lower benefit.

Annual Value of Salary Plus Annuity

Virginia's rank on total compensation using a neutral salary approach, rises due to the effect of member contributions. In states requiring member contributions, their neutral salary is discounted by the member contribution rate. This causes states with high benefits, but also with high member contributions, to fall below Virginia's combined salary and annuity. Only three states provide a more generous formula under a non-contributory system.

TABLE 6

ANNUAL VALUE OF SALARY PLUS ANNUITY
Salary Neutral

	<u>Annual Benefit</u>	<u>Rank</u>
Supreme Court	\$92,298	4
Appellate	\$87,683	1
Circuit Court	\$85,691	4

In this case, all of the states which rank above Virginia in total value of compensation have actual salaries in the bottom half of the rankings. This finding suggests that generous formulae have been combined with less competitive salaries. At the appellate level, the three states with more generous formulae, which would be expected to rank above Virginia, do not have appellate courts.

E. Results Of Eliminating Or Reducing Weighted Service Credits

Each of the above methods of comparison have been computed under the current provisions of the Virginia Judicial Retirement System. It has been proposed that the weighted service credit of 3.5 years for each year of active service be eliminated. Abolishing the weight would increase the number of service years required to reach the maximum benefit from about 13.5 years to over 47 years. Obviously, the benefits earned by the prototype judge in this analysis would be considerably lessened. After 15 years of service, earnings would be less than 1/3 of the maximum benefit instead of equal to it.

Annual Retirement Benefits Without Weighted Service Using Actual & Neutral Salaries

If the weighting were removed, Virginia's annual retirement benefits using actual and neutral salaries would be:

TABLE 7

ANNUAL RETIREMENT BENEFITS UNDER S.B. 713
USING ACTUAL & NEUTRAL SALARIES

	<u>Benefit</u>	<u>Rank</u>	<u>Salary Neutral Rank</u>
Supreme Court	\$20,791	45	42
Appellate Court	\$19,733	31	42
Circuit Court	\$15,477	46	46

Annual Value of Salary Plus Annuity Without Weighted Service Using Actual & Neutral Salaries

The value and ranking of total compensation would be as follows:

TABLE 8

ANNUAL VALUE OF SALARY PLUS ANNUITY WITHOUT WEIGHTED SERVICE CREDIT
S USING ACTUAL & NEUTRAL SALARIES

	<u>Benefit</u>	<u>Rank</u>	<u>Salary Neutral Rank</u>
Supreme Court	\$81,288	16	36
Appellate Court	\$77,217	14	25
Circuit Court	\$74,052	10	39

F. Findings Under Alternative Weighting Factors

Each of the above comparisons were also performed for other weighting factors in half point increments between 1 and 3.5. The results of these rankings are contained in the following table.

TABLE 9

EFFECTS OF ALTERNATIVE WEIGHTING FACTORS
ON THE LEVEL & RANK OF VIRGINIA'S
ANNUAL JUDICIAL RETIREMENT BENEFIT (1)
Comparison Using Actual Salaries & Neutral Salaries

<u>Court Level</u>	<u>Ratio 1:1</u>			<u>Ratio 1:1.5</u>		
	<u>Annual Benefit</u>	<u>State Rank</u>	<u>Salary Neutral Rank</u>	<u>Annual Benefit</u>	<u>State Rank</u>	<u>Salary Neutral Rank</u>
Supreme	20,791	45	42	28,998	30	36
Appellate	19,733	31	42	27,522	25	36
Circuit	15,497	46	46	23,088	34	40

<u>Court Level</u>	<u>Ratio 1:2</u>			<u>Ratio 1:2.5</u>		
	<u>Annual Benefit</u>	<u>State Rank</u>	<u>Salary Neutral Rank</u>	<u>Annual Benefit</u>	<u>State Rank</u>	<u>Salary Neutral Rank</u>
Supreme	37,205	21	25	45,412	9	14
Appellate	35,312	14	25	43,101	7	14
Circuit	30,700	19	34	38,312	14	17

<u>Court Level</u>	<u>Ratio 1:3</u>			<u>Ratio 1:3.5</u>		
	<u>Annual Benefit</u>	<u>State Rank</u>	<u>Salary Neutral Rank</u>	<u>Annual Benefit</u>	<u>State Rank</u>	<u>Salary Neutral Rank</u>
Supreme	50,640	6	12	50,640	6	12
Appellate	48,108	6	12	48,108	6	12
Circuit	45,923	4	11	47,031	4	11

(1) Assumes 15 years of service, average transfer credits if allowed , and retirement at age 65.

It is important to remember the characteristics of the prototype judge in these analyses when evaluating the effects of alternative weighting scenarios. Under the current system, the prototype judge reaches the maximum benefit before 15 years of service. This judge also has transfer credits.

As the weighting factor falls from 3.5 to 3, there appears to be no effect on Virginia's benefit or its ranking. However, instead of exceeding the maximum benefit, the prototype judge would just it. If the judge had no transfer credit, he would fall short of the maximum. Therefore, while this change would have little impact on the prototype judge, there would be effects upon the benefit level for other judges in different situations. It must be acknowledged that any decrease in the weighting factor will have these results: (a) The number of service years required to reach the maximum benefit on retirement benefits will increase and (b) For any number of service years below that required to reach the maximum, retirement benefits will be reduced.

V. FISCAL IMPACTS

The Joint Subcommittee considered the fiscal impacts of adopting alternative weighting factors, ranging from 1:1 (no weight) to 1:3. In each case, several assumptions were made to estimate the general funds savings that alternative weights would generate. The following table provides the estimated savings of each alternative weight assuming that:

- 1) The effective date of any proposed change would be January 1, 1987.
- 2) Total judicial payrolls would remain constant at the present level of \$19.8 million.
- 3) Normal turnover would require an average of 17 new judges appointed each year after the effective date of any proposed change.

TABLE 10

FISCAL IMPACT OF ALTERNATIVE WEIGHTING FACTORS (a)(b)

<u>Fiscal Impact of Following Weighting Factors</u>					
<u>Year</u>	<u>1:1</u>	<u>1:1.5</u>	<u>1:2</u>	<u>1:2.5</u>	<u>1:3</u>
1987-88	(\$69,354)	(\$55,484)	(\$41,613)	(\$27,742)	(\$13,871)
1988-89	(\$208,063)	(\$166,451)	(\$124,838)	(\$83,225)	(\$41,613)
1989-90	(\$346,772)	(\$277,418)	(\$208,063)	(\$138,709)	(\$69,354)
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2003-04	(\$2,179,710)	(\$1,743,768)	(\$1,307,826)	(\$871,884)	(\$435,942)

(a) Assume effective date of January 1, 1987.
 (b) Assume constant payroll of \$19,815,546.

The savings realized under each successive weight beyond 1:1 is simply a proportion of the savings accrued at 1:1. For example the general fund savings of reducing the weight from the current 1:3.5 to 1:1.5 is exactly 80 percent of the savings estimated by reducing the weight to 1:1.

The estimated savings of any proposed change will increase over time as more judges join the JRS under the new weight. With an average turnover rate of 17 judges each year, the Commonwealth's required contributions to the system decline by .7 percent of payroll each calendar year. After converting to a fiscal year basis, the estimated savings will rise each year until fiscal year 2004, when virtually all judges will come under the reduced weights. When compared to the Commonwealth's current payments to the JRS of \$6.8 million annually, the estimated savings of the alternative weights are relatively insignificant over the near term.

VI. JOINT SUBCOMMITTEE RECOMMENDATIONS

The Joint Subcommittee considered a substantial amount of information regarding the impact of any proposed changes in the benefit formula of the Judicial Retirement System and heard a great deal of testimony from judges and practicing attorneys. Over the course of this study, no evidence was presented which would indicate any change in the underlying factors of age, years of service, and compensation, upon which the JRS benefit was originally established. The Subcommittee is opposed to any reduction in the JRS benefit formula. For the following reasons, the Subcommittee believes that the public policy considerations which led to establishing the present JRS are sound, and that these policy considerations should not be disturbed unless there is clear justification for doing so.

1) Characteristics Of The Membership Remain Unchanged

In 1970, the General Assembly established the current Judicial Retirement System, by consolidating several haphazard and poorly funded systems. In establishing the new JRS, the General Assembly sought to insure that benefits under the new system would be comparable to those common to the predecessor systems. Over time, critics have charged that recent appointees have joined the system at an earlier age than their colleagues appointed several years ago. Thus, new appointees were in a position to unfairly take advantage of the benefit formula's favorable weighting of judicial years of service.

The Joint Subcommittee is unable to find any evidence that judges are being appointed to the bench at younger ages. According to data provided by the Secretary of the Supreme Court, the average age at appointment has remained relatively stable. No increase in average age at appointment can be demonstrated.

2) Maximum Benefit Provides Adequate Safeguard

The JRS benefit formula contains a built-in safeguard against judges able to accrue unusually high amounts of weighted years of service. The maximum retirement allowance, provided by statute, limits every judge's retirement benefit to no more than 75 percent of Average Final Compensation.

This benefit limit is adequate assurance that all judges, regardless of their accrued judicial service, will not receive benefits which are excessive in relation to their AFC, as is possible under VSRS..

3) The JRS Benefit Is Reasonable

When salary differences among the states are eliminated from the analysis, retirement benefits for Virginia judges rank 12th among the states at the Supreme and Appellate Court levels, and 11th at the Circuit Court level (Table 5). Clearly JRS benefits are not excessive. These rankings are appropriate, given the quality evidenced by the Virginia judiciary, and the quality Virginians expect from their judicial system. Further, these rankings are consistent with the intent of the General Assembly when it established the JRS in 1970. The 1970 VALC study, upon which the benefit formula is based, found that Virginia's retirement benefits, at that time, compared favorably to other state systems, and that to attract quality candidates to judicial service, the JRS benefit should be maintained at a favorable level.

4) Judicial Compensation Must Be Attractive To Attorneys In Private Practice

Interstate comparisons of judicial retirement benefits cannot be the sole basis upon which to judge JRS benefit levels. The Virginia judiciary draws its membership, not from other states, but from attorneys practicing law in the Commonwealth. Therefore judicial compensation must be attractive to high caliber attorneys in private practice throughout the state. Most prospective candidates to the bench face substantial reductions in salary. By private law firm standards, the excellent JRS benefit is the only aspect of judicial compensation that compares favorably. As retirement plans become more prevalent among private law firms, even this competitive edge may gradually disappear.

Leading attorneys in private practice, representing bar groups with no direct interest in judicial compensation, testified that 1) the Virginia judicial system is among the best in the nation, 2) the JRS benefit is the leading compensation factor attracting candidates to the bench, and 3) reductions in the JRS benefit would seriously erode Virginia's ability to recruit top quality judges, and eventually harm administration of justice in the Commonwealth.

5) JRS Benefits Must Be Adequate For Relatively Short Service

Judges are unique among state employees in that prior to their appointment they must have first embarked upon and been prominent in another career, the career of practicing law. Service on the bench, a judge's second career, necessarily begins later in life than most other occupations. Attorneys are generally not considered good candidates for the bench until they have achieved the maturity and competence acquired only after many years of legal experience. Therefore the JRS benefit must provide a suitable retirement benefit for members joining the system in their forties and fifties. The current method of weighting years of judicial service meets this objective.

6) Proposed Changes Will Erode Ability To Attract Older Candidates

Proposals to reduce the current weighting factor below 3.5 will erode the Commonwealth's ability to attract mature and prominent attorneys to the bench. For example, reducing the weighting factor to 2.5 has little effect on the benefit paid to the average retiree from the JRS. The average judge retires with more than 13.5 years of service and therefore receives the maximum benefit of 75 percent of Average Final Compensation. A weighting factor of 2.5 would reduce the average benefit somewhat, and extend the number of years needed to reach the maximum benefit by another 5 years. More importantly, it would disproportionately erode the benefit available to judges appointed relatively late in life, who could not expect to accrue enough judicially service to reach the maximum benefit. Such a proposal would adversely affect the Commonwealth's ability to attract to the bench, the very kind of mature attorneys likely to make the best judges. It would also tend to diminish the independence of judges by reducing the financial security currently provided by the retirement system.

7) Proposed Changes Have Negligible Fiscal Impact

By restricting proposed benefit changes to new members, savings attributed to reducing the current weighting factor accrue gradually, and are quite small over the next few years. For example, reducing the weighting factor to 2.5 will save the Commonwealth only \$28,000 the first year it goes into effect. Estimated savings will rise each year over the next seventeen years. By 1990 the annual savings will only be \$139,000. Compared to the \$27 million spent annually by the Commonwealth for judicial salaries and retirement benefits, such savings are negligible and not worth the potential harm they might inflict on the judicial system.

CONCLUSION

In summary, the Joint Subcommittee recommends no changes in the Judicial Retirement Benefit formula. The current formula provides a reasonable benefit for men and women expected to take the bench relatively late in life, and thereby denied the opportunity to accrue extensive service credits in a retirement system.

The retirement program is an integral and essential part of the total compensation plan for judges. To reduce judicial compensation without a compelling reason would signal a reduced emphasis on quality in the Commonwealth's judicial system.

No evidence can be found to support any change in the JRS weighted service credit. Indeed any reduction would save very little money, increase the compensation disparity between judicial service and private practice, and risk severe harm to a system known nationally for its high quality. The Commonwealth should be proud of its judiciary, and continue its support for the men and women serving on the bench.

Respectfully Submitted,

Owen B. Pickett

V. Earl Dickinson*

Floyd C. Bagley

William F. Green*

Lacey E. Putney*

Edward E. Willey

William F. Parkerson, Jr.

William A. Truban*

See attached Minority Report

VII. MINORITY REPORT

We agree with testimony made before the Joint Subcommittee that Virginia's judiciary is made up of highly qualified men and women who, by most accounts, are among the best in the nation. However we also believe that the current JRS benefit formula is excessive. We recommend that the weighted service credit be reduced from the present factor of 3.5 to 2.5.

We concede that judges are a special class of state employees, who by the nature of their positions, are unable to begin their judicial careers until relatively late in life. Unlike most state employees, judges are generally denied the opportunity to accrue extensive service credits in a retirement system, prior to reaching normal retirement age.

When the JRS was established by the General Assembly in 1970, Virginia's judicial salaries did not compare favorably with other states. At the time, a relatively generous retirement benefit was considered a justifiable offset to a relatively poor salary. Since then, the General Assembly has improved judicial salaries considerably, without a corresponding adjustment to the JRS benefit formula. This point is made clear by Table 4 in which Virginia's total compensation levels, represented by the combination of salaries and the present value of JRS benefits, rank 4th, 5th, and 6th respectively, for judges at the Circuit, Supreme, and Appellate Courts.

Compared to national peers, judges are the only class of employees supported by the state, whose compensation ranks so high. Virginia's classroom teacher salaries rank 28th among the states. Virginia's classified state employee salaries, as a group, rank 34th among the states. Virginia's state college and university faculty salaries rank at or below the 40th percentile of salaries paid at their respective peer institutions. Such favorable treatment afforded to just one group of employees is unjustified, not only by Virginia's own standards for state employee compensation, but also by most other states' standards for compensating judges.

Judges are public employees. As such, their compensation must be defensible and reasonable, both to the public at large and to other state employees. Under the current formula a judge is able to accrue within 13.5 years, a benefit that would accrue to other state employees only after 47 years. Most state employees aim for retirement after 30 years of service. However a Virginia judge can attain a comparable 30-year benefit in just 8.6 years of actual service. This is unfair to other members of the state retirement system who obtain a decent retirement income only after dedicating the majority of their working years to state service.

As displayed in Table 10 of the report, a weighting factor of 2.5 represents a reasonable benefit level that Virginia should establish for its judiciary. It retains the principle that judges require special treatment under a retirement formula adjusted for relatively short service careers. It would also make Virginia's benefit more defensible and consistent with practices in other states. A drop in rank from 4th to 14th among the states in benefits for circuit court judges would not harm Virginia's judiciary. On the contrary, it would instill public confidence that tax dollars are being spent wisely on a fair, attractive, and reasonable compensation plan for judges.

