REPORT OF THE
JUDICIARY COMMITTEE OF THE
VIRGINIA BAR ASSOCIATION

1997 UPDATE OF THE REPORT BY THE VIRGINIA BAR ASSOCIATION: APPELLATE REVIEW IN VIRGINIA

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 55

COMMONWEALTH OF VIRGINIA
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1997 VBA APPELLATE REVIEW IN VIRGINIA UPDATE

I. BACKGROUND

A. The 1994 VBA Report

In 1994, after a two-year study, the Judiciary Committee of the Virginia Bar Association published a report, APPELLATE REVIEW IN VIRGINIA (the 1994 VBA Report). The 1994 VBA Report made a number of recommendations, see Appendix A, Executive Summary. In accord with to the 1994 VBA Report's recommendations, additional staff was provided for the Court of Appeals and Virginia Code amendments were sought authorizing the Judicial Council of Virginia to prepare periodic reviews and reports to the General Assembly about the size and staffing of the Court of Appeals. Phased structural changes in the appellate system recommended by the 1994 VBA Report have not been adopted.

B. House Joint Resolution No. 546

House Joint Resolution No. 546, agreed to by the House of Delegates on January 30, 1997 and by the Senate February 19, 1997, requested the Judiciary Committee of the Virginia Bar Association to update the 1994 VBA Report. See Appendix B.

II. OVERVIEW AND RECOMMENDATIONS

A. Overview

Nationwide, for decades, there has been a large, sustained increase in the number of appeals. The dominant component is criminal appeals.

The 1994 VBA Reports characterized the phenomenon as an avalanche of appeals. Updated statistical data show the trend has continued unabated. The Supreme Court and the Court of Appeals have demonstrated energy, initiative and flexibility in addressing the situation, Major challenges remain.

In 1994, the Court of Appeals instituted the practice of single judge review of criminal petitions for appeals, with the right to further review by a three judge panel in the event of denial. Any denial includes a substantial written explanation of the reasons. Only about one-third of the single judge denials are submitted for a further review by a three judge panel.

By means of the single judge review process, and other measures, the Court of Appeals has increased its output and reduced the number of pending cases. For the past three years, the

Court has disposed of more cases than it has received. Moreover, this has occurred during a period when the number of appeals to the Court increased by more than 20%. This is a remarkable achievement.

The current criminal petition process also has a significant ancillary fiscal benefit. Since only the appellant submits a brief, the Commonwealth's legal resources are not expended on appeals clearly devoid of merit.

The Committee believes that the criminal petition process as currently implemented by the Court of Appeals is efficient, provides quality review and should not be altered.

The Committee recognizes that the "petition for appeal" terminology associated with criminal appeals may imply to some that granting appeals is discretionary. However, the Court of Appeals' substantial written explanations accompanying denials make clear to petitioners that this is a reasoned appellate ruling on the merits.

The VBA 1994 Report documented the tremendous strides made by the Supreme Court in managing its docket. During the period from 1983, the Court reduced its backlog and cut disposition time from almost 4 years to under one year. The Court essentially has maintained that performance,

Creation of the Court of Appeals clearly was a vital ingredient in the Supreme Court's ability to bring its docket current.

The structure of the Virginia appellate system nevertheless places challenging responsibilities on the Supreme Court. Most supreme courts deal almost exclusively with *legal policy* issues such as constitutional and statutory interpretation that have broad significance beyond the specific case at hand. (Criminal capital punishment cases are one exception.) The Virginia Supreme Court, however, also has major *error correction* responsibilities, *i.e.*, the review of cases to determine whether the trial judge made an error that simply prejudiced a party in that particular case. This is a function typically performed in other jurisdictions by three judge panels of intermediate appellate courts.

Specifically, our Supreme Court is the sole avenue of review for civil cases from the circuit courts other than domestic relations cases. This direct civil review function that is predominantly an error correction function is a major burden on Supreme Court resources.

The effect of the direct civil review function is that in Virginia seven Supreme Court Justices perform an error correction function that nationwide generally is performed by three intermediate appellate judges. The direct civil appeal function of the Supreme Court (i) limits the number of appeals from the Court of Appeals that may be heard, (ii) likely contributes to the small percentage of such appeals that are heard, (iii) likely underlies the 1994 Bar Survey responses indicating that some areas of the law are not well developed, and (iv) likely underlies the 1994 Bar Survey responses indicating that the Supreme Court is not able to hear all meritorious appeals.

B. Recommendations

The 1994 VBA Report recommended that jurisdiction of civil appeals from the circuit courts be transferred to the Court of Appeals, and that the membership of the Court of Appeals be expanded to handle the additional work. The Committee believes that ultimately will be necessary, but is not recommending such action at this time. The Supreme Court and the Court of Appeals continually have adapted to meet challenges. The Committee believes that major structural change should be a last resort and undertaken only after ample opportunity has been afforded for any adaptive changes the courts may wish to undertake.

Among the measures that might be considered to mitigate the current burden of direct civil appeals are (i) use of panels to hear cases identified as error correction cases and (ii) use of compact or memorandum opinions in error correction cases. Increased support staff also might be of assistance.

A measure that should be considered to help alleviate the perception that meritorious direct civil appeals are not being heard is the use of substantial statements of reasons for denial of petitions. The Committee believes that such a practice would be particularly appropriate in direct civil appeals since a litigant's only appeal is being denied.

While no legislative action is recommended at present, the Committee does recommend that the VBA Appellate Review In Virginia Report be updated at an appropriate time in the future.

As noted in the Discussion section that follows, the expanded use of unpublished decisions is a matter of concern to the bar which warrants thoughtful consideration by the courts.

III. DISCUSSION

The Court of Appeals

The number of criminal petitions for appeal to the Court of Appeals has continued rapidly to increase, 22% from 1992 to 1996 (1,866 to 2,274). Civil appeals also have increased, but far less substantially, 6% (678 to 717). The total number of appeals to the Court of Appeals rose 23% (2,611 to 3,218).

By a variety of means, the Court of Appeals has greatly increased its dispositions, 40% (2,380 to 3,336). The measures employed to enhance output include:

- the one-judge procedure for review of criminal petitions (with the option to have three-judge review in the event of denial),
- increased staff support as recommended by the 1994 VBA Appellate Review Report,

- increased use of compact, unpublished opinions, and

- increased emphasis by the Court on its output.

Despite large increases in the number of appeals, the Court for the last three years has disposed of 4% to 7% more cases than were filed. The Court has reduced the number of cases pending at year end 14% from 1992 to 1996 (763 to 657). A snapshot analysis indicates that in approximately one-third of the cases tabulated as "pending," the record below has not been received, so those cases are not ripe for action by the Court.

In sum, the Court of Appeals has made enormous strides in increasing its output and reducing its backlog, and has done so in the face of a rapidly increasing caseload.

The one-judge review process for criminal appeals is the most important element in the Court's enhanced productivity. Prior to 1994, all petitions were reviewed by three-judge panels. Under the one-judge procedure, a single judge reviews the petition and grants or denies it. In the event of denial, the petitioner has the right to request review by a three-judge panel with the right to oral argument. If one of the three judges favors granting the petition, it is granted. Denials by either a single judge or a three judge panel are accompanied by a substantial written explanation, typically of 2 to 6 pages. In only about 25% of one-judge denials does the petitioner request review by a three-judge panel.

As noted in the 1994 VBA Report, the avalanche of criminal appeals is a national phenomenon. Of necessity, courts around the country are employing various "screening mechanisms" to efficiently and quickly weed-out appeals patently without merit. In some instances, staff attorneys alone effectively dispose of the great majority of appeals. The substantive attention petitions receive under the Court of Appeals procedures appears superior to what is available under many screening mechanisms. Indeed, the Court of Appeals approach may be the best system existent in terms of balancing productivity and quality of review.

The Supreme Court

The 1994 VBA Report documented the great strides made by the Supreme Court to bring its docket current. Since 1983, the Court has reduced its backlog of pending cases, and cut disposition time from almost 4 years to 1. The Court remains essentially current in its docket. Over the past decade, the number of decisions issued by the Court generally has been in the 145 to 160 range. There was a surge to 215 in 1989 as part of the backlog reduction effort. In 1996 the number dropped to 130 and petitions pending at year-end increased somewhat.

As noted in the 1994 VBA Report, the Supreme Court faces a daunting challenge being charged with both a *legal policy function* in reviewing decisions of the Court of Appeals and the circuit courts and an *error correction function* in reviewing civil decisions of the circuit courts.