Respectfully Submitted,

V. Earl Dickinson

William F. Green

Lacey E. Putney

William A. Truban

APPENDIX A

50 STATE COMPARISON OF
JUDICIAL RETIREMENT BENEFITS

----- TYPE OF JUDGE=SUPREME COURT -----

STATE	ANNUAL JUDICIAL RETIREMENT BENEFIT	ANNUITY	ANNUAL CONTRIBUTION TOWARD ANNUITY
FEDERAL	104,100	928,468	38,398
DISTRICT OF COLUMBIA	72,360	645,379	26,691
ILLINOIS	68,000	606,492	25,082
ALASKA	64,774	577,724	23,893
NEW JERSEY	58,500	521,761	21,578
MASSACHUSETTS	56,925	507,714	20,997
GEORGIA	53,164	474,167	19,610
VIRGINIA	50,640	451,656	18,679
RHODE ISLAND	49,176	438,601	18,139
ALABAMA	47,850	426,774	17,650
TEXAS	45,900	409,382	16,931
MICHIGAN	44,677	398,479	16,480
MAINE	44,070	393,060	16,256
MARYLAND	43,931	391,823	16,204
CONNECTICUT	43,230	385,568	15,946
NEW MEXICO	43,125	384,632	15,907
MINNESOTA	42,750	381,287	15,769
LOUISIANA	42,269	377,001	15,591
WEST VIRGINIA	41,250	367,909	15,215
NEW HAMPSHIRE	41,172	367,213	15,187
NORTH CAROLINA	39,514	352,422	14,575
FLORIDA	38,762	345,716	14,298
DELAWARE	37,320	332,857	13,766
MISSOURI	36,250	323,314	13,371
HAWAII	35,551	317,078	13,113
KANSAS	35,254	314,428	13,004
OKLAHOMA	34,836	310,707	12,850
WASHINGTON	34,650	309,043	12,781
ARIZONA	33,716	300,715	12,437
INDIANA	31,800	283,624	11,730
WYOMING	31,750	283,178	11,711
ARKANSAS	31,285	279,026	11,540
IDAHO	28,754	256,459	10,606
NEVADA	28,185	251,386	10,396
IOWA	26,835	239,341	9,898
SOUTH DAKOTA	26,036	232,215	9,604
OHIO	25,207	224,818	9,298
NEBRASKA	24,657	219,916	9,095
VERMONT	24,451	218,078	9,019
MONTANA	24,217	215,990	8,933
KENTUCKY	23,188	206,815	8,553
COLORADO	22,700	202,461	8,373
PENNSYLVANIA	21,750	193,988	8,023
TENNESSEE	21,620	192,826	7,975
NEW YORK	21,614	192,777	7,973
NORTH DAKOTA	21,477	191,555	7,922
UTAH	21,467	191,461	7,918
WISCONSIN	19,369	172,749	7,144
MISSISSIPPI	12,480	111,309	4,603
CALIFORNIA	0	0	0
SOUTH CAROLINA	0	0	0
OREGON	0	0	0
U. S. Magistrates	16,669	148,671	6,149

50 STATE COMPARISON OF
JUDICIAL RETIREMENT BENEFITS

2

----- TYPE OF JUDGE=APPELLATE COURT -----

STATE	ANNUAL JUDICIAL RETIREMENT BENEFIT	ANNUITY	ANNUAL CONTRIBUTION TOWARD ANNUITY
FEDERAL	83,200	742,061	30,689
ILLINOIS	64,000	570,816	23,607
ALASKA	57,141	509,641	21,077
NEW JERSEY	56,250	501,694	20,748
GEORGIA	52,755	470,522	19,459
MASSACHUSETTS	52,688	469,920	19,434
VIRGINIA	48,108	429,075	17,745
ALABAMA	47,025	419,416	17,346
MICHIGAN	42,890	382,539	15,820
MARYLAND	42,137	375,819	15,543
TEXAS	41,310	368,444	15,238
CONNECTICUT	41,250	367,909	15,215
NEW MEXICO	40,950	365,233	15,105
LOUISIANA	40,238	358,883	14,842
MINNESOTA	39,437	351,743	14,547
NORTH CAROLINA	37,411	333,670	13,799
FLORIDA	34,980	311,986	12,903
HAWAII	34,563	308,271	12,749
KANSAS	33,995	303,206	12,540
MISSOURI	33,750	301,016	12,449
WASHINGTON	33,075	294,996	12,200
ARIZONA	32,717	291,805	12,068
OKLAHOMA	32,659	291,287	12,047
ARKANSAS	30,219	269,523	11,147
INDIANA	29,150	259,989	10,752
IDAHO	28,229	251,777	10,413
IOWA	25,470	227,167	9,395
OHIO	23,687	211,261	8,737
KENTUCKY	22,242	198,374	8,204
PENNSYLVANIA	21,150	188,637	7,801
COLORADO	21,019	187,468	7,753
TENNESSEE	20,545	183,242	7,578
NEW YORK	19,279	171,951	7,111
WISCONSIN	18,092	161,361	6,673
CALIFORNIA	0	0	0
SOUTH CAROLINA	0	0	0
OREGON	0	0	0
DELAWARE	N	N	N
MAINE	N	N	N
MISSISSIPPI	N	N	N
MONTANA	N	N	N
NEBRASKA	N	N	N
NEVADA	N	N	N
NEW HAMPSHIRE	N	N	N
NORTH DAKOTA	N	N	N
RHODE ISLAND	N	N	N
SOUTH DAKOTA	N	N	N
UTAH	N	N	N
VERMONT	N	N	N
WEST VIRGINIA	N	N	N
WYOMING	N	N	N
DISTRICT OF COLUMBIA	N	N	N
U. S. Magistrates	16,669	148,671	6,149

50 STATE COMPARISON OF
JUDICIAL RETIREMENT BENEFITS

----- TYPE OF JUDGE=CIRCUIT COURT -----

STATE	ANNUAL JUDICIAL RETIREMENT BENEFIT	ANNUITY	ANNUAL CONTRIBUTION TOWARD ANNUITY
FEDERAL	78,700	701,925	29,029
DISTRICT OF COLUMBIA	68,400	610,060	25,230
ALASKA	60,046	535,555	22,149
NEW JERSEY	52,500	468,247	19,365
MASSACHUSETTS	50,625	451,524	18,673
4 VIRGINIA	47,031	419,467	17,348
RHODE ISLAND	45,260	403,669	16,694
GEORGIA	43,736	390,084	16,132
MAINE	43,381	386,913	16,001
ILLINOIS	41,650	371,476	15,363
MARYLAND	40,776	363,678	15,040
NEW HAMPSHIRE	40,095	357,607	14,789
ALABAMA	39,600	353,192	14,607
CONNECTICUT	39,336	350,838	14,509
NEW MEXICO	38,824	346,269	14,320
WEST VIRGINIA	37,500	334,462	13,832
DELAWARE	35,160	313,592	12,969
TEXAS	32,700	291,651	12,062
LOUISIANA	31,965	285,094	11,790
WASHINGTON	31,500	280,948	11,619
ARIZONA	31,219	278,440	11,515
KANSAS	30,648	273,353	11,305
WYOMING	30,500	272,029	11,250
FLORIDA	30,019	267,740	11,073
ARKANSAS	29,153	260,016	10,753
OKLAHOMA	27,619	246,336	10,188
IDAHO	27,153	242,178	10,016
HAWAII	26,949	240,358	9,940
MISSOURI	26,125	233,009	9,636
INDIANA	25,705	229,263	9,482
NEVADA	25,665	228,904	9,467
NORTH CAROLINA	24,916	222,222	9,190
MICHIGAN	24,573	219,163	9,064
SOUTH DAKOTA	24,291	216,650	8,960
IOWA	23,805	212,317	8,781
MONTANA	23,608	210,560	8,708
VERMONT	22,999	205,128	8,483
NEBRASKA	22,808	203,423	8,413
KENTUCKY	21,295	189,932	7,855
NORTH DAKOTA	20,161	179,820	7,437
MINNESOTA	19,987	178,269	7,373
UTAH	19,600	174,812	7,230
COLORADO	19,407	173,095	7,159
PENNSYLVANIA	18,650	166,339	6,879
NEW YORK	18,047	160,960	6,657
WISCONSIN	17,066	152,211	6,295
OHIO	16,902	150,750	6,234
TENNESSEE	15,628	139,383	5,764
MISSISSIPPI	10,969	97,830	4,046
CALIFORNIA	0	0	0
SOUTH CAROLINA	0	0	0
OREGON	0	0	0
U.S. Magistrates	16,669	148,671	6,149

50 STATE COMPARISON OF
JUDICIAL COMPENSATION

----- TYPE OF JUDGE=SUPREME COURT -----

STATE	VALUE TO MEMBER SALARY + BENEFIT
FEDERAL	142,498
ALASKA	104,213
ILLINOIS	103,707
NEW YORK	97,698
NEW JERSEY	97,238
DISTRICT OF COLUMBIA	96,518
5 VIRGINIA	92,298
MICHIGAN	91,460
MASSACHUSETTS	90,825
TEXAS	88,841
FLORIDA	88,645
MISSOURI	85,871
GEORGIA	85,179
DELAWARE	84,674
MINNESOTA	84,169
RHODE ISLAND	83,707
MARYLAND	82,944
CALIFORNIA	81,713
PENNSYLVANIA	80,315
CONNECTICUT	78,171
ALABAMA	77,622
NORTH CAROLINA	76,480
ARIZONA	75,212
WYOMING	75,211
MAINE	75,016
LOUISIANA	74,835
WASHINGTON	73,831
NEVADA	71,896
KANSAS	71,656
ARKANSAS	71,606
OHIO	71,518
WISCONSIN	71,404
NEW MEXICO	71,395
NEW HAMPSHIRE	70,083
SOUTH CAROLINA	69,531
OKLAHOMA	69,029
TENNESSEE	68,373
IOWA	68,362
INDIANA	68,130
NEBRASKA	67,057
WEST VIRGINIA	66,915
COLORADO	66,333
UTAH	65,918
KENTUCKY	65,108
NORTH DAKOTA	64,218
HAWAII	62,403
IDAHO	62,090
MISSISSIPPI	60,063
SOUTH DAKOTA	60,005
VERMONT	55,569
MONTANA	54,920
OREGON	49,576
U.S. Magistrates	69,761

50 STATE COMPARISON OF
JUDICIAL COMPENSATION

----- TYPE OF JUDGE=APPELLATE COURT -----

STATE	VALUE TO MEMBER SALARY + BENEFIT
FEDERAL	113,889
ILLINOIS	97,607
NEW JERSEY	93,498
NEW YORK	91,986
ALASKA	91,932
MICHIGAN	87,802
6 VIRGINIA	87,683
GEORGIA	84,524
MASSACHUSETTS	84,064
FLORIDA	79,996
TEXAS	79,957
MISSOURI	79,949
MARYLAND	79,557
PENNSYLVANIA	78,204
MINNESOTA	77,647
CALIFORNIA	76,607
ALABAMA	76,284
CONNECTICUT	74,590
ARIZONA	72,983
NORTH CAROLINA	72,410
LOUISIANA	71,239
WASHINGTON	70,475
ARKANSAS	69,167
KANSAS	69,098
NEW MEXICO	67,794
OHIO	67,297
WISCONSIN	67,153
SOUTH CAROLINA	66,055
TENNESSEE	65,653
IOWA	64,883
OKLAHOMA	64,715
INDIANA	62,452
KENTUCKY	62,450
COLORADO	61,573
IDAHO	60,956
HAWAII	60,670
OREGON	48,396
DELAWARE	N
MAINE	N
MISSISSIPPI	N
MONTANA	N
NEBRASKA	N
NEVADA	N
NEW HAMPSHIRE	N
NORTH DAKOTA	N
RHODE ISLAND	N
SOUTH DAKOTA	N
UTAH	N
VERMONT	N
WEST VIRGINIA	N
WYOMING	N
DISTRICT OF COLUMBIA	N
U.S. Magistrates	69,761

50 STATE COMPARISON OF
JUDICIAL COMPENSATION

----- TYPE OF JUDGE=CIRCUIT COURT -----

STATE	VALUE TO MEMBER SALARY + BENEFIT
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FEDERAL	107,729
ALASKA	96,606
DISTRICT OF COLUMBIA	91,236
NEW JERSEY	87,265
NEW YORK	86,197
4 VIRGINIA	85,691
MASSACHUSETTS	80,773
DELAWARE	79,773
ILLINOIS	78,263
RHODE ISLAND	77,040
MARYLAND	76,986
FLORIDA	75,145
MAINE	73,842
WYOMING	72,250
CONNECTICUT	71,129
GEORGIA	70,074
ARIZONA	69,640
PENNSYLVANIA	68,304
NEW HAMPSHIRE	68,249
MINNESOTA	67,873
WASHINGTON	67,119
CALIFORNIA	66,942
ARKANSAS	66,727
SOUTH CAROLINA	66,055
NEVADA	65,467
LOUISIANA	65,341
NEW MEXICO	64,274
ALABAMA	64,239
TEXAS	63,292
WISCONSIN	62,995
NEBRASKA	62,029
MISSOURI	61,886
KANSAS	61,807
TENNESSEE	61,516
NORTH CAROLINA	61,236
UTAH	61,230
WEST VIRGINIA	60,832
IOWA	60,621
NORTH DAKOTA	60,222
KENTUCKY	59,792
OHIO	59,304
IDAHO	58,632
OKLAHOMA	57,004
COLORADO	56,839
HAWAII	56,492
SOUTH DAKOTA	55,976
INDIANA	55,072
MONTANA	53,539
VERMONT	52,753
MISSISSIPPI	51,986
MICHIGAN	50,303
OREGON	44,971

U.S. Magistrates	69,761
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50 STATE COMPARISON OF JUDICIAL RETIREMENT BENEFITS
SALARY NEUTRAL

----- TYPE OF JUDGE=SUPREME COURT -----

STATE	ANNUAL JUDICIAL RETIREMENT BENEFIT	TOTAL LIFETIME PAYMENT	ANNUAL CONTRIBUTION TOWARD ANNUITY
FEDERAL	73,619	656,608	27,155
DISTRICT OF COLUMBIA	73,619	656,608	27,155
ILLINOIS	58,895	525,286	21,724
ALABAMA	55,214	492,456	20,366
GEORGIA	55,214	492,456	20,366
MAINE	55,214	492,456	20,366
MASSACHUSETTS	55,214	492,456	20,366
NEW HAMPSHIRE	55,214	492,456	20,366
NEW JERSEY	55,214	492,456	20,366
NEW MEXICO	55,214	492,456	20,366
RHODE ISLAND	55,214	492,456	20,366
WEST VIRGINIA	55,214	492,456	20,366
ALASKA	55,214	492,456	20,366
12 VIRGINIA	50,640	451,658	18,679
CONNECTICUT	48,589	433,361	17,922
MARYLAND	45,552	406,276	16,802
HAWAII	44,901	400,470	16,562
NORTH CAROLINA	44,171	393,965	16,293
TEXAS	44,171	393,965	16,293
LOUISIANA	42,875	382,404	15,815
MICHIGAN	42,331	377,550	15,614
KANSAS	41,595	370,983	15,343
INDIANA	39,018	348,002	14,392
OKLAHOMA	38,755	345,658	14,295
WASHINGTON	38,650	344,719	14,256
IDAHO	38,650	344,719	14,256
FLORIDA	37,474	334,227	13,822
ARKANSAS	36,810	328,304	13,577
DELAWARE	36,810	328,304	13,577
MISSOURI	36,810	328,304	13,577
WYOMING	36,810	328,304	13,577
ARIZONA	36,773	327,976	13,564
VERMONT	36,736	327,647	13,550
MONTANA	36,441	325,021	13,442
SOUTH DAKOTA	33,760	301,105	12,453
NEVADA	33,740	300,923	12,445
IOWA	30,384	270,995	11,207
NEBRASKA	29,695	264,850	10,953
UTAH	27,008	240,884	9,962
KENTUCKY	26,644	237,640	9,828
NORTH DAKOTA	25,837	230,438	9,530
OHIO	25,658	228,840	9,464
COLORADO	25,320	225,829	9,339
TENNESSEE	20,821	185,706	7,680
PENNSYLVANIA	20,256	180,663	7,472
WISCONSIN	20,256	180,663	7,472
NEW YORK	17,218	153,564	6,351
MISSISSIPPI	15,356	136,962	5,664
CALIFORNIA	0	0	0
MINNESOTA	0	0	0
OREGON	0	0	0
SOUTH CAROLINA	0	0	0
U. S. Magistrates	17,724	158,080	6,537

50 STATE COMPARISON OF JUDICIAL RETIREMENT BENEFITS
SALARY NEUTRAL

----- TYPE OF JUDGE=APPELLATE COURT -----

STATE	ANNUAL JUDICIAL RETIREMENT BENEFIT	TOTAL LIFETIME PAYMENT	ANNUAL CONTRIBUTION TOWARD ANNUITY
FEDERAL	69,938	623,777	25,797
DISTRICT OF COLUMBIA	69,938	623,777	25,797
ILLINOIS	55,950	499,022	20,638
ALABAMA	52,454	467,833	19,348
GEORGIA	52,454	467,833	19,348
MAINE	52,454	467,833	19,348
MASSACHUSETTS	52,454	467,833	19,348
NEW HAMPSHIRE	52,454	467,833	19,348
NEW JERSEY	52,454	467,833	19,348
NEW MEXICO	52,454	467,833	19,348
RHODE ISLAND	52,454	467,833	19,348
WEST VIRGINIA	52,454	467,833	19,348
ALASKA	52,453	467,833	19,348
12 VIRGINIA	48,108	429,075	17,745
CONNECTICUT	46,159	411,693	17,026
MARYLAND	43,274	385,962	15,962
HAWAII	42,656	380,447	15,734
NORTH CAROLINA	41,963	374,266	15,478
TEXAS	41,963	374,266	15,478
LOUISIANA	40,731	363,284	15,024
MICHIGAN	40,214	358,672	14,833
KANSAS	39,515	352,434	14,575
INDIANA	37,067	330,602	13,673
OKLAHOMA	36,817	328,373	13,580
WASHINGTON	36,717	327,483	13,544
IDAHO	36,717	327,483	13,544
FLORIDA	35,600	317,516	13,131
ARKANSAS	34,969	311,889	12,899
DELAWARE	34,969	311,889	12,899
MISSOURI	34,969	311,889	12,899
WYOMING	34,969	311,889	12,899
ARIZONA	34,934	311,577	12,886
VERMONT	34,899	311,265	12,873
MONTANA	34,619	308,770	12,770
SOUTH DAKOTA	32,072	286,050	11,830
NEVADA	32,053	285,877	11,823
IOWA	28,865	257,445	10,647
NEBRASKA	28,210	251,609	10,406
UTAH	25,658	228,840	9,464
KENTUCKY	25,312	225,756	9,336
NORTH DAKOTA	24,545	218,915	9,054
OHIO	24,375	217,398	8,991
COLORADO	24,054	214,538	8,873
TENNESSEE	19,747	176,127	7,284
PENNSYLVANIA	19,243	171,630	7,098
WISCONSIN	19,243	171,630	7,098
NEW YORK	16,357	145,886	6,033
MISSISSIPPI	14,957	133,401	5,517
CALIFORNIA	0	0	0
MINNESOTA	0	0	0
OREGON	0	0	0
SOUTH CAROLINA	0	0	0
U.S. Magistrates	16,838	150,178	6,211