For many years, the Supreme Court granted 6 to 9 civil petitions for review from the

Court of Appeals. The 1994 VBA Report observed that this effectively left the Court of Appeals as the court of last resort in domestic relations and worker's compensation cases. In 1996, the Supreme Court granted 27 petitions for review of civil decisions of the Court of Appeals. If sustained over years, an increased level of review will provide substantial guidance to the Court of Appeals, and go far toward dispelling any impression that a de facto parallel court system exists.

On a broader basis, the overall number of cases in which the Supreme Court granted appeal from Court of Appeals dispositions increased substantially in 1996.

The Supreme Court is the sole avenue of appeal for civil appeals from the circuit courts other than domestic relations and workers' compensation cases. Thus, the Supreme Court has the error correction function in these cases. Direct civil petitions generally have been granted 20% to 30% of the time over the years. From 1993 to 1996 the rate declined from 33% to 24%. When a petition is denied, a very brief, conclusory statement of denial is given.

Among the measures that might be considered to mitigate the burden of direct civil appeals are (i) use of panels to hear cases identified as error correction cases and (ii) use of compact or unpublished opinions in error correction cases. Increased support staff also might be of assistance.

A measure that might be considered to help alleviate the perception that meritorious direct civil appeals are not being heard is the use of substantial statements of reasons for denial of petitions. The Committee believes that such a practice would be particularly appropriate in direct civil appeals since a litigant's only appeal is being denied.

Unpublished opinions

Published opinions are the lifeblood of the Anglo-American legal system and are a core aspect of the rule of law. They make known refinements in the law and clarify ambiguities. This permits citizens to chart their conduct, to avoid disputes and more readily to settle disputes that arise. Published opinions thus play a substantial role in keeping disputes out of court and reducing the need for trials and appeals. They are an important docket control measure.

Traditionally, published opinions are long, scholarly expositions that require great amounts of drafting time. At times, scholarly overkill occurs.

Under the pressure of burgeoning dockets, appellate courts increasing employ relatively short opinions. These are indispensable tools in increasing output, reducing backlog and speeding decisions. Compact opinions make no pretense of being works of scholarly art. They do, however, provide extremely useful information as to how the court is applying the law. Typically, compact opinions are not published.

Concerns regarding the widespread use of unpublished opinions increasingly are heard. They include the following:

- Unfairness to attorneys and litigants who are not "in the know" about unpublished opinions in an area,
- Inefficiency and cost in attempting to identify and locate unpublished opinions, and
- Lack of guidance for planning and negotiation with resulting avoidable litigation.

The Committee believes that the widespread use of compact decisions is indispensable to the efficient functioning of the appellate system. The Committee believes that courts should consider publishing all or many of their compact decisions. Compact decisions are informative and useful and their dissemination should help reduce the number of disputes that need to be litigated. They need not be precedential.

The legal profession is a learned profession. Naturally, there may be some reluctance to publish opinions manifestly less scholarly than traditional opinions. Consideration might be given to denominating published compact opinions in a way that distinguishes them from traditional opinions, *e.g.*, as memorandum opinions.

IV. STATISTICAL UPDATE

The following updates statistical information made available to decisionmakers in the Commonwealth in the 1994 report entitled APPELLATE REVIEW IN VIRGINIA, prepared by the Judiciary Committee of the Virginia Bar Association.

In its most recent annual statistical release, the VIRGINIA STATE OF THE JUDICIARY REPORT 1996, the court administrators in Virginia report several years of statistics at pages A-37 to A-47. The statistical information in the next several pages is taken principally from this official report, the pertinent pages of which are reprinted in Appendix A to this report, subtitled "The Judiciary's Year in Review". Older entries in the tables below report data from comparable tables in earlier versions of the annual judiciary reports. Several graphic displays of the information are possible. These are broken down here into a review of the Court of Appeals' docket [Part A], some aspects of the work of the Supreme Court [Part B], concluding with summary displays on the overall levels of appellate review in the Commonwealth [Part C].

In addition, the Court of Appeals has released a 1996 Annual Review of Case Activity and Case Processing Times, dated April 1997, portions of which are also annexed to the present statistical update. Pertinent graphical and data displays in this report are based on the Court of Appeals' April 1997 report. Supplemental information was supplied by the Court of Appeals in August 1997, and early October, 1997 as well.

A. Court of Appeals -- Response to the Volume Crisis

The Court of Appeals has made significant efforts over recent years to deal with its caseload and to expand its output. The crush of appellate filing volume has greatly taxed the Court of Appeals, and has required a variety of efforts by the Court to deal with the flow of cases. These extensive efforts have had concrete impact. Total dispositions in the Court of Appeals have exceeded filings for the last three years. The Court has reported that a similar trend is continuing in the present year as well.

During the same recent periods, however, the number of published opinions have decreased. The Court of Appeals attributes the decline to changes in judicial personnel, in that some judges are more inclined than others to publish opinions. Whether attributable to the expenditure of energies on the overall high volume of appeals, or to such a personal sense on the part of some judges that fewer opinions should be published, the effect is that there is a continuing dramatic reduction in the percentage of appeals decided by published disposition.

The Court of Appeals has both mandatory and non-mandatory categories of jurisdiction. It receives appeals of right in domestic relations cases, workers' compensation matters, and certain categories of administrative appeals. Statistics for the filing of petitions and their disposition in the Court of Appeals are reflected in the "Judiciary's Year in Review", reprinted in Appendix C, at pp. A-42 et seq.

On the other hand, petitions for appeal in criminal cases are either granted or not, depending upon the Court's assessment of whether there is a basis for arguing that error exists. Thus the Court's own view is that it does not have "discretion" to deny petitions in the same sense that some court systems provide a "certiorari" system for truly elective granting of an appellate hearing. In this sense, the Virginia appellate system, with one exception, does not contemplate that an appellate court will deny leave to appeal if the case involves reversible error. The one exception is the category of cases controlled by Code § 17-116.07(B), in which the Supreme Court must find that a matter involves "a substantial constitutional question" or a matter of "significant precedential value."

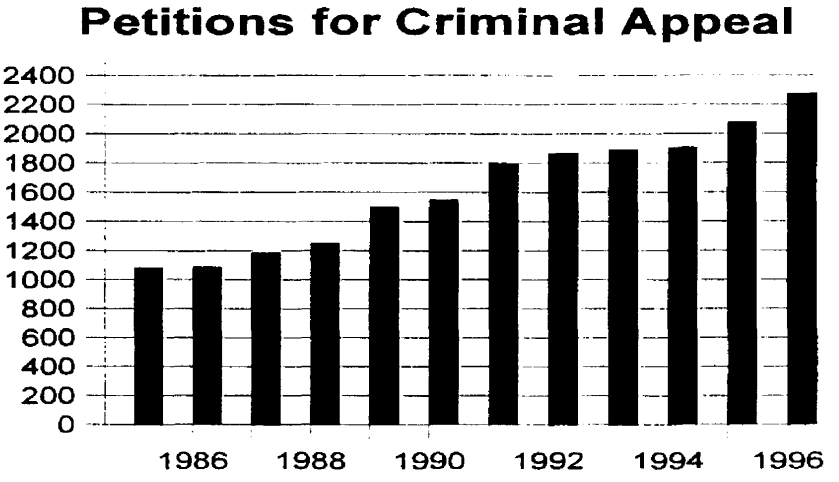
1. Growth of Criminal Petition Volume.

The signal fact in assessing the case load of the Court of Appeals is the seemingly inexorable growth in the numbers of petitions for review of criminal cases. Other than death penalty cases (where automatic review provisions of the Code require an accelerated hearing in the Supreme Court), those convicted of crimes in the Commonwealth have the option only of petitioning to the Court of Appeals for leave to take an appeal. The Court grants only a fraction of the petitions for hearing. The Court's practice is to review petitions with multiple assignments of error, and to grant leave to appeal on specified grounds of error only, thus limiting the expenditure of effort by the parties and the court to those issues that colorably have merit. Nonetheless, the sheer volume of criminal petitions has dramatic impact on the work of the Court in both civil and criminal matters.

Petitions to Court of Appeals for Criminal Appeal

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Filed	1,085	1,087	1,189	1,253	1,498	1,547	1,797	1,866	1,894	1,908	2,081	2,274
Granted	240	220	290	250	267	354	327	387	353	351	350	390

Source: "Judiciary's Year in Review", reprinted in Appendix C, at p. C-46 and comparable pages from prior year's reports. The incremental increases in criminal filings noted in the above table may be displayed as follows:



2. Civil Appeals of Right.

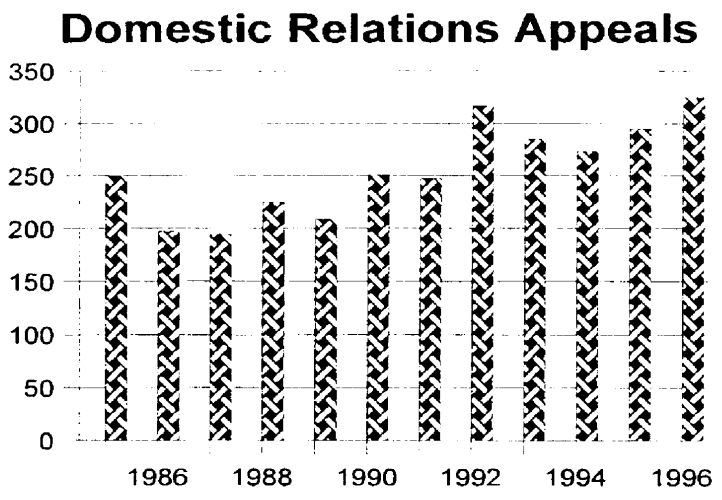
The volume of the Court of Appeals' "mandatory jurisdiction" cases remained relatively constant during most of the first decade since the court's creation, though workers' compens cases appear to have doubled in recent years over their volume in the first seven years of the Court's existence. Apart from a small number of cases falling in the Court's original jurisdiction, and other miscellaneous filings, the central categories are domestic relations cases, workers' compensation appeals, and administrative cases:

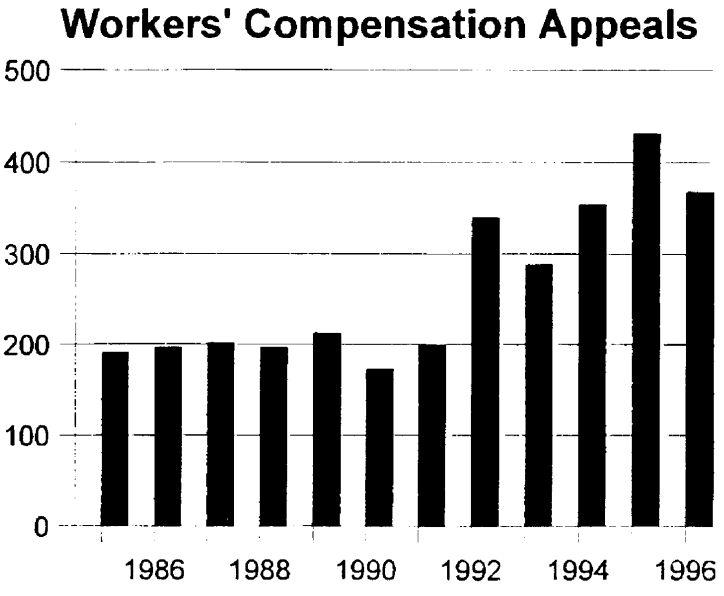
Filings on Court of Appeals' Civil Docket

	Domestic Relations	Workers' Compensation	Administrative	Total
1985	250	191	23	464
1986	197	197	29	423
1987	195	202	25	422
1988	225	197	33	455
1989	209	213	22	444
1990	251	173	40	464
1991	247	200	43	490
1992	317	340	21	678
1993	285	289	26	600
1994	273	354	36	663
1995	295	431	46	772
1996	325	368	24	717

Source: "Judiciary's Year in Review", reprinted in Appendix C, at p. C-45 and comparable pages from prior year's reports; also, Court of Appeals, April 1997 report.

Surge in "Mandatory" Appeals? It is evident from this table that, prior to the 1992 calendar year, filings in the principal categories of mandatory appellate jurisdiction at the Court of Appeals -- domestic relations and workers' compensation cases -- were relatively flat. In 1992, however, domestic relations filings jumped 28% from 247 in 1991 to 317 in 1992. They have hovered around 300 filings in the years since then. Workers' compensation filings increased even more dramatically in 1992, from 200 to 340 (a 70% jump). And in 1995 workers' compensation filings jumped another 22% from 354 cases in 1994 to 431 cases in 1995. See "Judiciary's Year in Review, Appendix C to this report, at pp. C-45. Given that the two largest categories of civil cases are mandatory or automatic appeals, where leave is not required, this trend represents a significant increase in workload, and accordingly presents severe challenges for the Court of Appeals. In 1996, however, while domestic relations increased another 10% to 325 appeals, workers' compensation appeals declined by 15%, and administrative appeals dropped by a large percentage, such that the total volume of "mandatory jurisdiction" appeals declined in calendar 1996 by 7%.





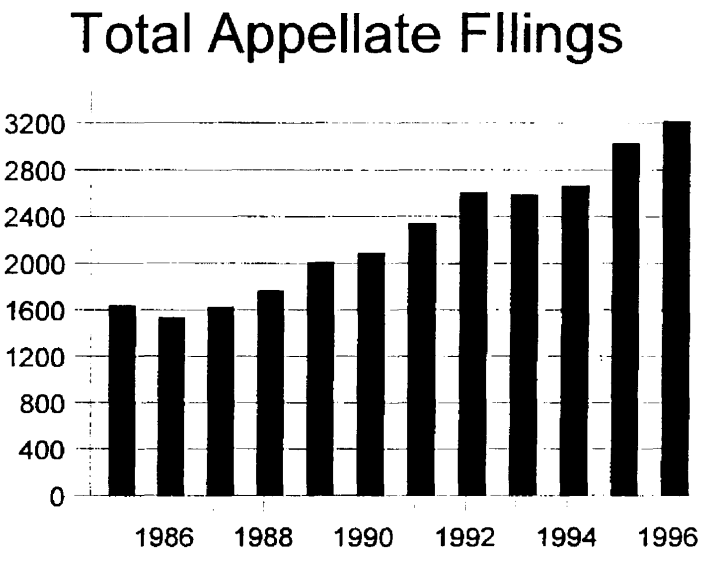
The filing volume pattern in the civil subject matters where appeal is of right to the Court of Appeals, is as shown in the right column of this page.

3. Total Appeals.

Combining the growing number of criminal appeal petitions and the other categories of appeal (listed above and adding in small numbers of original jurisdiction and miscellaneous filings) the number of appeals presented to the Court of Appeals has doubled in the first decade of the Court's operations, breaking the 3,000 mark in the 1995 statistical year:

TOTAL APPEALS (criminal petitions, mandatory civil jurisdiction and miscellaneous)

Year	Total Filings
1985	1,641
1986	1,536
1987	1,625
1988	1,768
1989	2,010
1990	2,092
1991	2,343
1992	2,611
1993	2,590
1994	2,667
1995	3,031
1996	3,218



Source: "Judiciary's Year in Review",
reprinted in Appendix C, at p. C-45 and comparable pages from prior year's reports.

For many years following its inception, the volume of filings outstripped the capacity of the Court of Appeals to decide cases. In the three most recent years, however, the number of dispositions has exceeded the filing volume.

Filings and Dispositions in the Court of Appeals

	Filings	Dispositions
1985	1,641	689
1986	1,536	1,476
1987	1,614	1,450
1988	1,768	1,454
1989	2,010	1,777
1990	2,092	2,140
1991	2,343	2,308
1992	2,611	2,380
1993	2,590	2,491
1994	2,667	2,819
1995	3,031	3,230
1996	3,218	3,336

The Committee has been provided with year-end pending case studies collected by the clerk's office of the Court of Appeals for the years 1988 through 1995:

Appeals Pending at Year End

1988	689
1989	723
1990	694
1991	589
1992	763
1993	737
1994	816
1995	676
1996	657

An interim report on July 16, 1997 reported that the number of pending cases had been reduced to 570 in the first six months of 1997, a significant percentage reduction. Moreover, while these figures reflect several hundred pending cases at any one point, the Court of Appeals has noted that pending cases do not necessarily represent a "backlog". The distinction is important: of the cases carried on the docket of the court, only a small fraction have been fully briefed and are awaiting hearing or disposition by the court. Most are in the process of waiting for preparation of transcripts, and the ensuing sequence of briefing.

As of April 30, 1997, data supplied by the Clerk of the Court of Appeals indicates that the number of appeals "pending" was down to 566, of which the status can be broken down into groups as follows:

Waiting for preparation of the record	84
Waiting for the opening brief	138
Waiting for the appellee's brief	47
Waiting for reply briefing	18
Ready for assignment	46
Cases assigned and either awaiting hearing or awaiting completion of an opinion, or awaiting release in the clerk's office	233

The court notes that the "ready for assignment" category includes several cases that ma held in abeyance for settlement purposes, pending motions, stays, remands, and the like.