50 STATE COMPARISON OF JUDICIAL RETIREMENT BENEFITS
SALARY NEUTRAL

----- TYPE OF JUDGE=CIRCUIT COURT -----

STATE	ANNUAL JUDICIAL RETIREMENT BENEFIT	TOTAL LIFETIME PAYMENT	ANNUAL CONTRIBUTION TOWARD ANNUITY
FEDERAL	68,343	609,551	25,209
DISTRICT OF COLUMBIA	68,343	609,551	25,209
ALABAMA	51,257	457,163	18,907
GEORGIA	51,257	457,163	18,907
MAINE	51,257	457,163	18,907
MASSACHUSETTS	51,257	457,163	18,907
NEW HAMPSHIRE	51,257	457,163	18,907
NEW JERSEY	51,257	457,163	18,907
NEW MEXICO	51,257	457,163	18,907
RHODE ISLAND	51,257	457,163	18,907
WEST VIRGINIA	51,257	457,163	18,907
ALASKA	51,257	457,163	18,907
11 VIRGINIA	47,053	419,663	17,356
CONNECTICUT	45,106	402,304	16,638
MARYLAND	42,287	377,160	15,598
ILLINOIS	41,860	373,350	15,440
TEXAS	41,006	365,731	15,125
MICHIGAN	39,297	350,492	14,495
KANSAS	38,614	344,396	14,243
INDIANA	36,222	323,062	13,361
OKLAHOMA	36,004	321,116	13,280
WASHINGTON	35,880	320,014	13,235
IDAHO	35,880	320,014	13,235
DELAWARE	34,889	311,173	12,869
ARKANSAS	34,172	304,776	12,604
MISSOURI	34,172	304,776	12,604
WYOMING	34,172	304,776	12,604
ARIZONA	34,137	304,471	12,592
MONTANA	33,830	301,728	12,478
HAWAII	33,486	298,661	12,352
LOUISIANA	33,329	297,262	12,294
VERMONT	33,278	296,805	12,275
SOUTH DAKOTA	31,369	279,776	11,571
NEVADA	31,322	279,357	11,553
FLORIDA	31,290	279,076	11,542
NORTH CAROLINA	30,754	274,298	11,344
IOWA	28,232	251,798	10,413
NEBRASKA	27,586	246,043	10,175
UTAH	25,095	223,821	9,256
KENTUCKY	24,752	220,767	9,130
NORTH DAKOTA	24,002	214,077	8,853
COLORADO	23,526	209,832	8,678
MINNESOTA	22,502	200,698	8,300
OHIO	19,135	170,663	7,058
PENNSYLVANIA	18,821	167,865	6,942
WISCONSIN	18,821	167,865	6,942
NEW YORK	15,998	142,686	5,901
TENNESSEE	15,488	138,137	5,713
MISSISSIPPI	14,626	130,453	5,395
CALIFORNIA	0	0	0
OREGON	0	0	0
SOUTH CAROLINA	0	0	0
U.S. Magistrates	16,640	146,807	6,071

50 STATE COMPARISON OF JUDICIAL COMPENSATION
SALARY NEUTRAL

----- TYPE OF JUDGE=SUPREME COURT -----

STATE	VALUE TO MEMBER SALARY + BENEFIT
FEDERAL	100,774
DISTRICT OF COLUMBIA	98,197
MAINE	93,985
NEW HAMPSHIRE	93,985
RHODE ISLAND	93,985
4 VIRGINIA	92,298
NEW JERSEY	91,777
NEW MEXICO	91,409
ILLINOIS	89,822
ALABAMA	89,568
WEST VIRGINIA	89,568
ALASKA	88,832
GEORGIA	88,464
MASSACHUSETTS	88,096
CONNECTICUT	87,860
FLORIDA	87,441
MISSOURI	87,196
WYOMING	87,196
MICHIGAN	86,656
NEVADA	86,064
MARYLAND	86,004
NORTH CAROLINA	85,495
TEXAS	85,495
KANSAS	84,544
HAWAII	84,439
ARKANSAS	84,252
OKLAHOMA	84,233
INDIANA	83,594
UTAH	83,581
DELAWARE	83,516
VERMONT	83,488
IDAHO	83,458
MONTANA	82,644
NORTH DAKOTA	82,413
WASHINGTON	82,354
ARIZONA	82,030
IOWA	81,882
LOUISIANA	81,336
SOUTH DAKOTA	80,182
NEBRASKA	80,155
KENTUCKY	79,766
NEW YORK	77,761
COLORADO	77,069
PENNSYLVANIA	77,042
WISCONSIN	77,042
OHIO	76,825
TENNESSEE	75,410
MISSISSIPPI	74,866
MINNESOTA	73,619
SOUTH CAROLINA	70,674
OREGON	68,466
CALIFORNIA	67,729
U.S. Magistrates	75,003

50 STATE COMPARISON OF JUDICIAL COMPENSATION
SALARY NEUTRAL

----- TYPE OF JUDGE=APPELLATE COURT -----

STATE	VALUE TO MEMBER SALARY + BENEFIT
FEDERAL	95,735
1 VIRGINIA	87,683
NEW JERSEY	87,188
NEW MEXICO	86,838
ILLINOIS	85,330
ALABAMA	85,090
ALASKA	84,390
GEORGIA	84,041
MASSACHUSETTS	83,691
CONNECTICUT	83,467
FLORIDA	83,069
MISSOURI	82,837
MICHIGAN	82,324
MARYLAND	81,704
NORTH CAROLINA	81,220
TEXAS	81,220
KANSAS	80,317
HAWAII	80,217
ARKANSAS	80,039
OKLAHOMA	80,021
INDIANA	79,414
IDAHO	79,285
WASHINGTON	78,236
ARIZONA	77,928
IOWA	77,788
LOUISIANA	77,269
KENTUCKY	75,778
NEW YORK	73,873
COLORADO	73,215
PENNSYLVANIA	73,189
WISCONSIN	73,189
OHIO	72,984
TENNESSEE	71,627
MINNESOTA	69,938
SOUTH CAROLINA	67,140
OREGON	65,042
CALIFORNIA	64,343
DELAWARE	.
MAINE	.
MISSISSIPPI	.
MONTANA	.
NEBRASKA	.
NEVADA	.
NEW HAMPSHIRE	.
NORTH DAKOTA	.
RHODE ISLAND	.
SOUTH DAKOTA	.
UTAH	.
VERMONT	.
WEST VIRGINIA	.
WYOMING	.
DISTRICT OF COLUMBIA	.
U.S. Magistrates	65,865

50 STATE COMPARISON OF JUDICIAL COMPENSATION
SALARY NEUTRAL

----- TYPE OF JUDGE=CIRCUIT COURT -----

STATE	VALUE TO MEMBER SALARY + BENEFIT
FEDERAL	93,552
DISTRICT OF COLUMBIA	91,160
MAINE	87,250
NEW HAMPSHIRE	87,250
RHODE ISLAND	87,250
4 VIRGINIA	85,699
NEW JERSEY	85,199
NEW MEXICO	84,858
ALABAMA	83,149
WEST VIRGINIA	83,149
ALASKA	82,466
GEORGIA	82,124
MASSACHUSETTS	81,782
CONNECTICUT	81,564
MISSOURI	80,947
WYOMING	80,947
MICHIGAN	80,446
NEVADA	79,896
FLORIDA	79,885
MARYLAND	79,840
TEXAS	79,368
ILLINOIS	78,658
ARKANSAS	78,214
OKLAHOMA	78,206
KANSAS	77,870
DELAWARE	77,795
INDIANA	77,603
UTAH	77,599
IDAHO	77,477
VERMONT	77,201
MONTANA	76,721
MINNESOTA	76,643
NORTH DAKOTA	76,513
WASHINGTON	76,452
ARIZONA	76,151
IOWA	76,023
NORTH CAROLINA	75,586
HAWAII	75,364
SOUTH DAKOTA	74,446
NEBRASKA	74,418
KENTUCKY	74,056
LOUISIANA	73,119
NEW YORK	72,194
COLORADO	71,553
PENNSYLVANIA	71,526
WISCONSIN	71,526
MISSISSIPPI	69,638
OHIO	69,592
TENNESSEE	68,588
SOUTH CAROLINA	65,609
OREGON	63,559
CALIFORNIA	62,876
U. S. Magistrates	64,389

50 STATE COMPARISON OF JUDICIAL RETIREMENT BENEFITS
WITHOUT WEIGHTING

----- TYPE OF JUDGE=SUPREME COURT -----

STATE	ANNUAL JUDICIAL RETIREMENT BENEFIT	TOTAL LIFETIME PAYMENT	ANNUAL CONTRIBUTION TOWARD ANNUITY
FEDERAL	104,100	928,468	38,398
DISTRICT OF COLUMBIA	72,360	645,379	26,691
ILLINOIS	68,000	606,492	25,082
ALASKA	64,774	577,724	23,893
NEW JERSEY	58,500	521,761	21,578
MASSACHUSETTS	56,925	507,714	20,997
GEORGIA	53,164	474,167	19,610
RHODE ISLAND	49,176	438,601	18,139
ALABAMA	47,850	426,774	17,650
TEXAS	45,900	409,382	16,931
MICHIGAN	44,677	398,479	16,480
MAINE	44,070	393,060	16,256
MARYLAND	43,931	391,823	16,204
CONNECTICUT	43,230	385,568	15,946
NEW MEXICO	43,125	384,632	15,907
MINNESOTA	42,750	381,287	15,769
LOUISIANA	42,269	377,001	15,591
WEST VIRGINIA	41,250	367,909	15,215
NEW HAMPSHIRE	41,172	367,213	15,187
NORTH CAROLINA	39,514	352,422	14,575
FLORIDA	38,762	345,716	14,298
DELAWARE	37,320	332,857	13,766
MISSOURI	36,250	323,314	13,371
HAWAII	35,551	317,078	13,113
KANSAS	35,254	314,428	13,004
OKLAHOMA	34,836	310,707	12,850
WASHINGTON	34,650	309,043	12,781
ARIZONA	33,716	300,715	12,437
INDIANA	31,800	283,624	11,730
WYOMING	31,750	283,178	11,711
ARKANSAS	31,285	279,026	11,540
IDAHO	28,754	256,459	10,606
NEVADA	28,185	251,386	10,396
IOWA	26,835	239,341	9,898
SOUTH DAKOTA	26,036	232,215	9,604
OHIO	25,207	224,818	9,298
NEBRASKA	24,657	219,916	9,095
VERMONT	24,451	218,078	9,019
MONTANA	24,217	215,990	8,933
KENTUCKY	23,188	206,815	8,553
COLORADO	22,700	202,461	8,373
PENNSYLVANIA	21,750	193,988	8,023
TENNESSEE	21,620	192,826	7,975
NEW YORK	21,614	192,777	7,973
NORTH DAKOTA	21,477	191,555	7,922
UTAH	21,467	191,461	7,918
45 VIRGINIA	20,791	185,437	7,669
WISCONSIN	19,369	172,749	7,144
MISSISSIPPI	12,480	111,309	4,603
CALIFORNIA	0	0	0
SOUTH CAROLINA	0	0	0
OREGON	0	0	0
U.S. Magistrates	16,669	148,671	6,149

50 STATE COMPARISON OF JUDICIAL RETIREMENT BENEFITS
WITHOUT WEIGHTING

----- TYPE OF JUDGE=APPELLATE COURT -----

STATE	ANNUAL JUDICIAL RETIREMENT BENEFIT	TOTAL LIFETIME PAYMENT	ANNUAL CONTRIBUTION TOWARD ANNUITY
FEDERAL	83,200	742,061	30,689
ILLINOIS	64,000	570,816	23,607
ALASKA	57,141	509,641	21,077
NEW JERSEY	56,250	501,694	20,748
GEORGIA	52,755	470,522	19,459
MASSACHUSETTS	52,688	469,920	19,434
ALABAMA	47,025	419,416	17,346
MICHIGAN	42,890	382,539	15,820
MARYLAND	42,137	375,819	15,543
TEXAS	41,310	368,444	15,238
CONNECTICUT	41,250	367,909	15,215
NEW MEXICO	40,950	365,233	15,105
LOUISIANA	40,238	358,883	14,842
MINNESOTA	39,437	351,743	14,547
NORTH CAROLINA	37,411	333,670	13,799
FLORIDA	34,980	311,986	12,903
HAWAII	34,563	308,271	12,749
KANSAS	33,995	303,206	12,540
MISSOURI	33,750	301,016	12,449
WASHINGTON	33,075	294,996	12,200
ARIZONA	32,717	291,805	12,068
OKLAHOMA	32,659	291,287	12,047
ARKANSAS	30,219	269,523	11,147
INDIANA	29,150	259,989	10,752
IDAHO	28,229	251,777	10,413
IOWA	25,470	227,167	9,395
OHIO	23,687	211,261	8,737
KENTUCKY	22,242	198,374	8,204
PENNSYLVANIA	21,150	188,637	7,801
COLORADO	21,019	187,468	7,753
TENNESSEE	20,545	183,242	7,578
31 VIRGINIA	19,733	175,998	7,279
NEW YORK	19,279	171,951	7,111
WISCONSIN	18,092	161,361	6,673
CALIFORNIA	0	0	0
SOUTH CAROLINA	0	0	0
OREGON	0	0	0
DELAWARE	N	N	N
MAINE	N	N	N
MISSISSIPPI	N	N	N
MONTANA	N	N	N
NEBRASKA	N	N	N
NEVADA	N	N	N
NEW HAMPSHIRE	N	N	N
NORTH DAKOTA	N	N	N
RHODE ISLAND	N	N	N
SOUTH DAKOTA	N	N	N
UTAH	N	N	N
VERMONT	N	N	N
WEST VIRGINIA	N	N	N
WYOMING	N	N	N
DISTRICT OF COLUMBIA	N	N	N
U.S. Magistrates	16,669	148,671	6,149

50 STATE COMPARISON OF JUDICIAL RETIREMENT BENEFITS
WITHOUT WEIGHTING

----- TYPE OF JUDGE=CIRCUIT COURT -----

STATE	ANNUAL JUDICIAL RETIREMENT BENEFIT	TOTAL LIFETIME PAYMENT	ANNUAL CONTRIBUTION TOWARD ANNUITY
FEDERAL	78,700	701,925	29,029
DISTRICT OF COLUMBIA	68,400	610,060	25,230
ALASKA	60,046	535,555	22,149
NEW JERSEY	52,500	468,247	19,365
MASSACHUSETTS	50,625	451,524	18,673
RHODE ISLAND	45,260	403,669	16,694
GEORGIA	43,736	390,084	16,132
MAINE	43,381	386,913	16,001
ILLINOIS	41,650	371,476	15,363
MARYLAND	40,776	363,678	15,040
NEW HAMPSHIRE	40,095	357,607	14,789
ALABAMA	39,600	353,192	14,607
CONNECTICUT	39,336	350,838	14,509
NEW MEXICO	38,824	346,269	14,320
WEST VIRGINIA	37,500	334,462	13,832
DELAWARE	35,160	313,592	12,969
TEXAS	32,700	291,651	12,062
LOUISIANA	31,965	285,094	11,790
WASHINGTON	31,500	280,948	11,619
ARIZONA	31,219	278,440	11,515
KANSAS	30,648	273,353	11,305
WYOMING	30,500	272,029	11,250
FLORIDA	30,019	267,740	11,073
ARKANSAS	29,153	260,016	10,753
OKLAHOMA	27,619	246,336	10,188
IDAHO	27,153	242,178	10,016
HAWAII	26,949	240,358	9,940
MISSOURI	26,125	233,009	9,636
INDIANA	25,705	229,263	9,482
NEVADA	25,665	228,904	9,467
NORTH CAROLINA	24,916	222,222	9,190
MICHIGAN	24,573	219,163	9,064
SOUTH DAKOTA	24,291	216,650	8,960
IOWA	23,805	212,317	8,781
MONTANA	23,608	210,560	8,708
VERMONT	22,999	205,128	8,483
NEBRASKA	22,808	203,423	8,413
KENTUCKY	21,295	189,932	7,855
NORTH DAKOTA	20,161	179,820	7,437
MINNESOTA	19,987	178,269	7,373
UTAH	19,600	174,812	7,230
COLORADO	19,407	173,095	7,159
PENNSYLVANIA	18,650	166,339	6,879
NEW YORK	18,047	160,960	6,657
WISCONSIN	17,066	152,211	6,295
OHIO	16,902	150,750	6,234
TENNESSEE	15,628	139,383	5,764
46 VIRGINIA	15,477	138,038	5,709
MISSISSIPPI	10,969	97,830	4,046
CALIFORNIA	0	0	0
SOUTH CAROLINA	0	0	0
OREGON	0	0	0
U.S. Magistrates	16,669	148,671	6,149

APPENDIX B

THE CHAIRMAN: Ladies and Gentlemen, we were waiting momentarily for Senator Truban, who is going to be joining us this morning. But I think we will go ahead and get started, in fairness to those of you who are here and want to proceed with this matter.

This is a subcommittee, joint subcommittee, actually, to review the judicial retirement system. During the past session of the Legislature, there was some legislation proposed which would alter the way in which benefits would be computed. The legislation passed the Senate and was not acted upon in the House. And the Chairman of the House Appropriations Committee decided there should be a study of this matter to get some detailed information before any action is taken.

We have with us today from the Senate, Senator Willey, Senator Parkerson, and Senator Truban will be joining us shortly.

And from the House of Delegates, Del. Dickinson, Del. Floyd Bagley, Del. William Green, and Del. Lacey Putney.

We're going to proceed by having the staff, Mr. Schultze of the Appropriations Committee staff, provide us with an overview of how we got where we are and how the present system functions.

MR. SCHULTZE: Thank you. Before we get started, I'd like to point out we are preserving an audio record of this. And the means by which we're doing that is courtesy of Channel 56. And they asked me to point out to you that in order for your remarks to be captured on tape, that it will be important to speak directly into the mike.

And I've turned all the mikes on so you don't have to flip the buttons or anything. But it is important to speak into it, if you have any remarks. And the same would be true for any speakers who come up later to speak into this mike here at the podium.

We also have a couple of handouts that we've already placed in front of your desks -- in front of your seats, rather. One of them is entitled the "Overview of the Judicial Retirement System," which I prepared, and its purpose is to simply refresh your memories as to what the features of the current system are and what the previous studies found over the last 20 years, other legislative studies on the same issue.

And I prepared these slides to summarize what's in that background paper so that you don't have to simply read as

we go through this.

The current judicial retirement system, as you know, has a substantial -- requires a substantial employer contribution. It's approximately \$6.8 million estimated for the current fiscal year. That's on a wage base of approximately \$19 to \$20 million. The employer contribution is about 29-and-a-half percent, 29.44 to be precise. And the employee contribution is an additional five percent which, as you know, we pick up, just as we do for the other VSRS members, and we've been picking that up since October of '83. So the grand total contribution is 34.44 percent.

If you want to compare that to the VSRS employer contribution rate, again including the member part of 5 percent, the VSRS contribution rate is in the neighborhood of 12 percent.

The Judicial Retirement System rate is expected to rise next biennium, the '86-88 biennium, from the current 34.44 up to approximately 37 percent of payroll, and that's due primarily to the cost of living benefit to be paid to current retirees.

Point 2 is the credible service. As you know, years on the bench are weighted at 3.5 to 1. In addition to that, any VSRS service can be transferred to the JRS, but they would be unweighted. And, secondly, any military service can be purchased and transferred to the JRS, but they again would be unweighted years.

Normal retirement date is the same as you would find in VSRS, age 65 or, more typically, age 60 with 30 years of service. And these would be weighted years of service. It would only take 8.6 years of actual service to achieve that 30.

Point 4 is the nature of the benefit formula itself. The formula works, first of all, by defining average final compensation, which I've abbreviated here as AFC. That's the 36 highest consecutive months of salary, minus \$1200. That's called the \$1200 offset. Times an accrual rate of 1.65 percent and then multiplied further by the number of years of service which are subsequently weighted by 3.5.

And as an example, if we take a judge with an average final compensation of \$60,000, we'd subtract \$1200 from that sixty, times 1.65 percent. And let's assume that he was on the bench for 12 years before he retired, it would be simply 12 times 3.5, so his annual benefit then at retirement would be \$40,748.

That 12 years, once multiplied by 3.5, would result in 42 years of service from the point of view of the formula. This formula also does not include any Social Security benefit that the judge would be entitled to. Most judges at that point in their career would be entitled to the maximum Social Security benefit, which presently is about \$8600. So this judge could expect to retire with \$40,748, plus \$8600 from the Social Security Administration.

Then the last point I'd make on the current system is the maximum retirement allowance or cap. No judge can retire under the current system with a benefit that would exceed 75 percent of his average final compensation. In this case the average final compensation was \$60,000. Times 75 percent, that would mean that this judge could not retire no matter how many years of service he had and no matter how great the weighting factor, could not retire at more than \$45,000.

And any judge will reach that cap in approximately 13 and a half years of service. So, there again, the weighting factor does not provide any assistance to a judge beyond 13 and a half years of actual service on the bench because they are capped out at that point.

That's the current system, as briefly as I can describe it anyway. Now I'd like to go over some of the previous studies. There are three studies that I've been able to find that have been conducted by legislative groups over the last 20 years. The first is the retirement -- entitled "Retirement Systems for Judges, Commissioners and Clerks." That was done by the VALC in 1967.

They in turn formulated some alternatives that they asked to be reviewed further, and they authorized themselves to continue the study, which ended up or culminated in 1970 with a report entitled "Judicial Retirement System for Virginia." And that is the landmark study or the study that really served as the foundation for the current system as we know it.

And then the third study was done in 1980, "Report of the Virginia Retirement Study Commission." That study, of course, concentrated primarily on VSRS and only tangentially looked into JRS. And specifically, they looked at the three-and-a-half-to-one weighting and confirmed or recommended that it be continued.

When VALC first reviewed the Judicial Retirement System, this was the kind of system that they were looking at. First of all, there were three separate funds or trust funds.

And the membership of the three funds consisted of, first of all, the first fund, Supreme Court Justices were included, also circuit court justices, commissioners of the State Corporation Commission and Industrial Commission and assistant attorney generals were also in that first fund.

The second fund included clerks of the House and Senate, and the third fund included county judges.

There was quite a variation in the type of benefit and at the normal retirement date that any given member would be eligible for. For example, Supreme Court justices could retire at age 65 with 12 years of service or at any age if they had 25 years of service. And there was no weighting factor on this; these were actual years.

Circuit Court justices could retire at 65 with 10 years of service or -- I have an error on this slide -- or age 62 and 25. I incorrectly say "any age at 25," but Donna Browning corrected me this morning.

Industrial commissioners could retire at age 65 with ten years and any age at 25, although there was a slight difference for State Corporation Commissioners.

Assistant attorney generals could retire at age 65 and 20 years. House and Senate clerks, 65 and 20. And then county judges would have to go until 70 with 15 years of service or age 65 and 20.

And not only did the normal retirement date vary for each member, but also the amount of benefit varied somewhat. Most of the judges in the first group could retire at 75 percent of current salary. By "current salary," I mean the salary immediately prior to retirement. It wasn't an averaging concept like we now have with the average final compensation, where you look back three years.

In fact, back in 1970, when the first Judicial Retirement System was established, they looked back five years to develop the average final compensation. But prior to '70, it was 75 percent of current salary, which was much more generous than the current system, obviously.

In the case of county judges, however, it was 75 percent of current salary, but from that you had to also subtract the Social Security benefit that the judge would receive.

Then the member contribution was a range of two to three percent. It's now five, but it was two to three percent

at the time. Two percent for younger judges, those who were appointed to the bench at age 40 or less, then two and a half percent for those between 40 and 55, and then three percent for those appointed beyond 55.

The other point I'd like to make is that there is absolutely no sensitivity to years of service. And this was a criticism that the VALC mentioned over and over again in the 1967 and 1970 studies. That is, that if a Supreme Court justice wanted to retire before 12 years, he wanted to retire at age 65 with 10 years of service, he was just out of luck. There was no early retirement feature. You either had 12 years of service or you got no retirement.

Conversely, if a justice had had 25 or 30 years of service, he got no extra benefit. 75 percent of current salary was the maximum you could retire at regardless of years of service.

So one of the criticisms of the VALC's early studies was that they wanted to have a formula that was sensitive to years of service. Reward long service, but also, at the same time, provide an early retirement option. And that's when they began to think about a weighting of years of service.

Now the specific recommendations of the '67 study: First of all, they made no firm recommendations. They simply listed out some alternatives that should be pursued further.

The first was to make membership mandatory. Up until 1970 judges had the option of joining one of the respective systems.

The second alternative was to increase employee contributions. From that range of two to three, they recommended five-and-a-half percent at the time. That was subsequently adopted but then reduced to five percent in 1974 when the VSRS rate came back to five.

The third one was to adopt a pre-funded approach to financing. At this point in time all three funds had virtually no assets to their credit. In fact, the first two funds were in a deficit position and couldn't meet current payouts for people who were currently retired at the time.

And point four was to make benefits consistent among all judges, not have the variation that we saw, particularly the difference between the county judges and the circuit and Supreme Court.

And then fifth was to provide a retirement allowance which would be sensitive to length of service, as I mentioned before.

Then the 1970 VALC study picked up on those alternatives and expanded them somewhat further and really issued the definitive study that formed the system. First they adopted the single system, obviously, to combine benefits and make them consistent.

Secondly, they had a hold-harmless clause to insure that any current judge in one of the pre-1970 systems would be held harmless. And that's why you still see today -- I think there are 60 or 70 judges that still would have member contribution rates in the range of two to three percent. And, also, the present cap of 75 percent of average final salary would not apply to them. They would instead have the 75 percent of their current salary immediately prior to retirement.

The third point was to establish a normal retirement date at age 60. The fourth was to establish employee contribution the same as the VSRS. The fifth was to provide a benefit formula similar to VSRS. And that included a years-of-service factor which would be sensitive to time served on the bench. And that's where they came up with the weight of three-and-a-half-to-one factor.

And an important point that VALC pointed out -- and I add emphasis to this myself, but it was mentioned three or four times in that 1970 study -- is that their main intention was to provide benefit comparable to the benefits found in the prior system.

So there was really two reasons for the three-and-a-half to one that I can find from the literature. One is to provide the sensitivity to the years of service, provide an earlier retirement option and also to reward longer service, and also to provide a retirement benefit comparable to the prior system. Because, as you recall, the prior systems allowed retirement in either twelve years of service or ten years of service, except for the county judges, which was fifteen.

This three-and-a-half-to-one weighting provided a comparable retirement benefit after thirteen and a half years, which is where you would cap on the three-and-a-half to one.

Then there was another -- a whole range of recommendations to make JRS similar to VSRS, having to do with disability, alternative payout methods, group insurance, death

benefits, et cetera. And then also to adopt the pre-funded financing approach, which at the time was estimated to be 27 percent of payroll. That turned out to be pretty close because now the employer rate is 29 percent of payroll. At the time, I think the fiscal impact was \$700,000 a year.

Point eight was that non-judges should be covered under VSRS, so they moved the assistant attorney generals and the clerks of the House and Senate over to VSRS. They required a mandatory recall until age 60 and then prohibited retirees from appearing in court.

Then in 1980 the Retirement Study Commission -- again, they were established primarily to review VSRS options. But there was a suggestion that they looked into at the time, a suggestion that the three-and-a-half-to-one weighting be removed. And they withdrew that suggestion after reviewing some demographic data that had been presented by the Secretary of the Supreme Court, which demonstrated that average age at appointment and average years of service were actually increasing rather than decreasing, which it had been suggested early on in the study.

So that's a review of the current system and the three previous studies. That's all I have. Then I'd suggest that we turn to Kathy to look at the comparison of the other states, unless there are any questions.

THE CHAIRMAN: Let's see if we have any questions. Any questions from members at this time?

All right. Next we're going to hear from Kathy Reynolds, who is the analyst on the staff of the Appropriations Committee. And she's going to review a comparison of the Virginia Judicial Retirement System with that of the other 50 states.

MS. REYNOLDS: Thank you.

I believe each one of you have a handout, and, Bob, if you would hand these out to the audience. There is one handout that contains the narrative, and then a thick stack of appendices which contain the tables which I will be referring to in the presentation.

First of all, I would like to describe to you basically the features of retirement systems in the other states. First of all, in looking at the other states, there are about two types of formulae.

One type is the type of formula that has the

flat percentage. And this is similar to the system that Bob just described to you prior to the change in the Judicial Retirement System.

If the individual meets the years of service and age requirements to qualify, then that person is eligible for the flat rate of 75 or 65 percent of his salary.

Some states have modified this flat percentage approach so that they would have, for instance, 65 percent if the judge had ten years of service, and then 75 percent if he had 15 years, but then there would be no increase on top of that. This is an attempt to deal with the question of sensitivity to shorter or longer services.

In total, there are fourteen systems in the states, including the Federal Judicial System and the District of Columbia that are using this flat-percentage type formula.

The second type of formula then would be one that is similar to what we are currently using in Virginia, which takes a rate or a percentage times the average final compensation, then times the years of service.

The states that use this type of formula tend to have a lower number of years for vesting than the ones that use a flat percentage because the formula is directly related to the years of service. And some states also change the rate at certain threshold years of services.

This would be, for instance, using a two percent rate for the first five years, a two and a half percent rate for the next five years, and a three percent rate for any years over ten. And some states have graduated this rate in the exactly opposite order, where they have the higher percentage for the first years of service, then a lower percentage for the next threshold years, and then the lowest percentage for any years over ten or twelve or fifteen, however they have the thresholds established.

A third modification -- a second modification of this type of formula is one where the states use a pro-rated service. And this, for example, would be if in that state's formula it would take 20 years to accumulate enough service years for full retirement, then the rate times the average final compensation would be pro-rated by the number of actual years service as a proportion to the number that's required for full benefits.

So in a 20-year to -- in a system that requires

20 years to get full benefit, if you had 15 years at time of retirement, then you would get three-quarters of the full benefit.

Virginia is the only system that has a formula which weights the years of service. But in total there are 34 states, including Virginia, that use a variation of this type of formula.

You'll see in Appendix A of the sixth handout a table that summarizes those basic features on each of those states.

Likewise, the states use different methods for calculating the average final compensation. One method is using current salary. In some states, current salary is the salary of the individual at the time that they retire. In other states the current salary is defined as the salary of the office from which the individual retired.

So if a judge retired with enough service years at age 55, but could not accrue benefits until age 65, then the salary of the office from which he retired ten years later would be the salary on which his benefits would be based. Thirty states, the Federal system and the District use current salary in their formulas.

The other basic method of calculating salary is the average salary, which is the method that's used in Virginia. Average salary is calculated either over the highest consecutive salary quarters or over the most recent consecutive quarters. There are some states doing it each way. The period of averaging ranges from three to five years, and eleven states use a three-year average. One state uses a four-year average, and eight states use a five-year average.

Another basic feature of the system is whether or not they have a cap on the maximum amount of benefits. Eighteen of those 34 states that use a formula that is directly sensitive to years of service, that is, they multiply years of service times rate times the average final compensation, do place a cap on this. And this, in effect, limits the amount of benefit that can be derived from extended or long-term service. The caps range from 50 to 100 percent of final compensation. And, in effect, all of those states that use the flat rate have a cap, since the maximum amount you can have as your benefit is the 75 percent or whatever the flat percentage is.

Do you have any questions about the different formulas or the states?

THE CHAIRMAN: Any questions, Gentlemen? Yes, sir, Del. Green.

DEL. GREEN: Kathy, you said that Virginia was the only state that had the weighted years of service, but 34 other states had -- I didn't quite catch what you said. Was it similar?

MS. REYNOLDS: They use a formula similar to ours, but they use the actual number of years of service rather than a weighted number of years of service. And there are some trade-offs. If you use that type of formula, you can have a higher percentage or higher rate and use actual years or you can weight the years and have a low rate.

And while it may be interesting to see how the different states have derived these formulas, I think one of the more interesting factors is what kind of benefits does a judge derive from the different retirement systems. So I have done an analysis --

THE CHAIRMAN: Ms. Reynolds, I think we have another question before you go on.

MS. REYNOLDS: Oh, I'm sorry.

DEL. DICKINSON: Of the two types of formula, how many of the 50 states use the flat percentage formula and how many apply the rate?

MS. REYNOLDS: Okay. Fourteen states use a flat percentage or some variation on that. And 34 states, including Virginia, use a formula that is sensitive to the exact number of years of service. But if you glance down Appendix A in your second handout, you'll see that there really are no two states that have identical judicial retirement systems. These are just basic features that some of the states have in common, but there are all kinds of variations on how their benefits are calculated.

DEL. PUTNEY: Mr. Chairman, may I ask a question?

THE CHAIRMAN: Yes, sir, Del. Putney.

DEL. PUTNEY: Kathy, I take it from what you say then that -- maybe I should have asked Bob -- 8.6 years is the period of time it would take to get to the maximum with the 30 years.

MR. SCHULTZE: That's right. 30 divided by 3.5 is 8.6, so you can get to a so-called normal retirement after 8.6 years, actual years, on the bench; however, the cap would be 13 and a half years. So there's another five years there between normal retirement and the cap.

DEL. PUTNEY: Right. But if no other state has the weighted factor that we do, then achieving this cannot be done in any other state but Virginia.

MS. REYNOLDS: That's not true.

DEL. PUTNEY: In that period of time.

MS. REYNOLDS: No. Some states have a much lower number of years of service required in order to be eligible for the benefit.

MR. SCHULTZE: Lacey, many of the other states have cutoffs similar to our pre-70 system. That is, after serving 12 years or 15 years or whatever it might be, then you're eligible for the full benefit. The full benefit might be similar to our cap.

DEL. PUTNEY: Do you know how many of them you could achieve at 8.6 years?

MR. SCHULTZE: Well, we can't achieve the cap in 8.6 years here, though. Thirteen and a half.

DEL. PUTNEY: You can achieve the 30 -- for age 60 and 30 years, it takes 8.6 years?

MR. SCHULTZE: That's correct.

DEL. PUTNEY: Is that achievable in any other judicial retirement system that you know of?

MS. REYNOLDS: To reach what we define as normal retirement?

DEL. PUTNEY: Right. That's correct.

MS. REYNOLDS: I think it would be difficult to do that analysis because we would have to determine in each state what they considered to be normal retirement and whether that is the same as the maximum benefit. Do you see what I mean?

DEL. PUTNEY: Okay.

MR. SCHULTZE: I think you'd be pretty safe in saying that it would be very rare for most states to provide a full retirement after 8.6. But on the other hand, most judges in Virginia will go all the way to the cap, and they consider that, the 75 percent, to be their normal retirement amount.

THE CHAIRMAN: Any other questions, Gentlemen?
Del. Bagley?

DEL. BAGLEY: Kathy, are we getting a picture here that it's not financially feasible for anyone to serve beyond 13.5 years because there's no further benefits?

MS. REYNOLDS: Well, I think from a strictly financial point of view, the main reason a judge would wish to stay on the bench after thirteen and a half years is --

DEL. BAGLEY: To get full salary.

MS. REYNOLDS: Well, no, is to keep his salary current. See, if he's not eligible to draw benefits at the age at which he has served thirteen and a half -- suppose he's served that at age 55 and would not be eligible to draw benefits until several years later. If he retires or resigns at that point and wishes to draw his benefits some years down the road, then his salary base, his average salary base, will be somewhat dated because it will be for service that was on the bench three or four years previous to that.

So as the salaries are increased, then there is an increased interest on the part of the judge, financial interest, to stay on the bench.

DEL. PUTNEY: Mr. Chairman, may I ask another question?

THE CHAIRMAN: Yes, sir, Del. Putney.

DEL. PUTNEY: Kathy, back to the 8.6, all other participants in the VSRS, schoolteachers, you and all others, require 30 years of service where this 8.6 is all that's required in the judicial system, isn't that correct?

MR. SCHULTZE: Yes, that is correct.

THE CHAIRMAN: Any other questions?

Okay, Kathy.

MS. REYNOLDS: The analysis that I have done is

an effort to compare retirement benefits in the 50 states with that which would be earned by judges in Virginia. And this is in judicial retirement systems in the other states. And it's important that I first go through the methodology and the assumptions of this analysis so that we all understand what is being compared in the tables that will follow.

First of all, the data collected included salaries for Supreme, Appellate and Circuit Court judges only. We did not attempt to address District court judges because there's so much variation across the states, and they're not all unified into a central system. And so we have excluded them from the analysis.

The survey, the data -- excuse me. The income information or the salary information has been taken from a survey that's conducted by the National Center for State Courts.

THE CHAIRMAN: Mr. Parkerson?

MR. PARKERSON: Kathy, what is this that the district court judges are not integrated in the --

MS. REYNOLDS: In the other states they may still be local or county judges and not in a unified statewide system in those states. Ours are, but the others aren't, and so we don't want to be comparing judges that aren't in comparable situations.

Okay. So the salary data has been collected from 1979 to 1985, and in addition to not including district court judges, we have not included any expense allowances that may be in addition to a salary that's paid.

Okay. In addition to the data on the salaries, I've collected data on the age and service requirements -- and this is the number of years and the age at which the judge may be eligible for benefits -- I collected information on member contribution rates and on the ability of the judge to transfer in other credit that he may have earned in the military, in the legislative or in other public service that that particular state will accept.

Then I have generated a computer program that has a mathematical or symbolic representation of each state's formula, similar to the formula that Bob showed you earlier for Virginia's. Each state has a formula like that. And then running those formulas against the salary information, I'm able to calculate an estimated benefit.

The assumptions of this analysis: We attempted to make the analysis as closely resemble the characteristics of judges retiring in Virginia. So in that effort we have assumed that a judge will retire at age 65 with 15 years of service. In actuality Virginia judges, the average retirement age and service years are a little lower than that. But many states require 15 years of service before any benefit and have no provision for reduced benefits.