The Court of Appeals has also released comparisons of total filings and total dispositions, as noted above, which gives a picture of the trend in the pending caseload as of any annual snapshot date. These data also can be summarized based on the extent to which filings exceed dispositions and, in recent years, vice versa:

Calendar Year	Filings Exceed Dispositions
1992	231
1993	99
1994	-152
1995	-199
1996	-118

Court of Appeals, April 1997 Report, appendix. Clearly, in the last three years the Court disposed of a total of 469 more appeals than were filed during those periods, and interim dat 1997 suggest that this achievement is continuing in 1997.

One measure of this excess of decisions over filing is reflected in what the Court has taken to calling its "Clearance Rate", defined as "dispositions divided by filings and expressed by a percentage." Id. The rate ranged from 82 to 96 % in the 1980's. In the 1990's the Court's efforts at improving output have been reflected in this measure as well:

Calendar Year	Clearance Rate
1990	102.0 %
1991	98.5
1992	91.2
1993	96.2
1994	105.7
1995	106.6
1996	103.7

Court of Appeals, April 1997 Report, Appendix D.

4. Time Required for Court of Appeals Dispositions.

Figures gathered recently by the Court of Appeals demonstrate that the time required for disposition of civil cases is rather favorable, and the disposition time for criminal cases in which petitions for appeal have been denied are also within an acceptable range.

Time Between Filing and Disposition in the Court of Appeals Averages by Type of Proceeding (in Days)

Case type	1988	1989	1990	1991	1992	1993	1994	1995	1996
Criminal (pet. denied)	n/a	n/a	n/a	n/a	n/a	n/a	259	210	204
Criminal (pet. granted)	577	617	605	576	513	554	491	510	414
Domestic Relations	300	320	326	289	257	271	238	214	209
Workers' Comp.	265	291	259	224	182	208	186	176	176

As the preceding table indicates, the average time required for disposition of domestic relations cases in the Court of Appeals in 1992 was 257 days, and it declined to 209 days in 1996. This represents a significant improvement over the average figure for these cases in earlier years, and a decrease of over 90 days from the time required for disposition in 1988. Worker's compensation cases are processed even more quickly, the average disposition time for 1996 being a mere 176 days. This represents an improvement for these cases of 90 days over the 1988 average disposition period.

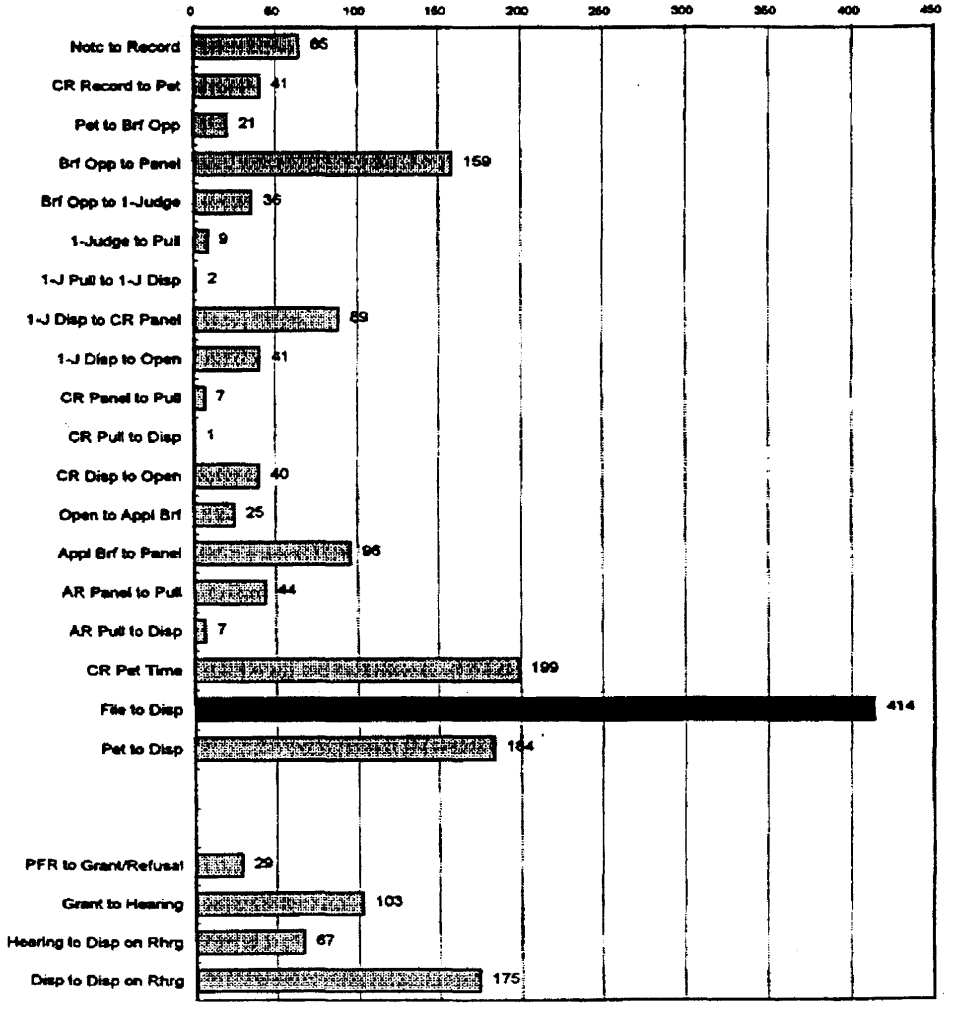
The figures are also impressive for those criminal cases in which disposition follows the granting of a petition for appeal. The Court's statistics indicate that a mean of 577 days was required for full disposition of criminal appeals in 1988. The 1996 figure was 414 days, fully 160 days shorter in average disposition time.

While this represents a substantial reduction of disposition times, the Court is still far from meeting the ABA "Reference Model" to which its own reports indicate that it aspires, which would be that 75% of appealed cases would be decided within 290 days, and 95% of appeals decided within 365 days. Court of Appeals, April 1997 Report, p. 11. The Court of Appeals reports that its 1996 statistics reflect a disposition speed in which 75 % of the cases appealed are decided within 310 days, and 95% of the cases are decided within 502 days of

filing. Id. Of course, cases in which petitions for appeal are denied, the vast majority of cases, are decided much more quickly, as indicated in the first line of the preceding data table.

Components of Delay in Criminal Cases. The Court of Appeals has recently publish[illegible] tables breaking down the time intervals encountered in processing criminal cases, to display the steps in the process and the amount of time consumed in each phase. Court of Appeals, April 1997 Report, Appendix D, p. 17 :

CRIMINAL APPEALS CONCLUDED IN 1996
MEDIAN TIMES (DAYS) FOR DIFFERENT STAGES OF THE APPELLATE PROCESS



Three footnotes are in order about this display. First, the category for time delay between the brief in opposition to the panel hearing (159 days in this example) no longer exists under the one-judge system. Second, the court has taken steps since the statistical year displayed here to reduce the 89-day period shown for the transition from a single judge proceeding to the CR panel, in an effort to be sure that these cases do not languish. Third, the Court believes tha[illegible]

period between certain briefing steps and the panel hearing (Appl Brf. to Panel) should be less today than during the reporting year, since the Court is essentially current on its docket.

Petition vs. Appeal by Right. One view of the timing information reported above would be that where there is no petition process (*i.e.*, in those civil subjects where the court turns immediately to review of the case rather than reviewing a petition first) the period between notice of appeal and final disposition is only about half as long as in criminal cases. Since judges of the Court of Appeals report that criminal cases are by-and-large simpler than the civil litigation before the court, it does not appear that the time difference could be explained by the burdens or complexity of the cases themselves.

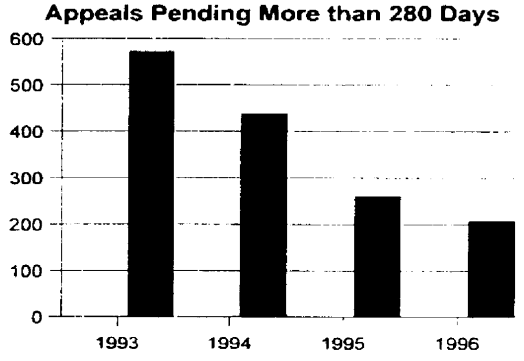
Time for Disposition of Fully Submitted Cases. In October, 1997 the Court of Appeals undertook to study the recent experience for the number of days appeals are pending from the point that they are fully submitted for decision by completion of briefing. The cases reviewed for that purpose indicated that the disposition time for fully submitted cases average approximately 111 days for cases that actually go to argument.