And when we ran the program at a years of service less than 15, so many of the states fell to zero that it really didn't make a very good comparison of what the benefits would be.

I think it's fair to assume that in those states a judge would stay on the bench until 15 rather than leaving at thirteen and a half if it meant that he would be eligible for the benefits at the end of 15.

In addition, we had to assume that the judge has served in the current position for five years, and this is because some states have a five-year average salary as the final compensation. And we have to assume that the salary we've recorded for that particular type of judge has been that judge's salary for five years.

Okay. In addition -- oh, and some side pointer to that, we have assumed in Virginia that the intermediate appellate court was established in '79, and we have assigned those salaries at 95 percent of the Supreme Court judges in order to have a base salary for that court, even though it has not been in existence for long enough to have an average salary compensation.

In terms of transferring credit, if the other state has a provision for transferring credit, then we assumed that judges retiring in those states transferred in the average transfer credits that Virginia retiring judges did. Virginia retired judges from the Supreme Court transferred an average of four years of creditable service, and from the circuit court, transferred an average of one-quarter year.

So if the other state allows for a transfer, then we increase their service years by that transfer amount.

Okay. In addition, the salary figures that we used do not include local supplements, since we were interested in the State support to this system. And we also used the mid-point for any state that has a range of salaries for the same type of judge.

Some states, for circuit court judges, either have a range of salary based on longevity or they have a range of salaries based on cost-of-living differentials or population served. And in those states we use the mid-point of their salary range for all of the calculations.

The last point that needs to be clarified is the calculations that appear in all of the appendices assume what the retirement benefit would be if the judge retires on July 1 of 1986. And it is restricted to that first year of payment. That, first of all, allows all of '85 salary to be included in the base salary. And, secondly, we cannot anticipate what future cost-of-living adjustments would be, and so we restrict the benefit to just what's available in the first year, what would be estimated in the first year.

THE CHAIRMAN: Question?

DEL. PUTNEY: Kathy, I hate to ask you to do this, but would you go back and cover the first assumption for me? You lost me at the end of it.

MS. REYNOLDS: Okay. We are assuming that judges in each of the states retire at age 65 with 15 years of service. And the benefits that are going to be displayed are the benefits that would be available to that judge under his retirement system, if he were 65 upon retirement and had 15 years of service on the bench.

DEL. PUTNEY: But you indicated that in Virginia it was less, a little less?

MS. REYNOLDS: The average length of service for Virginia judges upon retirement was about thirteen and a half years.

THE CHAIRMAN: Sen. Willey has a question for you.

SEN. WILLEY: Did you find any states that did not have a special retirement system for the judiciary?

MS. REYNOLDS: No, they all did.

SEN. WILLEY: And where we give weighted service, did they not have some other arrangement, a certain number of years or certain guidelines equivalent to what we call weighted service? Every one of them had some special incentive, did they not?

MS. REYNOLDS: I did not compare --

SEN. WILLEY: Just answer my question. Every one of them had some special incentive, did they not?

MS. REYNOLDS: Well, the only way to answer that would be to compare their judicial retirement system to their public service retirement system to see if there was a difference.

SEN. WILLEY: I just don't want us to look bad. I'm just saying that --

MS. REYNOLDS: No, I think --

SEN. WILLEY: -- every one of them had some special incentive in those judicial retirement systems equivalent to the weighted service that we provide in Virginia.

MS. REYNOLDS: There are numerous ways the state can use to derive what they consider to be a satisfactory benefit for the judge.

SEN. WILLEY: Okay. But I --

MS. REYNOLDS: They can use a higher rate; they can use shorter service.

SEN. WILLEY: I just want to be sure that, you know, when you start talking about figures, you can make them look any way you want to. And I don't believe, in looking at these comparisons, that you tell the whole truth.

MS. REYNOLDS: Well, I think that when you get to the analysis, you'll see that we've looked at any number of factors which would influence Virginia's ranking on these benefits. And I hope that all of those will satisfy your concerns.

SEN. WILLEY: And they're definitely saying you can get all benefits after ten years of service and saying you work ten years and get credit for 35? Depends upon how the systems are weighted?

MS. REYNOLDS: Yes.

SEN. WILLEY: And so there's all kinds of ways of getting to the answer?

MS. REYNOLDS: Right.

SEN. WILLEY: And those of us who deal with money know about those tricks.

MS. REYNOLDS: Yes.

THE CHAIRMAN: Del. Dickinson has a question.

DEL. DICKINSON: Kathy, does every one -- ever judge in every state have to campaign for election other than Virginia?

MS. REYNOLDS: No. On your Appendix A there is a small letter "a" or "e." And that legend refers to whether they're appointed or elected. And that's been included for your reference on that appendix.

DEL. DICKINSON: Well, is Virginia the only state?

MS. REYNOLDS: For appointed or elected by the Legislature?

DEL. DICKINSON: Elected by the Legislature.

MS. REYNOLDS: No. Okay?

[Unidentified] Where is that?

MS. REYNOLDS: Appendix A. The first table that I have is simply a ranking of salaries for supreme court justices in the 50 states. And you see from this table that Virginia ranks 12th among the states and also trails the federal system. The salary of \$73,619 as of July 1, 1985.

The ranking for the intermediate appellate court is tenth among the states and also trails the federal circuit court judges. And the salary for circuit court judges in Virginia ranks seventh and also falls below the salaries for federal district court judges and the District of Columbia judges.

The additional tables for -- this is just the ranking for the supreme court. Those for the appellate and the circuit court judges are included in Appendix B in your handout.

The next ranking I have is a ranking of adjusted salaries. Now for adjusted salaries, we have reduced the salary of those states that have a contributory system by the amount

that that member must pay as a percentage of his salary for the judicial retirement system. And you can see that on this ranking of adjusted salaries, Virginia moves up several rankings because some of the states above us have a relatively high contributory rate to judicial retirement systems. Illinois' is as high as 11 percent of their salary.

This shows you, in effect, the benefit in salary terms of the pickup of the members' contribution to JRS that the Assembly approved in '83.

DEL. PUTNEY: Question, Mr. Chairman.

THE CHAIRMAN: Del. Putney has a question.

DEL. PUTNEY: How many states is that the case, Kathy, where the member contribution has now been taken over, paid by the employer?

MS. REYNOLDS: I don't know, but I can find out for you. I didn't count them up.

DEL. PUTNEY: Another question, Mr. Chairman?

THE CHAIRMAN: Yes.

DEL. PUTNEY: Do you recall what the total percentage of salary, total percentage of compensation is in other states where this is going to go to --

MS. REYNOLDS: There is quite a range. I think Illinois' is about the highest at 11 percent. And some are as low as two or three percent of salary.

DEL. PUTNEY: I'm talking about the total, where ours is 34 and projected to go to 37.

MS. REYNOLDS: No, I don't have those figures.

DEL. PUTNEY: Okay.

MR. SCHULTZE: Can I add one point about that? Lacey, we deliberately steered clear of trying to compare contribution rates from one state to the next, particularly the employer contribution rate. Because some systems are on a pre-funded basis and some are not, and I think it would be misleading. So we had to try to reduce the benefit to a comparable figure, and that's why we chose this prototype judge of age 65 and 15 years, tried to crank that through each formula and compare benefits only rather than employer contributions.

DEL. PUTNEY: I was wondering if in those states that are close to ours if you made any comparison of that employer contribution?

MS. REYNOLDS: Close in what regard?

DEL. PUTNEY: The systems that are more like -- come closer to the Virginia system.

MR. SCHULTZE: No, we didn't look at the employer contribution on any of the states.

DEL. PUTNEY: Thank you.

MS. REYNOLDS: Okay. Are there any additional questions about the salary or the adjusted salary figures?

THE CHAIRMAN: Any other questions, Gentlemen?

MS. REYNOLDS: So we've run the formulas in each of the states against their judges' salaries and then ranked the benefit which would be available to the judge.

In Virginia, the benefit for supreme courts after 15 years at age 65 would be \$50,640. For the intermediate appellate court it would be \$48,108. For the circuit court it would be \$47,031. And those are included in Appendix D for the other states.

Okay. Our ranking on that would be sixth for the supreme court judges, which is shown on this table. For the appellate courts it would be sixth as well, and for the circuit courts it would be fourth, ranking behind Alaska, New Jersey and Massachusetts, and also the federal and the District of Columbia benefits would be higher.

Okay. There are two additional elements included on this table that will be essential to understanding the rest of the analysis. The additional concept is in the second column, and this is an estimate of the annuity. The annuity is the expected lifetime payments to that judge, given the annual retirement benefit.

The actuarial estimates right now for a white male retiring at age 65 is a life expectancy of 8.919 years. So this annuity column, in essence, is 8.9-plus percent or 8.9 times the amount that's reported in the annual benefit. So that's just a multiplication into this expected payment for his lifetime -- or payment for his expected lifetime.

In the third column we are trying to estimate how much would have to be contributed during each year that the judge worked on the bench, which would be each of the 15 years, in order to accumulate this annuity figure at the end of 15 years. So this column is labelled the annual contribution toward annuity, and it represents the employer and employee contribution amounts required to accrue that annuity at the end of 15 years.

And one way you can think about this column of the annual contribution toward annuity is that it is -- one way of looking at it is that it would be the dollar or cash value to the judge of those future retirement benefits on an annualized basis.

Were there any questions about those terms?

THE CHAIRMAN: Any questions, Gentlemen?

SEN. TRUBAN: Yes, one question.

THE CHAIRMAN: Sen. Truban.

SEN. TRUBAN: Ms. Reynolds, in order to figure the contributions toward the annuity, if I read correctly, it was \$22,874 -- is that F-1? Is that the one?

MS. REYNOLDS: \$18,679. We're in Appendix D.

SEN. TRUBAN: Yeah. I was on F. D.

MS. REYNOLDS: And this table is for the supreme court, which would be page D-1 of your appendix. And that figure would be the amount that would have to be contributed each year of the 15 years in order to have an annuity of that size at the end of 15 years.

SEN. TRUBAN: That's \$19,610?

MS. REYNOLDS: Right.

SEN. TRUBAN: If I was out working, just me working, how much salary would I have before I could take that much out of my salary, less state taxes and federal income taxes to be able to contribute to an annuity?

MS. REYNOLDS: I haven't calculated that.

MR. SCHULTZE: I had one further point. On the calculation of this annuity amount, Kathy used a figure of 8.9.

That's not the life expectancy of the judge. I think the life expectancy of a white male at that age is more like 15 or 20 years. 8.9 is the factor that Don Overholzer, the actuary for VSRS, gave us that you must multiply the annual benefit by in order to have annuity and invest it at the rate of six and a half percent interest per year compounded, an annuity that would last the lifetime of the judge and provide that annual benefit.

THE CHAIRMAN: Satisfied?

SEN. TRUBAN: Yeah, but you have to have more than 8.9 years. If the guy's going to live to the 15, it's just going to have to be more than 8.9 years.

MR. SCHULTZE: Except that you forget the interest value of this amount. If we invest, in the case of Virginia, \$450,000 in a trust fund that's held by VSRS, let's say, and they earn six and a half percent interest on it, that fund will last for 15 years or so before the last payment is made at the rate of \$18,679 per year.

Now you asked a question about a question about the tax effect of that. We obviously are assuming that there are no taxes on this annual contribution toward the annuity at the \$18,000 figure, because we're assuming that every state has a fiduciary agent that is tax exempt, such as VSRS, and they can invest that money without any tax consequences. You wouldn't be able to do that, however, on your own.

SEN. TRUBAN: I don't think so.

THE CHAIRMAN: Any other questions, Gentlemen?
Okay, Kathy.

MS. REYNOLDS: Okay. The next estimate which we wish to use for comparison purpose is an estimate of the value to the member of his salary -- or the judge's salary in that year and the amount that was contributed either by him or by him and his employer toward his annuity. So this, in essence, adds the salary of the judge in each state to that last column on the previous table. The annual contribution toward annuity.

And in doing that, you'll see for supreme court judges that the value to the member of his salary and this future retirement benefit would be \$92,298. For appellate courts it would be \$87,683, and for circuit courts it would be \$85,691. And these are all contained in Appendix E. Our ranking for the supreme court is fifth, for appellate court it's sixth, and for the circuit court judges it would be fourth among the states.

And this does use the adjusted salary, not his current salary, so it has been decreased by any contributions that he was required to make to the system.

One thing that occurred to me while we were doing this analysis is that some of the states are not participants in the Social Security system. And I was curious whether those states that did not view their system as supplemental to Social Security would have paid a greater benefit, since it was the sole employer-assisted retirement. And in doing this, we added the retirement benefits to the annual retirement benefit and then determined how much more it would require each year and deducted from the salary, in addition to their contribution to JRS, their maximum contribution to Social Security.

And in doing all of these manipulations, Virginia's rank only changed by one, in that Massachusetts, which ranked above us in terms of the dollar amount for annual benefit, ranked below us when we adjusted for the Social Security. That was the only state whose ranking was above us and was not a member of Social Security.

Those tables are included for you in Appendix F and Appendix G. But since there is so little change in it, I'm not going to bother to show them here. Now one of the difficulties in comparing the analysis that you've been shown so far is that this analysis has compounded the effects of difference in the salaries paid in the states. And it compounds it in two ways.

First of all, since all of the states pay some percentage of average final compensation, those states with higher salaries would have a higher benefit. It would be a direct function. Secondly, when we add to the annual contribution toward annuity the adjusted salary figure, those states with higher salary are also pushed up.

So in an effort to control for salary, we have run each state's formula, age and service requirements, against Virginia's salaries. So we're assuming that every state in the nation pays their judges what Virginia does, and then we did an analysis of their annual benefit which would get at the actual relative size of the benefit if the salaries were the same.

And under this analysis you'll see that Virginia's formula or the ranking here falls. And that is mainly because you'll see the federal and the district court systems at the top. They pay 100 percent of average final compensation after 15 years at age 65. So those two rank at the very top.

Then Illinois pays a cap of 85 percent of current salary. So that is, of course, higher than our cap of 75 percent of average three-year.

All of the next states that have the annual benefit identical at \$55,214 have a benefit formula that uses 75 percent of current salary, which is higher than 75 percent of the average three-year salary. And then Virginia is the next state following the states that use that other type of formula.

Now combining again this -- excuse me. These columns are calculated identical to the way in which we calculated them in the last, the annuity and the annual contribution toward retirement.

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by the rate at which the member must contribute. And since Virginia does not have a contributory system right now, that has moved our salary plus the annuity, the contribution toward annuity, up from a rank of 12 to 4 for the supreme court. For the appellate court our formula would rank first.

And that's an interesting phenomena -- behind the federal system -- because the three states that rank higher than us, Maine, New Hampshire and Rhode Island, don't have intermediate appellate courts, so they fall out of that analysis, and that puts Virginia toward the top. For the circuit court, our ranking would be identical as this for the supreme court.

Now are there any questions about the analysis using a neutral salary?

THE CHAIRMAN: Anyone?

MS. REYNOLDS: Okay. The next exercise was to determine what the benefits in Virginia would be if we removed the weighting. So in this respect, we return back to using the actual salary and benefit formulas in each of the states and only adjusting Virginia's formula to remove the weighting.

And the table for annual benefits on this shows that without the weighting, with 15 years of service, Virginia would rank 45th. And that's a dramatic drop in the benefit. It had, for supreme court judges, under the actual weighted system, there would be a benefit of \$50,640. And you see on this table without the weighting it would be a benefit of \$20,791.

[Change to Tape # 2: Words missing, text doesn't connect here.]

... to \$19,733. And for circuit court judges it would drop from \$47,000 to \$15,477.

It's also interesting to note that several of these states at the bottom, California and South Carolina, have a higher than 15 years of service required for retirement. California requires 18 years at age 66. South Carolina requires 20 years at 65. So if the length of service were increased, then these states would move up into the rankings because their salaries are relatively high. And then Virginia's rank would be even lower.

SEN. WILLEY: Mr. Chairman, that was exactly what was wrong with that bill that introduced. It's a "meat ax" approach to take us from a good circuit court and a good supreme court down to the worst in the country. And you can't just knock everything out without making some alternative recommendation for it. And that was the trouble with that bill. And I told my colleagues on the Senate floor that. You can't come down here and act like a bunch of boy scouts.

MS. REYNOLDS: Are there any other questions about this ranking without weighting.

THE CHAIRMAN: Any questions, Gentlemen?

MS. REYNOLDS: Okay. Then we move to the next table which would show the combination of salary plus the annual contribution without weighting. And this would put Virginia toward the middle of the states, ranking 16th among the supreme courts, 14th among the appellate and tenth among the circuit courts.

Then the last analysis that I did was to compare the systems of the other states to Virginia's without weighting and do this on a salary-neutral basis, so that we would get at the actual benefit level from the formula and not compound it by the effects of salary.

And on this table you see our former ranking listed here under the salary-neutral analysis X'd out, and the new ranking 42nd inserted here. And this would be the position on a salary-neutral basis of Virginia's formula without the weighting of service. And, lastly, when we combine the salary-neutral measure in terms of the annual -- or the requirement toward annuity and the adjusted salary, then for supreme court judges we would move to 36th. That's a benefit level of \$81,288.

SEN. PARKERSON: Now, Kathy, if I understand what this is showing, if you take out our version, Virginia's version of the weighted, with all these other states left in whatever they do do --

MS. REYNOLDS: Right.

SEN. TRUBAN: And that's where we come out?

MS. REYNOLDS: If we assume that all the other states have salaries identical to ours, which gets at the relative generosity of the formula rather than the compounding effect of salary levels.

SEN. PARKERSON: We drop clean down out of 36th?

MS. REYNOLDS: On the supreme court, uh-huh. It would be 25th among the appellate courts because many of the states don't have that level of court, and it would be 39th among the circuit court. And those are all contained in Appendix M.

THE CHAIRMAN: Okay. Gentlemen, any questions now on that presentation? Kathy, does that complete your presentation?

MS. REYNOLDS: Yes.

SEN. WILLEY: Mr. Chairman, that was a very fine report, Kathy.

MS. REYNOLDS: Thank you.

THE CHAIRMAN: Any other questions here, Gentlemen?

All right. Next we're going to hear from Mr. Baldwin, the Executive Secretary of the Supreme Court, who is going to provide us with some data, background data relating to the characteristics of the service of the members of the Judicial Retirement System.