The Court of Appeals has paid special attention to shortening the gestation period of the longest pending cases. One measure used internally is a count of the number of cases pending more than 280 days (a period comparable to some of the national "models" the Court considers pertinent in measuring prompt disposition). For the last four years the number of cases pending for 280 days or more has fallen consistently:

Cases Pending More than 280 Days

1993	573
1994	439
1995	261
1996	207

Memo, Cynthia McCoy, May 20, 1997.



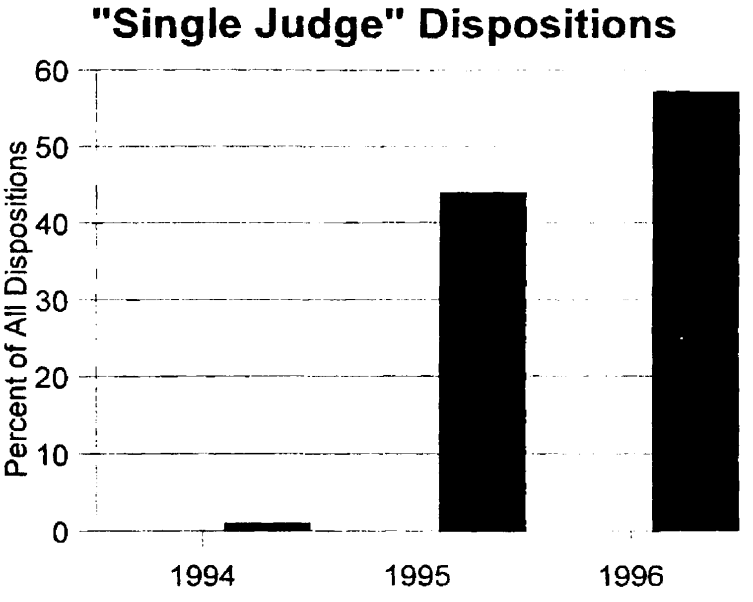
5. Means and Forms of Disposition by the Court of Appeals.

A. The "Single Judge" Process Leaps to the Fore

The Court of Appeals reports that its dramatic reduction in disposition times "reflects the implementation of the 'one judge' process in criminal cases as well as other efforts of the Court to process cases more expeditiously." Court of Appeals, April 1997 Report, Appendix D, p. 11.

Looking at data provided by the Court of Appeals, it appears that the "one judge process" has quickly become the predominant mode of disposition for criminal cases in the Court of Appeals. The Court reports that cases disposed of by a single judge have increased from 1.1 %

in 1994, to 44 % in 1995 and reached 57.3 % in 1996. Court of Appeals, April 1997 Report, Appendix D, p. 27.



This information should not be interpreted as suggesting that the Court of Appeals picks and chooses among cases for single judge review, leading to the dramatic increase shown. Rather, under the internal operating procedures of the Court, *all criminal cases* where the notice of appeal was filed after July 1, 1994 are subject to the one-judge procedure (with some exceptions for procedurally defective appeals). Thus, the reason that the percentage numbers for 1995 and 1996 are not *higher* is that many "appeals" disposed of in 1995 and 1996 had been *initiated* under the older three-judge procedure. Thus the Court has advised that 1997 will be the first reporting year in which the full impact of the one-judge procedure will be seen. The implication is that the "1997" column will show an even higher proportion of cases dealt with by a single judge, when that statistical year's information becomes available.

B. How the One Judge Procedure Functions

In July of 1994 the Court of Appeals began to implement a procedure for review of petitions for appeal in criminal cases under which the file is reviewed by a single judge in the first instance. The procedure was conceived by the late Judge Bernard Barrow of Charlottesville, and is authorized pursuant to the statutes governing appeals to the Court of Appeals. It is also reflected in Part 5A of the Rules of Court.

Under the terms of Code § 17-116.05:2, the statute entitled "Procedures on appeal," in all appeals of right the clerk of the Court of Appeals is directed to forward the case to a panel of three judges. However, for criminal cases, § 17-116.05:2(C) provides that the case may be referred to "one or more judges of the Court of Appeals as the court shall direct."

> C. Each petition for appeal in a criminal case shall be referred to one or more judges of the Court of Appeals as the court shall direct. A judge to whom the petition is referred may grant the petition on the basis of the record without the necessity of oral argument. The clerk shall refer each appeal for which a petition has been granted to a panel of the court as the court shall direct.

This authorization for use of a single judge procedure has been in the Code for many years. A

procedure using this authorization was conceived by the late Judge Bernard Barrow in 1993. In July, 1994, the Court of Appeals began to take advantage of the provision, by directing that all petitions in criminal cases be referred to a single judge. See 11 Virginia Lawyers Weekly 1137, April 21, 1997, p. 1 "Appeals court getting more cases, handling them faster."

It appears that all active members of the Court of Appeals participate in reviewing petitions under the single-judge review system, and that "senior judges also participate, [which] means that cases are dealt with faster." 11 Virginia Lawyers Weekly at 1160.

The statute quoted above (Code § 17-116.05:2(C)) provides that the single judge may *grant* the petition without oral argument. Accord: Rule 5A:13. While this Code provision states that "[a] judge to whom the petition is referred may *grant* the petition on the basis of the record without the necessity of oral argument," the Court of Appeals' present procedure reads that term as authorizing a single judge to *hear and rule* upon the petition, which means in practice that the single judge is accorded the power to *deny* the petition, which happens in four out of every five petitions. "Under the new procedure, criminal petitions are referred to a single judge, who decides, without oral argument, whether or not to grant the petition." 11 Virginia Lawyers Weekly at 1160.

The Committee had initial uncertainty about the availability of oral argument before the single reviewing judge. However, conversations with the staff of the Court of Appeals confirmed that in the review of petitions for criminal appeal by a single judge, there is no oral argument permitted.

If the petition is granted by the single reviewing judge, the case is then referred by the clerk's office to a regular panel of three members of the Court of Appeals to hear the appeal. Code § 17-116.05:2(C).

If, as is more commonly the case, the single judge denies the petition, the statute and the appellate rules set forth an option for the appellant to seek review by a three-judge panel of the Court. The statute makes no provisions for the timing of this process. See id. at (C) and (D). The appellate rules, however, require a written "demand for consideration of the petition by a three-judge panel" in a very short time: Rule 5A:15(a) specifies that the demand for hearing by three judges on the petition must be filed within 14 days of the date of the order by which the petition was denied:

> The demand shall be filed in writing and in quadruplicate with the clerk of the Court of Appeals within fourteen days after the date of the order by which the petition was denied.

Code § 17-116.05:2(D) seemingly assures the would-be appellant of an opportunity to present oral argument in support of the petition for leave to have an appeal:

> D. If the judge to whom a petition is initially referred does not grant the appeal, counsel for the petitioner shall be entitled to state orally before a panel of the court the reasons why his appeal should be granted.

The rule implementing this provision of the Code, however, requires that in order to have the right to make an oral presentation a petitioning party have preserved that request in the petition for appeal itself, as provided in Rule 5A:12(c).

> Oral argument shall not be permitted on consideration of a petition by a three-judge panel unless oral argument was asked [for] in the petition for appeal pursuant to Rule 5A:12(c). A petitioner who has previously so asked for oral argument may waive oral argument by so stating in the demand for review.

Rule 5A:15(a).

No new petition papers or briefs may be filed during the review of a criminal petition by the three-judge panel. Rule 5A:15(a).

Code § 17-116.05:2(D) provides that an appeal will not be granted "[i]f all of the judges of the panel to whom the petition is referred are of the opinion that the petition ought not be granted." As implemented by the Court of Appeals, this means that if a single judge of the three judges reviewing the petition thinks that the petition should be granted and an appeal heard, the appeal will be granted.

By statute, the Court of Appeals must "state the reasons for the denial" of a petition, when it acts by a three-judge panel. Code § 17-116.05:2(D). While the statute does not expressly require a member of the court performing a single-judge review of a petition to provide a written statement of the reasons for denying a petition, the practice of members of the court is generally to provide such explanations in writing. The Committee has been provided with examples of such denials, which range from one or two pages, to several pages in length.

The Court of Appeals has reported that increased staffing in recent years has made the decision to deny an appeal more comfortable: petitions today are not presented to the reviewing judge "cold," but have been studied by staff attorneys, who submit written analyses to accompany the papers presented to the judge, and demonstrating that the issues have been researched and analyzed. The implication is that in prior years appeal may have been improvidently granted in cases where more complete research revealed a complete lack of merit, and such cases are more readily denied initially today.

The Clerk of the Court of Appeals has reported to the Virginia Lawyers Weekly that in practice most criminal petitioners do not seek review by three judges of the Court of Appeals after denial of leave to appeal entered by a single judge. Rather, "less than about one-third of the petitions denied in a one-judge review are then referred for a full three-judge panel. After the initial onejudge denial, petitioners usually just go up to the Supreme Court, McCoy said." 11 Virginia Lawyers Weekly at 1160.

Implementation of the one-judge procedure began in mid-1994, and it is now used in all criminal cases, the largest segment of the docket of the Court of Appeals. The 1995 and 1996 statistical years reflect the first periods in which the effects of the one-judge procedure are apparent, but in both of those years there were many older appeals pending which had been

initiated under the three-judge panel procedure. Hence the 1997 statistical year will be the first to display the full effect of the one-judge procedure.

C. Forms of Disposition by the Court of Appeals

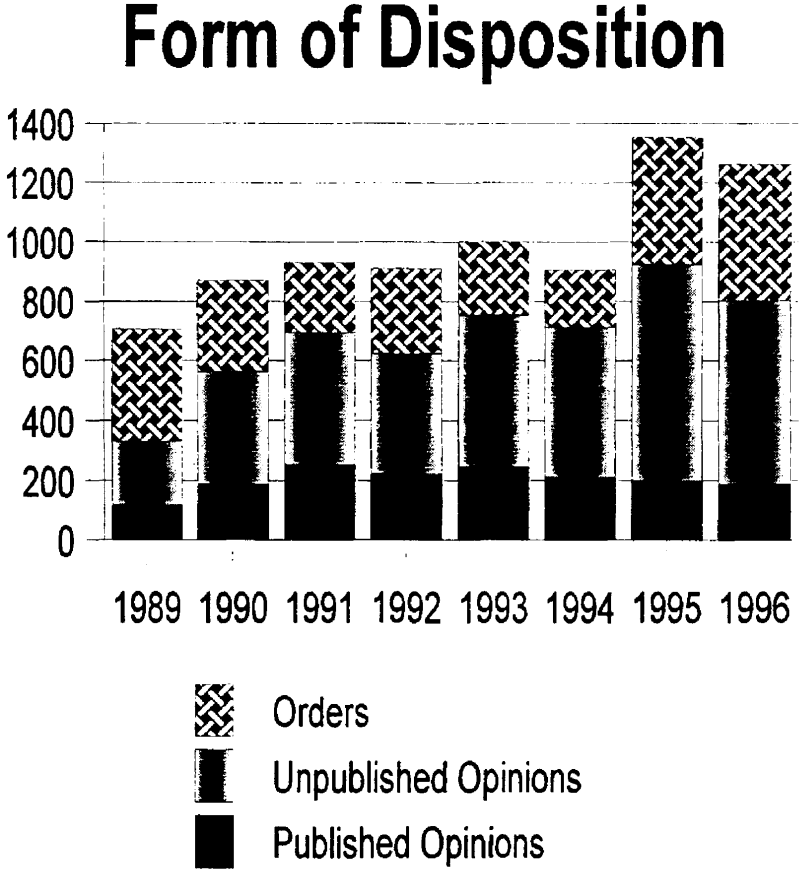
In its efforts to deal with the growing filings, the Court of Appeals has utilized three principal forms of disposition for cases. The judicial dispositions are: published opinions, unpublished opinions, and orders. The Court reports that the "orders" category is comprised mainly of cases eliminated from the docket through settlement, withdrawal or other forms of attrition. Thus it appears that almost all appeals are disposed of by some type of opinion (published or unpublished). Unpublished opinions from the Court of Appeals tend to be several pages long, and orders denying leave to appeal commonly have two or three pages stating reasons for the disposition, and some are much longer.

All three of the forms of decision in the Court of Appeals have been used for larger numbers of cases in recent years, and the balance shifted several years ago, such that the Court of Appeals now decides *over five times* as many appeals with unpublished opinions and orders as it does by published dispositions (1,072 to 190). If order-dispositions are disregarded as reflecting settlements or non-merits resolutions, the relation of unpublished to published decisions as the exclusive means for deciding cases on the merits should be seen as *three to one (three times as many unpublished opinions as published, 613 to 190).*

Use of Published Opinions, Unpublished Opinions, and Orders by the Court of Appeals of Virginia

	1989	1990	1991	1992	1993	1994	1995	1996
PUBLISHED OPINIONS	120	190	255	223	247	213	201	190
UNPUBLISHED OPINIONS	211	374	440	400	508	499	722	613
ORDERS	375	307	236	287	246	294	431	459
Total dispositions:	**706**	**871**	**931**	**910**	**1,001**	**1,006**	**1,354**	**1,262**

Source: "Judiciary's Year in Review," reprinted in Appendix C, at p. C-47; Court of Appeals, April 1997 Report, Appendix D. Note that the raw number of opinions has increased greatly in the last 8 years: published opinion volume is 58% greater than in 1989, and unpublished opinions number 190% more than in 1989.



B. Supreme Court Docket Status.

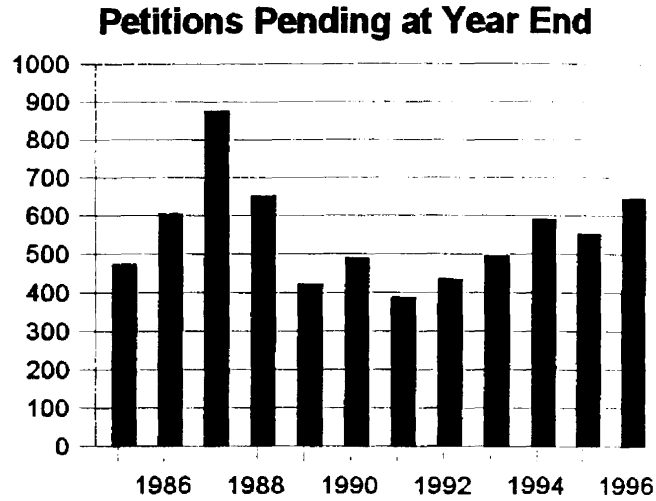
1. Petitions Pending Reflect Current Docket.

By now all followers of the state of the legal system in Virginia are aware of the success of the Supreme Court in bringing its docket current. Over the period from 1983, the Court has reduced its backlog of pending cases so that the sheer number of cases in which review has been granted that remain to be argued is less than 100, the disposition time has been cut from almost 4 years to under 1 year, and the Court is essentially current. The presence of the Court of Appeals also no doubt facilitated the reduction of the Supreme Court's load of pending cases, along with efforts of the Supreme Court itself to bring its docket current.

The principal listing of the Supreme Court's pending load over the years has been the number of petitions pending at year end. This measure declined from a recent high of 891 in 1984 to a low of 389 in 1991. In the years since then, this measure has grown gradually and stood at 554 in the year just ended (1995 statistical year), then jumped somewhat to 647 at the end of 1996.

Petitions Pending

YEAR	PENDING PETITIONS
1984	891
1985	476
1986	606
1987	878
1988	654
1989	423
1990	492
1991	389
1992	437
1993	497
1994	592
1995	554
1996	647



Source: "Judiciary's Year in Review", reprinted in Appendix C, at p. C-45.

The Supreme Court's docket improvement has meant reduction of civil petitions pending, and a reduction of the composite of all petitions pending as well.