MR. BALDWIN: Mr. Chairman, Members of the Committee, thank you very much for the opportunity. And may I also add my word of congratulations to both Bob and Kathy on an excellent presentation and, I thought, a well-balanced presentation, too. And obviously a lot of work and research on their behalf.

I'm going to concentrate my remarks at this time

on one narrow area, which is included in that package of information. I've done some of the similar tyhpes of things that Kathy has done, but I won't go over those at this time. But for those of you who have the yellow tabs, under the third tab there is some information that deals with the ages of judges who are currently on the bench, and that's what I'm going to concentrate my remarks. Those of you who have the books that have blue sheets, it would be under the third sheet.

This is really to address the concern raised by a number of people who have suggested that maybe the weighted factor is not needed because of the fact that judges are getting younger than they used to be. And to the extent we could, we tried to look at some statistical information to see if that was true.

I reviewed this for you back in the winter when we first went over this, so there's nothing new on this information, so I'll go through it very hurriedly.

On the first page there it takes a look at a profile of our judiciary at February 1, 1985. And this first page deals with circuit court judges and indicates to you that the average present age at that time of circuit court judges was 55.16 years. Of that group of judges the average age at appointment was 44.4, so this confirms, I think, what most of us sort of feel in our mind that roughly we're bringing people on the bench at the circuit court level, at least, in their mid-forties.

The next figure there shows the average years of service. Now this is where some of my figures differ slightly from one point that Kathy made, and I don't know why that's true, and I'll be happy to try to find out. But we took those people who had left the bench from January 1, 1974, through 1985. And we use '74 because of the fact that's when the courts were reorganized and we really started a new state system.

So our figures indicate that for circuit court judges leaving the bench during that period of time through death or retirement, they served an average of 17.2 years. I think Kathy used the figure of about 13 years. It is a little bit lower on the next two pages for the district court judges, but it still would suggest at least just using -- she may have used a longer history than we did, but the history since 1974 would suggest that circuit court judges who left the bench during that time served about 17 years.

The next figure was an attempt to try to look at those people who left the bench through some other form of

resignation or something other than retirement or death. And I only identified that I could clearly say it was some other reason for during that period of time, and they served a ten-year period.

That to me indicates -- I put that in there to try to indicate that the fear that some have about the fact that if people come on at a younger age and they then serve their 13 years and get off the bench, these figures would seem to suggest to me that while that is a potential for happening, that the actual fact has not occurred.

Then, finally, this is the one point that while this, I guess, could be statistically argued by statisticians as to the accuracy of this, what we've done there is said, "Okay. Let's look at the people who came on the bench in the last five years. How old were they when they came on the bench?"

And this indicates that circuit court judges coming on in the last five years were 47.5 years of age. So when compared to the whole -- when compared to the whole -- the whole being 44.4 -- the average appointment age of the present judges, judges coming on the bench, the circuit bench, in the last five years, are actually significantly older, almost three years older than the average age at appointment of the whole.

I've done similar types of information for each level of the judiciary. The second page, again, deals with the general district court. They're 52 years of age. Again, they come on at average age of 44 for the current people. And the other key figure down there indicates that in the last five years their average age has been 45, still higher than the average age of the whole, indicating again that they're not getting older -- excuse me -- younger; they're getting older.

And the J&DR judges would be the third page. Again, their average age is almost 52. The average age at appointment of that group of judges was 42.9. And, again, in the last five years their average age at appointment has been 44, so that would indicate that that group is getting older also.

Now that, of course, just looked at the last five years. I've included a similar type of analysis that was done in 1982 and a similar type of analysis that was done in 1979. And one of the things that, if you're trying to see what's transpired between '79 and 1985, if you put your fingers on the pages that, first of all, are entitled "Circuit Court Judges" -- the first page -- "Circuit Court Judges, February of '85," and then the pages entitled "Circuit Court Judges, July of 1979," you can see that we took the average age of appointment for circuit

judges taking the bench between '74 and '79 -- that was the five-year period at that time -- and that average age was 46.9.

And the average age during the five-year period of 1980 to 1985 was 47.5.

SEN. PARKERSON: You're going so fast now it's getting harder.

MR. BALDWIN: I apologize. Does everyone have -- there are, in essence, in that first appendix there, there are three pages covering each level of the court for February of '85. There are three similar pages for February of '82, and there are three similar pages for July of 1979.

SEN. PARKERSON: I've got that.

MR. BALDWIN: Okay. I was just comparing if you had the page that said, "Circuit Court Judges July 1, 1979," and comparing that with the first page in that chart. And to me that would provide some evidence of at least what's happened since 1979. We compared the five years previous to 1979. That's the last figure on that page at the bottom of the page there, that states the average age of appointment of circuit court judges taking the bench between January 1 of '74 and April 1 of '79 was 46.9.

And then if you look back over and look at that compared with the average age of judges taking the bench from 1980 to 1985, makes it 47.5. And while there's not much difference, again, that just demonstrates it's about a half a year older.

I think the point that all I'm really trying to say and demonstrate is that they're not really getting any younger. They're staying about the same age, but if there is any trend at all they're probably just slightly older.

I have included behind that the specific judges that are on the bench now as of February 1985. The total listing of the judges, their present age at that time, their average age of appointment and their number of years of service as well as a listing of those people that left the bench during the 1974 to 1985 period.

Again, at this point in time -- and I'll be happy after everyone else has talked to answer any questions or to respond further to anything that comes up and to go over the rest of what's in this notebook. But at this point in time, addressing the limited question of age, I'll be happy to respond

to any questions.

THE CHAIRMAN: Gentlemen, any questions of Mr. Baldwin here at this time? Looks like it isn't, Bob. Thank you very much.

Now we're going to hear from some representatives who asked to be heard in this matter. We've got them here in the order in which they entered and had their names listed. The first is James C. Roberts of the Virginia State Bar.

MR. ROBERTS: Thank you, Mr. Chairman, members of the subcommittee. My name is Jim Roberts. I've been practicing law in Richmond for 28 years. I appear here on behalf of the Virginia State Bar.

In addition to the length of time that I've been engaged in active practice in Richmond, I think I've had a fair opportunity to give a lot of thought to this question over the years. I have been privileged to serve as an officer of a number of organized bars.

In the mid-seventies I was fortunate enough to be elected president of the Richmond Bar Association. Five years later I served as president of the Virginia State Bar, and currently I am one of Virginia's delegates to the House of Delegates of the American Bar Association.

This, I think, has enabled me to see and have fairly close contact with the processes used in this state and in a number of other states in the selection and recommendation of candidates for judicial appointment.

I can highlight for you specifically activities that I have seen ongoing over many years in connection with the nominating process employed by the Richmond Bar Association. That association has, and has had for a number of years now, a judiciary committee whose special purpose is to seek out and recommend to the Legislature or other appointing authority the names of good qualified individuals for judicial vacancies, candidates for judicial vacancies.

Serving as I have for a number of years as a member of that committee and for some period of time as its chairman some years back, we had a number of opportunities to meet with people who were experienced practicing attorneys, good, qualified people for judicial vacancies, and to encourage them to become candidates for specific judicial appointment.

I know from that personal experience, frankly,

of simply sitting down across the table, one on one, talking with a number of these individuals, of the tremendous sacrifice that each of them had to look in the eye as they made the determination that they would opt for judicial position.

I know from my own personal experience people who have been close friends of mine in the Richmond area -- one in particular I can think of who was a neighbor of mine, lived two blocks up the street from me. His three kids were the same age as my three kids. And he took the position. I know when he moved to the much smaller home; I knew of the belt tightening and the trimming of sails that he had to do. And he did that simply because he wanted to give of his talents to this Commonwealth. He has served and continues to serve very capably and with distinction as a Circuit Judge of the Circuit Court of the City of Richmond.

One of the things that I talked to him about -- and I was one who met with him and urged him to go for this vacancy -- one of the things that he talked about, one of the things that he focused on, one of the things that was so important to him, was that at least in the future -- he'd have to trim his sails, he'd have to tighten his belt now -- but in the future he could look to the good retirement benefits that are available under our present system.

I think, frankly, that it's even harder today to get those very well qualified, experienced lawyers to take this step. Ten, fifteen years ago, in Richmond at least, you didn't find law firms with pension plans. Most of the larger sized law firms today have their own pension plans, so it's even more difficult for that person to make that choice to move on to this type of position, because he's got a pension plan in place for him there.

I think, frankly, that it's going to be increasingly difficult, if Virginia places itself in a position where it would drop from its present fourth-place ranking to 46th, to continue to get the well-qualified and experienced lawyers that we have been fortunate enough to have to go on our benches to do so in the future. And I hope that it will not be the pleasure of the General Assembly to change the service weighting system that it has had for so long and that I think has worked so well to give us qualified applicants for our benches. Thank you, Mr. Chairman.

THE CHAIRMAN: Mr. Roberts, thank you. Any questions of Mr. Roberts?

I have one question, Mr. Roberts. Are you

appearing on behalf of the Virginia State Bar?

MR. ROBERTS: Yes. Mr. Robert H. Patterson, its president, is out of the state today and asked if I would appear on behalf of the bar.

THE CHAIRMAN: All right, sir. Thank you very much. The next speaker is Mr. Gordon Smith, speaking on behalf of the Virginia Bar Association.

MR. SMITH: Gentlemen, thank you for this opportunity to appear here today. I'm representing the Virginia Bar Association, which is the voluntary statewide organization of attorneys in Virginia. We represent about 4,000 members.

Our premise is that it is desirable to attract to the judiciary the best-qualified lawyers in the state, as opposed to merely average lawyers or, certainly, as opposed to mediocre lawyers.

And I, too, like Mr. Roberts, have been involved in trying to recruit persons to serve on the bench. And the most serious impediment you have to getting your best-qualified lawyers to serve is the enormous gap between judicial salaries and the salaries that many of your best lawyers can earn in private practice.

I think Mr. Baldwin will later cite you a figure from the Bureau of Labor Statistics that shows that the average experienced attorney in America makes about \$91,000. I don't know how the Bureau of Labor Statistics defines "experienced attorney," but I think that figure of \$91,000 may well understate the earnings of many lawyers in Virginia that you would hope to be able to attract to judicial service.

Our law firm, McGuire, Woods & Battle, subscribes to a private survey on lawyer compensation known as the Price-Waterhouse Law Firm Statistical Survey. And this is a survey that compares partner earnings of the firms that participate in the survey. It's not a survey of average lawyer earnings in Virginia or a survey of even average partner earnings in Virginia. But there are six law firms in Virginia that participate in the survey.

And it shows that in 1984 the average partner in those six Virginia law firms earned \$137,000, which is about twice the salary of a Virginia Circuit Court Judge. And in Virginia we really do worse than in other states, if you look at other aspects of the survey. For example, the southeast region, the average partner in the survey is earning \$184,000.

When you go to a lawyer and ask him to take a judicial post and ask him to, at the same time, take, say, a 50 percent cut in salary, you have a very difficult selling job. And it's really not realistic to think that the state can compete with private practice in the area of salary. But one area where the state can compete is in the area of retirement.

Many lawyers in private practice really have no retirement at all other than what they put aside themselves through contributions to an HR-10 or that sort of thing. But I know from personal experience that the attractive retirement benefit associated with judicial service in Virginia is the most powerful inducement you have to persuade your able and best-qualified lawyers to offer for the bench.

And on behalf of the Bar Association, I hope that the General Assembly will not remove this inducement. If it is removed, we feel that there will inevitably be a decline in the high quality of the judiciary in Virginia. Thank you.

THE CHAIRMAN: All right. Any questions of Mr. Smith? Anyone? Thank you very much.

Next we have Mr. William W. Sweeney from the Judicial Council. Mr. Sweeney. Judge Sweeney, I'm sorry.

JUDGE SWEENEY: Thank you, Mr. Chairman, Members of the Committee. I want to thank you for the opportunity to appear here before you today. And I want to commend your staff for an excellent presentation and a very impartial presentation, I felt.

I'm Judge William W. Sweeney from Lynchburg, and I appear in my capacity as a member of the Judicial Council and as chairman of that group's committee on compensation, retirement and insurance.

Both the Judicial Council and the various judge groups in the state -- that would be the district judges and the circuit judges -- have both gone on record as opposing any change in benefits for judges.

DEL. PUTNEY: Mr. Chairman, excuse me. He also appears as my Circuit Judge, and one of the very outstanding judges in the State of Virginia, I might say.

JUDGE SWEENEY: Thank you, sir. Thank you, sir.

DEL. PUTNEY: I might be wrong on this, but

anyway --

SEN. WILLEY: All right, Lacey. Stop buttering him up.

JUDGE SWEENEY: I can always tell when he's getting ready to do something to me here.

I don't think it's too surprising that the judge groups would oppose the reduction in their benefits, but I really feel it is significant that the lawyers' associations have also taken the same position because in many ways they have more at stake, I think, than we do.

Now I speak for myself and my committee when I say to you, Gentlemen, that I really feel that we have the best judiciary in the country in Virginia at this time. I have spent a great deal of time at the National College for State Judges in Reno, Nevada, both as a student and as an instructor. I have had the opportunity to see judges from all over this country, and I think the general feeling of most of us who've come back is that Virginia has the best judges. And with the exception of myself, I make that statement and will take an oath on it if necessary.

But I think that it is in our interest, in all of our interests, yours and ours, too, that we try to keep it that way. And I think that the General Assembly, particularly in the last four or five years, has been more sensitive to the needs of the judges than they have ever been before. And I have been on the bench for over 20 years, on the Circuit Court bench.

When I went on the bench I was in a rather large law firm, at least large for Lynchburg. I took a \$10,000 reduction in salary -- and this is an actual example. At that time the circuit judges' salary was about \$16,000 a year. It was a pretty close decision for me as to whether or not I would stay where I was or whether I would go on the bench.

I can tell you that the very liberal, I thought, very fair retirement benefits for judges was a big factor in my decision. And I think that without that or with reduced benefits, my decision might have been different and I would have been speaking to you today maybe as a lawyer and not as a judge.

There are some arguments which have been advanced against a change in the present system. Let me note a few, and then I will conclude. The biggest argument, I think, is -- and the most telling -- is that both from a philosophical viewpoint and an actual viewpoint, a change in the retirement benefits of judges is going to discourage some competent and

successful young attorneys from becoming judges.

I think that the present benefits which we have offset the income reduction from bar to bench and the limitations on practice after retirement. And that is a real factor for us. There is, of course, mandatory retirement for judges but none for lawyers. A change in the present benefits would alter the composition of the bench. It would discourage certain age groups and encourage others. A change, we feel, would be a step backwards in benefits for judges at a time when we need to increase benefits to attract better judges.

And the present retirement plan, we feel, keeps judges from leaving the bench from an early age, and thus insures that experienced judges remain. The present system attracts senior-level lawyers who are at that peak.

And my final point is that I think that a change might force some of our younger judges to stay on the bench past what I call the burn-out stage. And I think when you have been on the bench about 15 years, you do reach that stage. I may be reaching it myself, and I would not like to see any change that would require burned-out judges to remain longer than they should, for the benefit of the bench and the bar and the public.

Thank you, Gentlemen.

THE CHAIRMAN: Thank you, Judge Sweeney. Are there any questions of Judge Sweeney? Yes, sir, Sen. Truban.

SEN. TRUBAN: Judge Sweeney, since I was the sponsor of that bill, you know that it didn't affect any judge that sat on the bench today?

JUDGE SWEENEY: I know that, sir.

SEN. TRUBAN: Now do you think we've had any shortages of people who aspire to be elected officials because of the salary or the retirement benefits? Say, members of the General Assembly. We never have any shortages.

I put the bill in -- and Sen. Willey said it was a meat ax approach. I put the bill in to get the attention of what I called an inequity in the system. And I still think -- I think we got to pay the judiciary right. It never once entered my mind -- we should not have a weighted salary.

JUDGE SWEENEY: I respect your position, Senator. I disagree with it, but I respect it.

SEN TRUBAN: But, you see, we have out here thousands of state employees, thousands of schoolteachers, and they get one for one. And they think that the judiciary -- and this thing's not going to go away. It might go away here today in this room, but it's not going to go away, I'll assure you of that. It's not going to go away. But we got to work out a system, I think, before it's too late. The same with Social Security. We're going to have to change that system soon, but you know how it is. Public pressure doesn't want you to do the things that you got to do.

But no one wanted to affect any of the judiciary. They didn't want to affect the quality. Goodness knows, we need the quality. All we wanted to do was put some equity in the system. If it takes some additional weighting, nobody is complaining about that. But three and a half to one, to me, is a little high. To serve one term as a district court judge when I am 50-some years old and get 21 years of retirement benefits, to me, is a little bit high.

JUDGE SWEENEY: But the business of being a judge is a rather unique business, Senator. And more and more unusual problems are being placed on us today. It seems the problems that have no other place to go are ending up in the courts. It's a different ball game today than it was when I went on the bench 20 years ago. It's more difficult.

SEN. TRUBAN: Sir, I understand that. Our decisions are not that easy anymore either.

JUDGE SWEENEY: I understand that, too. Thank you very much.

DEL. BAGLEY: Mr. Chairman?

THE CHAIRMAN: Yes, Del. Bagley.

DEL. BAGLEY: Judge Sweeney, do you have any comment on the comparison between yourself as a judge and other judges and schoolteachers insofar as the remarks by the Senator are concerned?

JUDGE SWEENEY: Well, I think there are certainly better schoolteachers than I am a judge, but I really feel that we're dealing in such different fields here that some difference in consideration of such matters as retirement benefits are worthy of consideration.

DEL. BAGLEY: The responsibilities of a judge are considerably more than those of a schoolteacher, I would

suggest.

JUDGE SWEENEY: I think it's different, sir, and I think it deserves different attention.

SEN. TRUBAN: That's amazing.

THE CHAIRMAN: Any other questions of Judge Sweeney?

Thank you very much, Judge Sweeney.

JUDGE SWEENEY: Thank you, sir.

THE CHAIRMAN: Next we have Mr. Wayne O'Brien, a former member of the House of Delegates, who is appearing on behalf of the Virginia Trial Lawyers' Association.

Mr. O'Brien.

MR. O'BRIEN: Good morning, Gentlemen. I'm here for the Virginia Trial Lawyers' Association, and I won't pretend to be able to tell anyone on this panel anything about the Judicial Retirement System. I do just want to express the feelings of the Virginia Trial Lawyers' Association.

We support the current Judicial Retirement System, and we think that it's important that we continue to give additional weight to the service of our judges in Virginia.

Just one comment, if I may. It appears to me that the General Assembly over the last fifteen years has spent a great deal of time and money in trying to improve the overall judicial system in Virginia. We've spent virtually millions of dollars in trying to improve the delivery of justice in Virginia.

As a consequence of that, in my opinion, we've developed one of the top judicial systems in the United States. It appears to me that we should be near the top in both judicial salaries and judicial retirement if indeed we want to have one of the top judicial systems in the United States. And I think we have to keep it in perspective.

We're talking about a relatively small number of people who are touched by the proposed legislation. These are people who have a very difficult job. They have to deal with the most critical problems of our society on a daily basis.

And one thing I might observe about the difference between a teacher and a judge is, of course, that the

judge can't go out and work after he retires. He's prohibited by the canons of ethics from going back into court after his retirement. Whereas, a schoolteacher, if he so desired, could go out and continue to earn a living.

In conclusion, it would be my suggestion that the enactment of this type of legislation would be pennywise and pound foolish.

THE CHAIRMAN: All right. Any questions then -- yes, sir?

DEL. PUTNEY: Wayne.

THE CHAIRMAN: -- of Mr. O'Brien? You can question him.

MR. O'BRIEN: Yes, sir.

DEL. PUTNEY: Wayne, I'm not much of one, but I guess I consider myself a trial lawyer. I certainly don't want to do anything to weaken in any way the quality of what I think is an outstanding judiciary in Virginia. But since you have been in the General Assembly you know what it is to answer to constituents.

What do you tell the schoolteacher, who says they're burned out at the age of forty, when she says, "You know, I give it all I have from morning until night, and I get one year for each year I teach"?

And the man who's working for the Highway Department, the ABC store, you name it, or the lawyer who leaves his practice and goes with the Attorney General's Office rendering a public service and just gets one year, or the physician who leaves his private practice and goes to work for MCV -- what do you tell these people when they say, "Why do I only get one year for each year of work and this one classification of people, the judiciary, get three and a half for each year they work"?

How do we explain the equity of it? That's my problem, isn't it?

MR. O'BRIEN: Yes, it is, and I'm glad I don't have to answer those kind of questions any more. But I think there are always people who will not understand the difficult positions that judges have and the very different situation that they're in. And there are always going to be people who can't understand that, but I think it's very real; I think it's very

legitimate.

DEL. PUTNEY: Thank you.

THE CHAIRMAN: Any other questions?

Thank you, Mr. O'Brien.

Next we have Ms. Gail Starling-Marshall, Virginia -- member of the Virginia Bar.

MS. STARLING-MARSHALL: Good morning. I am Gail Starling-Marshall, and I'm a member of the Virginia Bar and a practitioner speaking to you as an individual today. And I am endorsing and in favor of retaining the system of weighted retirement service that we have for our State judiciary.

I want to just make three very brief comments that perhaps will put things into a slightly different perspective.

I'm sure that one of the concerns of the Legislature is the equity issue that's been mentioned here several times, and it is true that the system we presently have for the State judiciary is not like the system we have for schoolteachers and it's not like the system we have for other civil servants.

But we happen to have a unique requirement for our judiciary in this state and indeed in this country which is that you have to have first not only been trained but have embarked upon and been prominent in another career, namely the career of practicing law, before you even begin your career of a judicial appointment.

Now that's not the only way it can be done, and in fact it might be interesting to remind us all that in some other countries it's not done that way at all.

In all the countries on the continent and in Japan, I've recently learned, as well, you train to go into the judiciary. You take special courses; you take special degrees; and you go onto the bench as a civil servant right out of university. That's not the system we have, and I think probably all of us agree it's not the system we want.

We have a value from the fact that the people on our bench are experienced attorneys; that they have had a first career and have been required to do an outstanding performance in a first career before they enter the judicial career. And that

is the difference, and it's the difference that we must accommodate in our compensation and benefits, in my view.

To further the point about the age, I was interested, and I thought you might be interested to know, too, that the average age for embarking on the first career, that is, the practice of law, seems to be going up.

The average age of the entering class at the University of Virginia Law School this year is twenty-four which means that they will be graduating, average, on the average age of twenty-seven.

George Mason University does not have a statistic for its entering class, but its statistic for the average age -- of the average age of a student in the three years of law school there is thirty years.

So we're talking about people embarking on the first career somewhat later in life than many of us did or many of us remember, that is, in the late twenties and the early thirties, before they even begin the judicial -- excuse me -- the career of practicing law.

And I think most lawyers agree that a good dose of practicing-law experience is a prerequisite for the judiciary, so we're talking about embarking on a career in your late twenties or early thirties and continuing that career probably for twelve or even up to twenty years before you go on the bench.

The guideline for the ABA judicial appointments on qualifications is a minimum of twelve years of experience.

Finally, I'd like to make one point about the private practice. Now I believe that we should be drawing judges not just from the private practice but from all various areas of the practice of law. But I think it would be a significant mistake to change the benefit package in such a way that any segment of that pool, including the large segment of private practitioners, was in fact discouraged from competing and being willing to serve.

In the private firm the practice of law, as you know, has a system called an "associate's status." That, too, is stretching out, and now many large firms are not considering people for partners until eight or eight and a half years. So, again, it is a longer time before an attorney reaches the peak of his career or her career and would be established and, therefore, be attractive to a judicial appointment.

Finally, the ability of a law partner or a solo practitioner to prepare for his or her own retirement is very generous under our present KEOGH type plans. An individual who's self-employed, like a partner or a solo practitioner, is allowed to put away each year twenty-five percent of his or her income up to thirty thousand dollars and tax defer that and draw it out upon retirement.

Most of the people, of course, in private practice who would be going in at the peak of that period of their lives into the judiciary would then have to give up that option of their own funding of their own retirement through a tax-deferred plan at that generous level.

The provisions for State employee compensation tax-deferred plans I believe now allow a maximum contribution, except for the final three years, of only seventy-five hundred dollars. So the individual practitioner's ability to fund -- even if he were willing to live on a shoestring -- to fund in a voluntary way additional and supplemental retirement is very much reduced.

As a final point, I noticed that -- I want to endorse and affirm Judge Sweeney's comment. I have exposure to Virginia state judges and judges in other states. It's my personal opinion that this state has the very best judiciary of any state system, and I think, from the figures we've seen, since there are about five and maybe ten states paying more than we are for the same -- for their judiciary, it's proof that we right now have a very good value and a very good bargain. And I would hate to lose that bargain or that quality of judge that we have been able to have in this state by reducing the benefits available.

THE CHAIRMAN: Any questions of Ms. Marshall, anyone?

Thank you very much.

Next we have Judge William H. Hodges from the Court of Appeals and the Judicial Conference of Virginia.

JUDGE HODGES: Thank you, Mr. Chairman. And, Gentlemen, this is a hallmark in my life. I've been fighting for twenty-five years to get before the Appropriation Committee or some segment of it, and I've finally achieved it. So I want to thank you for this privilege.

SEN. TRUBAN: Remember who got you here.

JUDGE HODGES: Well, I would be remiss, though,

if, as chairman of the Judicial Retirement and the Insurance and Compensation Committee of the Judicial Conference of Virginia, I did not express my appreciation to each of you for what you have done for the judiciary in the recent years.

I guess I should establish my priorities and say I'm not only appearing here as chairman of that committee but I also appear on behalf of Chief Judge Koontz of the Court of Appeals, who is sitting in Salem today and unable to be here. And he asked me to extend to you his gratitude for the invitation you extended him to come and to let you know that he opposes any change in the Judicial Retirement Act.

The gentleman from Louisa asked a while ago about the election of judges, and I'm reminded of a little story a friend of mine in North Carolina told me. He was up for reelection about two years ago and said his opponent used a little radio script in his campaign for election.

And it started out with these two kids talking about they wanted to go to the circus, and Jimmy said to Johnny, he said, "Well, you know, Johnny, we don't have any money." He said, "Well, you know, Mr. Jones has got a lot of guns up there in his house, and we can break in that house, get those guns, sell them, and we could have money to do most anything we want."

And he said, "Oh, no, no, you know that's wrong, and you could go to jail if you did that." And he said, "Oh, heck," he said, "Judge Bell never puts anybody in jail." And with that, the window, you could hear glass breaking, and this voice bellows out, "Fight crime, protect the citizens of your community and your property. Elect Joe Smith judge." So I'm glad that in Virginia we have not gotten to that state.

I guess my motivation in being here today could be considered selfish and it's not in dollars and cents that will be reflected upon me because --

SEN. WILLEY: We all know you're rich already.
Go ahead.

JUDGE HODGES: I wish I could confess to that. But -- because as I understand the bill, it would not affect any judge elected prior to January 1 of 1986. But I take a selfish interest in the judiciary in Virginia having been a part of it now for almost fourteen years. And as Judge Sweeney said, in some of his travels he has been encouraged that we have probably the best system in Virginia -- in the country, here in Virginia, and I certainly attest to that.

I've had the privilege of attending several national sessions involving members of the judiciary in the past two or three years, and the quality here exceeds that in any other state. And I can say to you that the retirement system that we've had is a real attraction for qualified persons to go on the bench.

And I might say, Lacey, that I think one of the answers to the schoolteachers, and there's never a satisfactory one, is that to get a qualified mature judge, he has at least, under the law and the Constitution, had to have practiced law for five years, so that raises the age.

As a practical matter, he almost would have had to have practiced for ten to fifteen years, which increases the age of ascending to the bench. And I think that those are factors.

I'm not going to tell you about sacrifices in compensation because they used smelling salts on me when my first check came in. And I called Sydney Day, and he said, "If you'll just calm yourself down, I'll try to explain it." And while he was explaining, I said, "Sydney, just send me a little money for a psychiatrist because I need to go." And I think that's an experience that all of us have witnessed.

But from a serious vein, I do hope that it will be your pleasure to preserve the system that we have. I want to see us keep climbing, whether we're fourth, seventh, eighth, or whatever. I don't want us to be thirty-first, forty-fourth, and forty-sixth.

Thank you, Mr. Chairman.

THE CHAIRMAN: Thank you, Judge. Any questions of Judge Hodges?

MR. BAGLEY: Could I ask one question?

THE CHAIRMAN: Yes, sir, Mr. Bagley.

MR. BAGLEY: Judge Hodges, you mentioned that our Constitution requires you practice for five years, and I take it then you would agree with me the Constitution ought to be amended to require practice instead of merely admission for five years.

JUDGE HODGES: Yes, sir.

MR. BAGLEY: Thank you.

THE CHAIRMAN: Any other questions?

All right. Let's see. Next we have Mr. Pierce Rucker from the Virginia Association of Defense Attorneys.

MR. RUCKER: Mr. Chairman and members of the Committee, I'd like to thank each and every one of you for giving the Virginia Association of Defense Attorneys the opportunity to speak to you today. Hal McVey of the law firm of McGuire, Woods & Battle here in Richmond, the president of our organization, wanted to come, but he had commitments elsewhere and asked me to come as a member of the board.

For those of you who don't know, the Virginia Association of Defense Attorneys is a statewide Bar association. Its membership is made up of lawyers who practice on the defense side, in civil cases for the most part.

I've heard - a lot of the comments I had planned to make to you today I have heard. I would like to make one or two comments, though, that I think are pertinent, and, that is, to point out to each of you that often in situations that involve compensation and money one tends to be very receptive to arguments from constituents and also fail to recognize that what we're dealing with here is not mere numbers.

We're dealing with a system, and it's a system that is different from the educational system. It's different from most every system that any other state employee is involved in. It's a system that by its very nature requires a high level of skill, a great deal of education, and a tremendous amount of experience.

I don't think anyone on the committee here would suggest that we require only recent graduates of law school to be judges; that's not appropriate to the system. I think that because each and every one of us is dedicated to this system, we should do everything we can to preserve the quality of it.

To the schoolteacher that Delegate Bagley is concerned with dealing with, I echo what Judge Hodges says and, that is, to simply try to explain that he or she entered a different system with different requirements.

So I would ask on behalf of the VADA that the committee remember that the Commonwealth of Virginia, each and every citizen, expects and deserves the right to have the best legal system that he or she can have. No one likes to go before a person who sits in judgment on them, but when they have the

opportunity to do it, they're going to want to have the very best they can.

Thank you very much.

DEL. PUTNEY: May I ask a question?

THE CHAIRMAN: Yes, sir, Del. Putney.

DEL. PUTNEY: Would you agree that the head of the cardiology department at MCV would require a good bit of education, some skill, and experience?

MR. RUCKER: Yes, sir. I have absolutely no objection to that. And perhaps he was chosen because of his skill and his ability; perhaps he went into it with his eyes open, I don't know. He certainly made elections, and certainly judicial candidates make elections, too. He certainly may have given up a lot in private practice, also.

DEL. PUTNEY: On the question of equity this presents a problem then, doesn't it?

MR. RUCKER: That presents much more of a problem to address than I think the schoolteacher problem, yes, sir. If the people down at MCV are raising Cain, then that would be a potential problem.

THE CHAIRMAN: Any other questions?

Yes, sir. Sen. Truban?

SEN. TRUBAN: To respond to Mr. Putney's question, there's no restriction on the head of cardiology at MCV or any state hospital to not have outside employment, is there?

MR. RUCKER: I'm not aware of it, Senator.

SEN. TRUBAN: It's my understanding, Mr. Chairman, that most of them affiliated with the hospital do in fact have independent practices.

(Unidentified speaker): Well, the point we're talking about is the service they render, the educational background, the training, the skills, talents.

SEN. TRUBAN: Oh, I agree on that.

THE CHAIRMAN: Okay. Any other questions?

MR. RUCKER: Thank you.

THE CHAIRMAN: Thank you very much.

MR. RUCKER: Thank you.

THE CHAIRMAN: Next we have Mr. Alton Bryant from the District Court Committee on compensation, retirement, and insurance.

JUDGE BRYANT: Mr. Chairman, members of the committee, thank you very much for having me or allowing me to appear today. I am representing, as chairman of the Judicial Compensation, Retirement, and Insurance Committees of the Judicial Conference of Virginia for District Courts, the District Court judges and their association.

Of course, as you realize, there are more District Court judges than any other type, so perhaps those are the judges that you are most familiar with. And I believe that they are the judges that the population of the people that you represent -- your constituents -- they are the people that in general are seen as being the judiciary. They rarely, if ever, appear before an Appellate judge.

I don't want to say that District Courts are more important. I do want to say that they have a greater closeness and are seen more directly than any other type of judges.

What do we need on that level? I would like to talk just for a few minutes, and I'll try not to repeat things that have already been said.

I would consider myself an average District Court judge. I'm a judge in the 13th Judicial District, which, of course, covers the City of Richmond. I'm a Juvenile and Domestic Relations District Court judge. I have all the scars to prove it.

I do want to say I'm fifty-three years old. I was just fifty-three October the 8th; that would be my age level. I think that, again, makes me fairly average as District Court judges go according to the statistics.

I have some distinctions, however. I went to college the first day with Jim Roberts, who turned out to be president of the Virginia State Bar; and when I went to work as a lawyer from school, I went into the same building with Sen. Parkerson, the Old Traveler's Building in Richmond; and I used to

hang around Sen. Willey's drugstore, so I have all those -- there are some somewhere, and that was a great learning place -- I do have some distinctions other than those average factors.

I would like to talk and to give you, first of all, the consensus opinion of the District Court judges. We recently had a conference, a semi-annual training conference at Virginia Beach. A resolution was offered, and it was passed unanimously, opposing the change in the weighted retirement features of the Judicial Retirement System. It passed unanimously.

And if you've ever been to a meeting with District Court judges, frankly, Gentlemen, you couldn't get those fellows to agree on the time of day or the day of the week.

I ask myself why that happened. Was it self-interest? Well, and a close reading of the bill indicates, of course, those present judges and those people who voted for that bill were not affected by it. Their compensation and retirement apparently would go on unchanged.

I think it was a dedication to the system and a concern for the system. We've talked about systems, and others have talked about the system. I think the system is vitally important. It probably is much more important than any individual judge or any individual concern.

Now I've been through -- at this for twenty-six years. I came to the Bar in 1959 in the City of Richmond, as I indicated. I've seen the system develop, and I've seen it grow. And, Gentlemen, I give you -- I thank you for that; I give you full credit for that. You are the people who created the system. It wasn't the judges; it wasn't anyone else but the members of the General Assembly after reflection and after their experience and training.

It was created by the General Assembly; it was passed by the General Assembly; it's supported and maintained by the General Assembly. So I think the credit should go right there, and I join the prior statement that you should take pride. You have the right to feel good about it. I see that when I go to other states to conferences, to see other judges, to go to training.

I have the very same reaction as the other judges who have spoken. I feel that our system is the best. I feel like, excluding myself, that the other judges that I work with are the best. I feel like it's getting better all the time. There are several reasons for that. First of all, I think

there's the training and education that we receive through our semi-annual conferences and other conferences.

I went to Charlottesville this year for a week, University of Virginia, spent a week there, lived in a college dorm room -- nothing to write home about -- but, nevertheless, I went back and we went to the basics. We got the education and training that one needs, and one forgets that the price of retention is constant repetition. And we went over those things that we have seen before, that we've learned before, but we have -- might have forgotten, and we added to our knowledge from that training.

Now the backup and support of the Supreme Court is important to the system. I thank you for that. We're not sitting out there over in north Richmond by ourselves doing what we want to do, doing this and someone else is doing that. We're part of a system, and we're united in delivering high quality judicial services.

But the last thing that I think, though, vital is compensation and retirement benefits for judges. I think that has had a tremendous impact on the quality of our system.

Now what I would like to touch on briefly is our need for the midline or senior-level lawyers in law firms coming into the system, and I'm afraid that if we change or diminish the retirement benefits that we're going to lose. It's hard enough now to attract those people. If we change this system as indicated, I feel it's going to make it very difficult for midline or senior-level lawyers to enter our system.

Now I see it every day as I work. Other than today -- someone has taken my place -- I see it every day that to be a judge it's one thing to know what's in the black book and what's in the Virginia reports. It's another thing to apply life's experiences, knowledge, and training that you have received over a period of time to those problems.