2. Opinions Rendered Annually by the Virginia Supreme Court

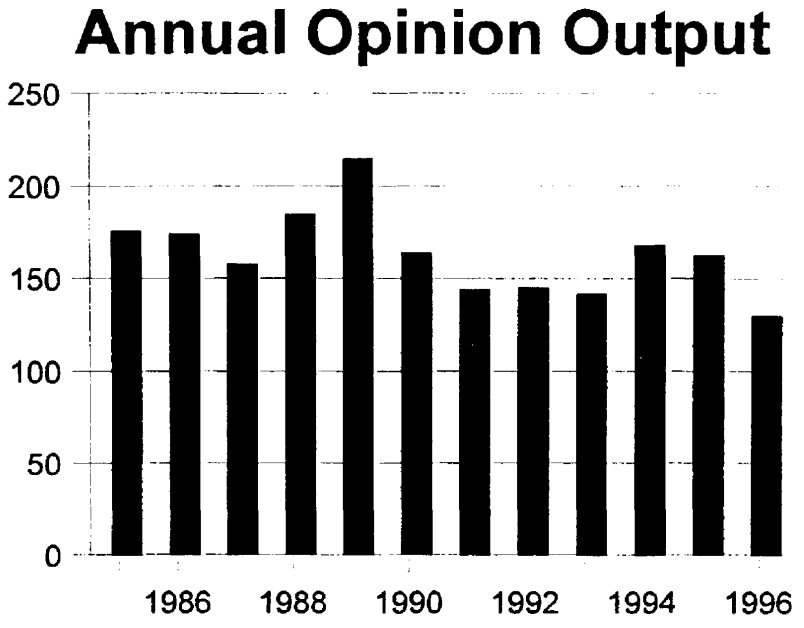
Reduction of the Supreme Court's backlog resulted from several initiatives undertaken by the Justices, including taxing themselves to write extra opinions in every opinion cycle of the court over a several year period. Overall, however, the Court has issued approximately the same number of decisions each year for the past decade: in the range of 145 to 160 opinions. During the same period it has issued anywhere from 25 to 130 orders disposing of cases, annually.

A temporary surge in the number of dispositions by opinion began in 1988 (accompanied by a burst of order dispositions) and peaked in 1989. This extra dispositive activity coincided with the Court's efforts to decide extra appeals in each session to eliminate the backlog of pending appeals awaiting argument. The volume of opinion decisions declined in 1990 and by 1993 had fallen to approximately 145 opinions. In 1994 and 1995 the number of opinions issued rose to some 165 opinions. In 1996, however, the number of published opinions issued dropped to 130.

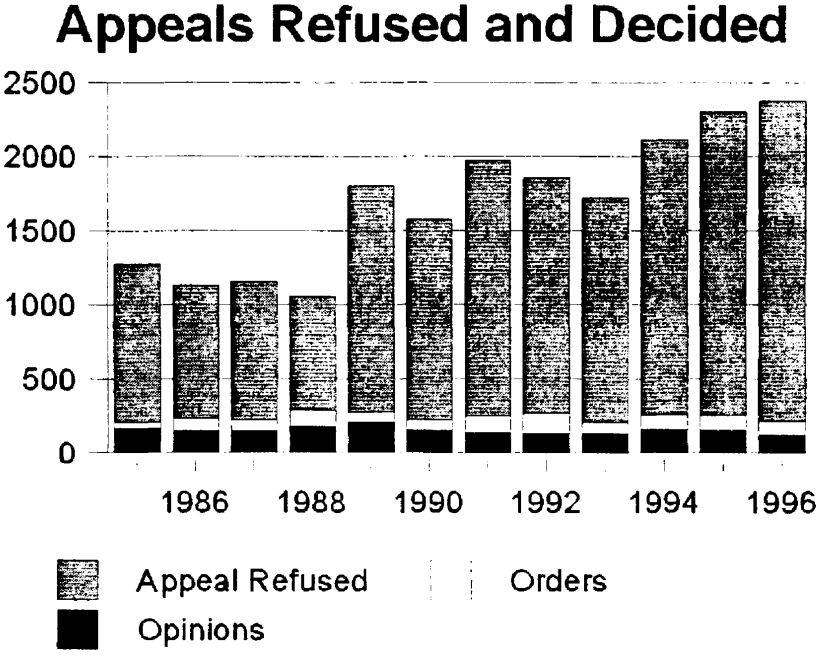
Opinions Rendered Annually by the Supreme Court

YEAR	OPINIONS
1984	176
1985	174
1986	158
1987	158
1988	185
1989	215
1990	164
1991	144
1992	145
1993	142
1994	168
1995	163
1996	130

Source: "Judiciary's Year in Review", reprinted in Appendix C, at p. C-43. This pattern may be charted as follows:



In proportion to the volume of discretionary appeals sought in the Supreme Court, the appeals granted remain a small faction. The vast majority of petitions for appeal are refused. Cases heard by the Court are decided in published opinions (most common) or unpublished orders (still fairly infrequent).



C. Overall Levels of Review

Set forth in Part Two of The Virginia Bar Association's 1994 report are detailed studies of appellate review rates in Virginia, and in other jurisdictions. We attempt there to explore the subject matters toward which appellate scrutiny is directed, the percentages of trial court dispositions in which appeal is sought and, most importantly, the percentages in which review is accorded to the case. Further studies in that section of the report deal with reversal rates, comparing Virginia experience with other jurisdictions.

In the present section of the report we introduce in broad strokes the levels of appellate review presently being accorded various subject matters in Virginia law, and the relationship between dispositions at the Court of Appeals level and the opportunity for further hearing at the Supreme Court.

1. Review of Criminal Cases by the Court of Appeals

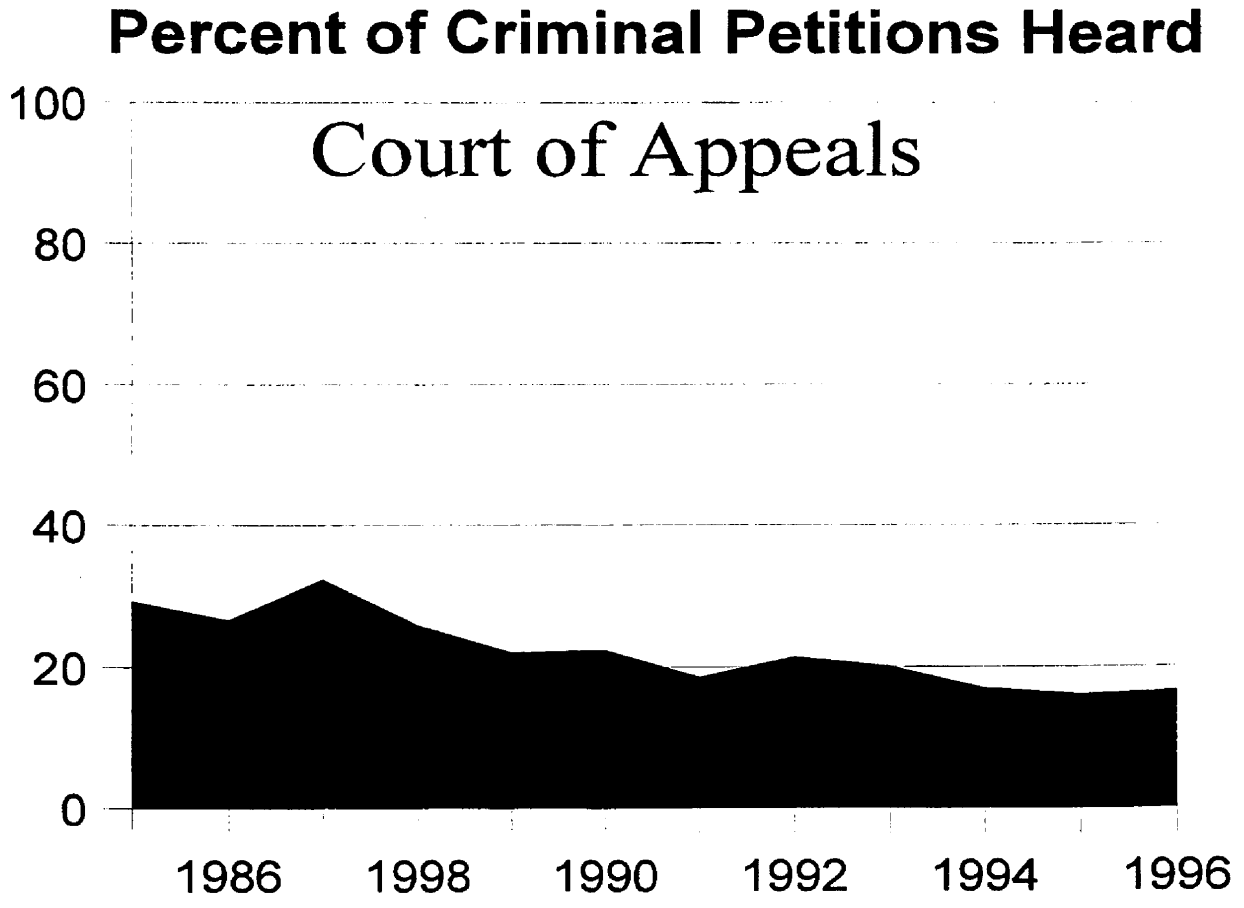
Percentage of Criminal Cases Heard in the Court of Appeals. The data in Part A above demonstrate that the number of petitions for appeal in criminal cases has increased incrementally but markedly in the Court of Appeals over the last several years. The statistics also demonstrate that the relative proportion of criminal petitions that are granted has never been high, and has declined in recent years. While for the past several years the Court has consistently granted about 350 criminal appeal petitions per year, the number of petitions has continued to skyrocket in recent years. Calculating from the published data, the rate at which criminal petitions for appeal are granted has ranged from 24 to 18%, and in the last statistical years for which information is available, calendar 1995 and 1996, that percentage of criminal appeals heard dropped for the first time to a new low of approximately 17% of petitions seeking appeal.