I see myself every day drawing on not just the code or the case law of Virginia but that type of experience, experience that I learned the hard way -- perhaps at the hands of Sen. Parkerson, having come up against that formidable situation -- the experience that I've learned from handling problems of people. But you can't do that overnight, and you can't do that effectively, in my humble opinion, if you walk out of law school and become a judge overnight. You don't have anything to draw on.

I would like to say one thing. When we talk

about what do we really want from our judicial system, what are we after, what do we really want, I'd like to say one thing to you. I suppose this is probably -- what I'm going to say is probably derived from some member of the General Assembly, and it says this: Don't settle for a blue suit if you want a tuxedo; don't settle for a rocking horse if you want a pony; don't settle for peanut butter if you want cavier; don't settle for a poodle if you want a hound -- you won't hunt; I hear that all the time.

Now I think that we've got to decide what we want here, and I'm just requesting today, Gentlemen, in your wisdom and your considerations, whatever you settle for, don't settle for less than the best as far as our judicial system in this Commonwealth is concerned. I think we have the best system. You have made it the best system. As I said, I think it is certainly becoming better all the time.

Mr. Putney, I was thinking of what you said when you asked the very pertinent question today. You mentioned the man over at MCV -- (END OF SIDE 1, TAPE 2 - ends in middle of sentence)

Our court has a contract with a physician services at MCV to cover our detention home that I had to develop, negotiate, sign, and we pay those gentlemen quite a bit of money for the services that they do supply us. So that is just one example of that type of thing. Now, of course, I can guarantee you I don't have any contracts with any other agency, body, system, individual, or anything like that. That was just one difference I thought you might be interested in.

Again, I think we have a wonderful system. As I said, I think we ought to strive for the best, not the mediocre. And I think we -- due to your efforts, I think we're there or we're rapidly getting there.

Any questions, Gentlemen?

THE CHAIRMAN: Any questions of Judge Bryant, anyone?

SEN. TRUBAN: Yeah, one question.

THE CHAIRMAN: Yes, sir, Senator.

SEN. TRUBAN: I didn't get how long you'd been on the bench.

JUDGE BRYANT: Six years. I am up for a reelection in January.

SEN. TRUBAN: Do you think that the judges that sat on the bench twenty years ago did an inferior job as compared to today?

JUDGE BRYANT: I didn't mean to indicate that. I don't believe I did indicate that, Senator.

SEN. TRUBAN: Oh, I know that. I'm just asking you the question.

JUDGE BRYANT: Yes, sir, and I want to answer it. I would say (*Break in tape, side 2, tape 2*) they didn't have the training; they didn't have the education that we have; they weren't as well compensated; they were selected from a smaller pool.

In the City of Richmond we have fourteen hundred lawyers. And what we're doing, we're competing with that pool with Hunton Williams, with McGuire, Woods, with the Attorney General, with everybody else who wants an attorney private enterprise. We're fishing in the same pond that they're fishing in, and what we want to do is get the big bass. We're not interested in the minnows.

THE CHAIRMAN: Any other questions?

Yes, Del. Dickinson?

DEL. DICKINSON: You mentioned comparison of the judiciary twenty years ago today after six years on the bench. Do you think the impression with the public, that the public has of the judiciary, has improved? Would you go around and encourage someone to register?

"I will not register. I don't want to be there because the jurors are picked from the voters' list. I go there 9:00 or 10:00; I sit to 5:00; they finally get to me. And I'm real busy." Is that improving?

That's what we as legislators catch out there as the impression of the judiciary. Most of us don't want to even go there because we'll stand there, but sometimes you go as a witness, something like that.

JUDGE BRYANT: Well, I suppose it's difficult for a judge to evaluate the impressions that others have of the system. I suppose that you're a better judge of that or just as good as anybody else.

DEL. DICKINSON: Are they bending to help the public any more than they used to?

JUDGE BRYANT: I think the Commonwealth is expressing its concern for the average citizen of the Commonwealth when it assists the judicial system. It makes an effort to get better qualified judges or the best qualified applicants. I think that tells the people of the Commonwealth that the General Assembly and those people that they have elected are interested and want them to have the best level of service and the best level of justice that they can have.

I don't think that it tells them that if you make it less attractive to obtain judges for the system. I think that indicates something else. I think it indicates you're putting a lower priority on the judicial competence of people that you're trying to attract.

Frankly, I feel it's -- if we go back to the law of supply and demand, it's a question of can we get the people? Because no matter -- it gets down to a one-on-one situation. You have a judge; you have lawyers; you have people there. And that person that you have there making that decision, affecting someone's life, finances, future, you want to be the best possible person for that position.

THE CHAIRMAN: Any other questions?

Thank you very much, Judge Bryant. Appreciate that.

Next we have Judge Harold Purcell.

JUDGE PURCELL: Mr. Chairman, members of the commission, I was a member of the House for twelve years, a member of the Senate for eight years, and I never had the privilege appearing before a House Appropriations Committee meeting. And it's indeed a privilege for me to speak to you.

I endorse all that's been said here today. I don't take a word away from anything that's been said. I appear before you not representing any group, not representing anyone but myself.

I would like to call to your attention the fact that when this preferential treatment was given to the judges in the retirement system, you passed certain legislation which was detrimental to the judges. And if you're going to look at it from one viewpoint, you should look at it from all viewpoints.

Now what I mean by that is this. If you are a teacher, you can retire and get a job in a private school and teach. If you're this cardiac specialist, Medical College of Virginia, you can retire and draw your retirement and still be a doctor. If you're an engineer at the Department of Highways, you can retire and still practice your profession of engineering. The only person that is restricted so far as his future endeavors are concerned is the member of the judiciary.

You have passed a statute -- at the same time you pass this preferential statute pertaining to retirement, you passed a statute saying that any retired judge could not practice law. Now that -- I'm not in the ninety-one-thousand-dollar category at all, but I tell you this: that can be quite detrimental to a man's pocketbook.

The lawyers in my area don't make ninety-one thousand dollars, but they, in general, make as much or more than the Circuit Court judge does. And if you're going to retire as a Circuit Court judge, you must understand that you cannot practice law and you're going to be sitting there with a very much reduced income. So my only statement to you, members of the commission, is that when you study these laws that you study all of them.

I felt it was particularly unfair to me because I was on the bench when this statute was passed. I had no way -- at that time I had already retired from the Senate. I could not go back to the Senate. My clients had long gone. I couldn't recover them. So I had no -- if I had attempted to resign from the bench at that point and go back to the practice of law, I would have had neither any political career nor any clients that I could count on. So I was stuck with it. I had to stay with the judiciary until retirement time and then retire.

I also have the great advantage of having my son to come back and want to practice with me, and I had been looking at him since he was two years old with the thought in mind that eventually we would practice together. And for me to be restricted in that regard is indeed a handicap to me.

It's right hard when you walk into a courtroom, and you're prohibited from sitting at counsel table when you have presided over the same court. Not only that, there are other restrictions. For instance, you cannot even take depositions in a divorce case; that is a court appearance. You cannot sign a pleading; that's a court appearance. You are restricted to such an extent that an attempt to practice law after having been on the bench is practically impossible.

I call this to your attention. When you're

examining these statutes in reference to retirement, I suggest you examine them all. And whatever you do I'm sure will be for the best interest of Virginia.

Thank you very much.

DEL. PUTNEY: May I ask Harold --

THE CHAIRMAN: Yes, sir, Del. Putney.

DEL. PUTNEY: Has there been any effort, and I should be aware of it, to remove the restriction on law practice?

JUDGE PURCELL: I don't know of any. I think Del. Dickinson did introduce a bill at one time, received no support for it whatsoever. And it was -- therefore, nothing else was ever done about it.

DEL. PUTNEY: Another question.

THE CHAIRMAN: Yes, sir, go ahead.

DEL. PUTNEY: I'm not real sure. What were the reasons? What were the considerations, if you know, for putting that in the statutes?

JUDGE PURCELL: I have no idea. I have no idea. I got some reports that there were -- it was a judge who had retired in a section of Virginia and taken over a great deal of practice in that area, and some of the people were dissatisfied with it. But, at any rate, whatever may be the reason for that, that statute was passed at identically the same time that you passed the beneficial statute so far as retirement is concerned.

And I can understand as a legislator how you might be questioned concerning that, and I can see that you could be questioned pertaining to that. My only answer to it has already been given, mainly to try to get better compensation.

DEL. DICKENSON: Question?

THE CHAIRMAN: Yes, sir, go ahead.

DEL. DICKENSON: Judge, if you retire from the bench --

JUDGE PURCELL: Yes.

DEL. DICKENSON: -- and do not accept retirement

--

JUDGE PURCELL: Then you can practice.

DEL. DICKENSON: Then you can practice.

(Unidentified speaker) He can practice.

JUDGE PURCELL: That is correct. That is correct. You're absolutely correct about that. You're absolutely correct about that.

And you're faced there with, again, a monetary consideration. My retirement is two thousand dollars a month. I could probably make a little bit more practicing in Louisa with -- but I doubt a great deal more. And so, again, you're reaching a financial consideration as to whether it's worth more to retire or worth more to resign.

I say to you I did resign and went into all the courts in the state for a period of approximately two years. In that two years my son had gotten so proficient that I didn't feel that he really needed me any more, so I went ahead and retired. But there are definite detriments, no question.

THE CHAIRMAN: Sen. Truban?

SEN. TRUBAN: Thank you. And, Judge, there would be nothing to prevent you from working in a law office, doing anything you wanted to, just so you didn't go in front of the Court?

JUDGE PURCELL: Yes, but it's not only not going in front of the Court. It's what is considered as a court appearance. I wrote a letter to the Attorney General. You'll find a very long opinion in which he described to me exactly what I could do and what I could not do.

For instance, I would like very much to be involved in this political campaign that's going on right now. I'm very interested in politics, been interested in politics all my life, but I'm prohibited from doing so. I can't say that --

(Unidentified speaker): You're limited to --

JUDGE PURCELL: I can't say that I'm going to support someone; I can't contribute to a campaign.

SEN. TRUBAN: Are you allowed to contribute?

JUDGE PURCELL: You are not, not according to

the Attorney General.

SEN. TRUBAN: Mr. Chairman, can I ask him one more question?

THE CHAIRMAN: Yes, sir, Sen. Truban.

SEN. TRUBAN: Is there any place in there, other than 51-179, that prohibits you? Is there other sections in the code that does that?

JUDGE PURCELL: That's the section that does it.

SEN. TRUBAN: Well, that says the practice of law by certain retired judges and commissioners. It says, "No former justice or judge of a court of record of the Commonwealth and no former fulltime judge of a court not of record of the Commonwealth who has retired and receiving retirement benefits under Chapter" so-and-so-and-so-and-so "shall appear as counsel in any case in any court of the Commonwealth." And it goes on to say that "no State Corporation Commission..."

Well, it seems to me that you'd have a lot of leeway.

JUDGE PURCELL: Well, I, of course, don't want to get into conflict with the canons of judicial ethics. I'm still considered a judge even though I don't particularly desire to be one. There's no way I can get out of being one. I was one, and I can't get out of it. I'm still a judge. And I'm faced with that proposition, and, as I said, it has some very definite detriments. So if you're going to consider part of the statutes involved, please consider them all.

SEN. WILLEY: Don't hand us that stuff. You love to be called a judge.

JUDGE PURCELL: No. Really, Sen. Willey, I like the term "Senator." I enjoyed that very much, and I resented really losing that.

SEN. WILLEY: Now you're talking.

JUDGE PURCELL: Now I would say to you that people at Louisa normally call me "Harold" if they're speaking to me on the streets, other than sometimes behind my back they call me other things.

DEL. BAGLEY: I never heard any of that.

THE CHAIRMAN: All right, Gentlemen. Any further questions of Judge Purcell?

Thank you, Judge.

JUDGE PURCELL: Thank you.

THE CHAIRMAN: Now that completes the names of the persons who were listed here as wanting to speak. Is there anyone else here who would like to speak on this matter at this time?

Any member of the joint committee have anything they'd like to say at this time?

SEN. PARKERSON: Mr. Chairman, I certainly don't want to prolong it because I've got to get out of here, but could Mr. Pond tell us in the whole retirement system what percentage of the members of the system or in the judicial branch versus the balance of the system so we know?

THE CHAIRMAN: Yes. Mr. Pond?

MR. POND: Mr. Chairman, I think there are about

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THE CHAIRMAN: Come up here, if you would, please, sir.

MR. POND: I believe there are about two hundred and eighty judges, and there are about eighty-one thousand state employees and about eighty-one thousand schoolteachers and about fifty-one thousand employees of political subdivisions.

SEN. PARKERSON: So when you look at the broad retirement picture for Virginia, the judiciary makes up a very small percentage?

MR. POND: Yes, sir. It's a separate independent system. I think that should be clarified. There are three systems: one is VSRS, one is the State Police, and one is Judicial.

THE CHAIRMAN: Any other questions, Gentlemen?

DEL. DICKINSON: Mr. Chairman?

THE CHAIRMAN: Yes, sir, Mr. Del. Dickinson?

DEL. DICKINSON: You hear a lot today about

substitute judges. I think there's an article in the Times Dispatch Sunday about the more frequent use of substitute judges.

Can a retired judge -- I think we have mandatory retirement at age seventy. Well, then can you recall a retired judge over seventy to sit on the bench?

THE CHAIRMAN: Mr. Baldwin, can you answer that, please, sir?

MR. BALDWIN: The answer is yes.

DEL. DICKINSON: Is that not contradictory to your mandatory retirement of a sitting judge who must retire at seventy?

MR. BALDWIN: I'm not sure that it is. If the mandatory retirement age is to say that he should go off the bench as to a fulltime position, I don't think it's to suggest that on an individual *ad hoc* basis that the person could not come back and handle individual cases and that, in fact, is done.

DEL. BAGLEY: That's voluntary, though, isn't it?

MR. BALDWIN: After that age it is voluntary, and, of course, in practice, while there's some language in the statute saying it's mandatory up to a certain age, the practice is that it's voluntary the entire time. Obviously the chief justice would not want to recall someone who did not want to sit; that would probably be the worst thing you could have is someone sitting on the bench who did not want to be there.

SEN. WILLEY: How frequent is that?

MR. BALDWIN: Are they recalled?

SEN. WILLEY: Yes.

MR. BALDWIN: A good number of occasions. I would say very frequently because on the circuit level you have disqualifications, sometimes for work overloads, that type of thing, or sometime illnesses. And they are frequently used. Retired judges are frequently used.

Obviously we start with moving other judges, other regular judges, around the state to try to cover as best we can, but we also do have to call upon retired judges a significant amount.

DEL. DICKINSON: Mr. Baldwin, are the retirement benefits number of days of annual leave the same in the judiciary as they are for other government employees?

MR. BALDWIN: Circuit judges have no annual leave requirements at all. They have no system whatsoever of that nature. The District Court judges do have an annual leave system, and I'm not as familiar with the state employees, but they get twenty days per year to start off with, and they can earn for each year of service one additional day up to thirty. So for District Court judges you have somewhere between twenty and thirty days of annual leave that they can accrue. Circuit judges have none.

DEL. DICKINSON: How does that compare with state employees?

MR. BALDWIN: Again, I'm not sure about the state employees. I think the state employees is somewhere -- and please don't go on this because I'm just not that familiar with the state employee system -- but I think it's probably somewhere in the neighborhood of about twelve days, I believe, annual leave for state employees -- twelve, fifteen, to eighteen.

DEL. DICKINSON: Well, then is it possible for accumulated annual leave and sick leave that a General District judge would not be serving for two months at a time?

MR. BALDWIN: Yes, that's possible. He can accumulate up to forty days of annual leave and sick leave can be accumulated *ad infinitum*. There's no limit on the amount of sick leave. I think that's true for all the employees, too, and I think the CAP is similar, too. You can accumulate over a period of years up to forty days.

DEL. DICKINSON: Another thing. We speak about the weighted payment, and I just want to make an observation, Mr. Chairman. This must be a weighted hearing. I have never been to any hearing where everybody was in opposition. Usually you have one proponent.

MR. BALDWIN: Let me just add one closing thing. I won't prolong this. I did present you with a book. There are some information packages in there. There's a package in there that deals with our entire compensation picture, and if you want to look at that, I'm sure there's some -- I'm not going to take the time since I think everyone has covered many of these points, but there are some nice charts, I think, that demonstrate on both the salary levels that we are not all that well off when you compare with the private Bar.

The final thing I would say -- I think everything that Kathy and Bob presented probably brought me back to one point -- is that you pay for what you get. And I think the people have demonstrated and said here today they think we've gotten something pretty good so far, and I think that's because we've been willing and you've been willing to pay for it. And I think that's what those figures demonstrate. I hope we'll not change course there.

And then the final thing that I would say is that the action you take today, of course, is something that's probably not going to show up, unfortunately, for about ten years. But if you do something that is going to affect the quality of the judiciary, you're not going to see it right away, and some of us will not even be around to see the impact of that.

But I'm telling you, just as I think most of you saw, your action in 1973, when you created the system you have today, is paying off for you today. I think that was a positive step. I think any action of this nature would be a negative step, and ten years from today those that were still around would be coming in here saying, "Why isn't the judiciary as qualified today as it was then?" And I think the answer would be your action today. So I hope you won't go in that direction and will stick with our system we have.

Thank you very much for your attention.

THE CHAIRMAN: All right. Any other questions?

Yes, sir, Senator Truban.

SEN. TRUBAN: Mr. Baldwin, since before the '74 do you think we had inferior judges then?

MR. BALDWIN: I think the quality of the judiciary -- and, of course, my opinion in this area is limited because I wasn't around before 1974, so this is speculation on my part, but from all the people that I've talked to, I think -- most people suggest that there has been an improvement in the judiciary in Virginia since that time. I think that's come about for some of the reasons that Judge Bryan indicated, and I think moving to a fulltime judiciary has helped that a lot.

THE CHAIRMAN: Any other questions, Gentlemen?

Thank you very much, Mr. Baldwin.

Anyone else want to comment at this time?

Gentlemen of the committee, we've been given a lot of material today, and rather than try to take any further action today, it would be my suggestion that we each go through this material carefully. I think we will have one more meeting and which we will make a discussion meeting to give the staff some direction in preparing a report, and that should enable us to conclude our work.

So we will schedule one more meeting and that will be a work meeting to make recommendations to the staff for a report, is that satisfactory?

All right. Well, thank you all very much.

[Meeting adjourned]