Percentage of Criminal Appeal Petitions Granted in the Court of Appeals

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Filed	1,085	1,087	1,189	1,253	1,498	1,547	1,797	1,866	1,894	1,908	2,081	2,274
Granted	240	220	290	250	267	354	327	387	353	351	350	390
%	22	20	24	20	18	23	18	21	19	18	16.8	17

Source: "Judiciary's Year in Review", reprinted in Appendix C, at p. C-45, C-46. Court of Appeals, April 1997 Report, Appendix D.

The Court of Appeals notes that increased staffing in recent years has made the decision to deny an appeal more comfortable: petitions today are not presented to the reviewing judge "cold", but have been studied by staff attorneys, who submit written analyses to accompany the papers reaching the judge, demonstrating that the issues have been researched and analyzed. The implication is that some cases that in prior years might have been improvidently granted an appeal are more readily denied an appeal today.



2. Review of Criminal Cases by the Supreme Court after Disposition in the Court of Appeals

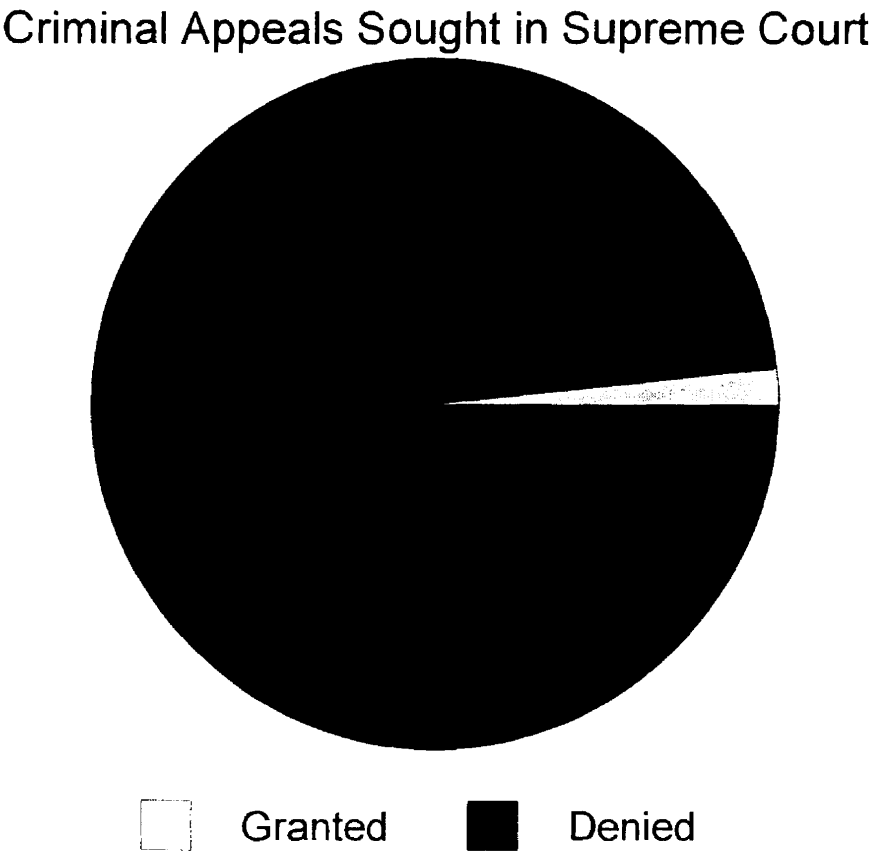
Each year, the Court of Appeals grants review in 350 to 390 criminal appeals out of the 2,274 petitions for appeal. And each year, large numbers of petitions are filed with the Supreme Court for review of Court of Appeals dispositions in criminal cases (denial of appeal, and decisions in cases where the Court of Appeal grants review).

Indeed, in the last three years the number of appeal applications lodged with the Supreme Court has rapidly increased, from 639 in 1993, to 866 in 1994, 935 in 1995, and to 942 in 1996. The Supreme Court currently refuses to hear 98 % of these petitions for appeal.

Percentage of Criminal Appeal Petitions Granted by the Supreme Court

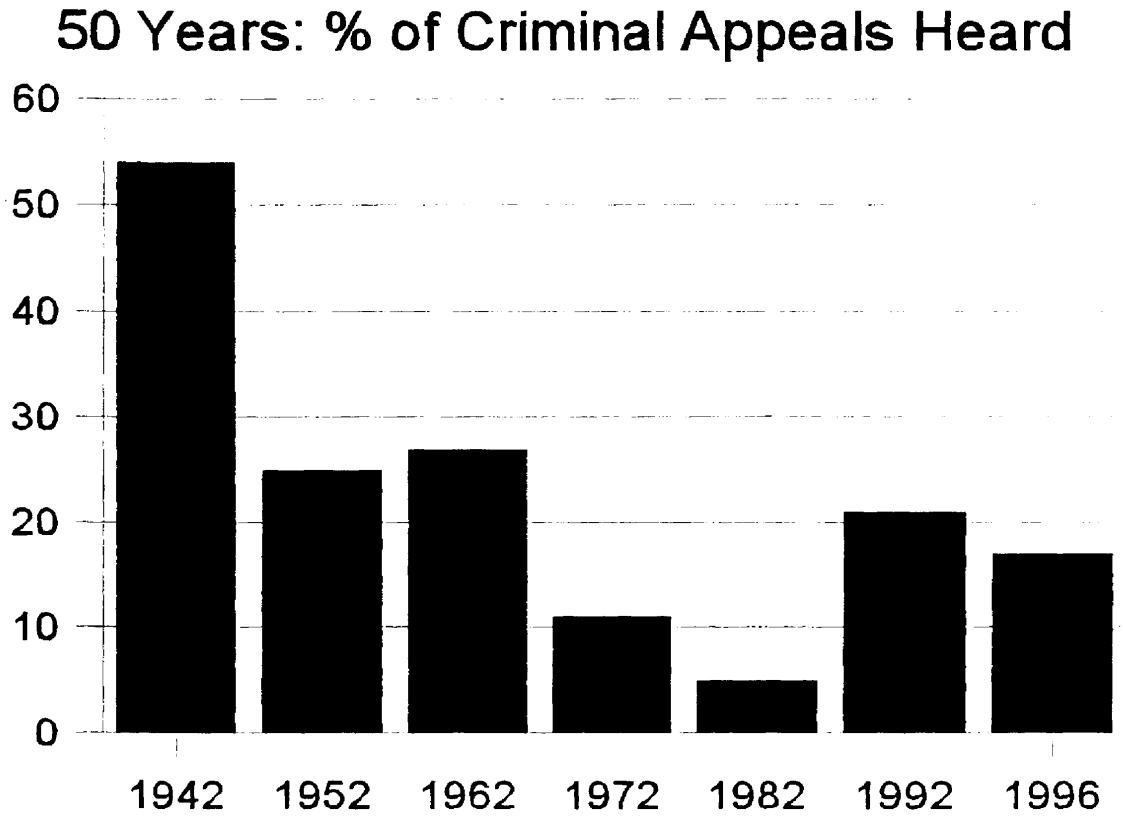
	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Sought	29	202	281	347	382	447	690	694	559	825	924	942
Granted	1	2	9	11	4	7	10	6	13	14	8	20
%	3	1	3	3	1	1.5	1.4	1	2	1.7	0.8	2

Source: "Judiciary's Year in Review", reprinted in Appendix C, at p. C-40 and comparable pages of earlier years' reports.



3. A 50-year Perspective on Review of Criminal Appeals

In the context of levels of appellate review of petitions for appeal in criminal cases over the past 50 years, the present level of review is among the lowest. The following graph reflects in summary form the percentages of petitions granted by the Supreme Court prior to the creation of the Court of Appeals, and by the Court of Appeals thereafter. Current statistics are gleaned from the "Judiciary's Year in Review", reprinted in the Appendix to this report. Prior statistics were obtained from earlier annual reports and, in the earlier periods, by manually counting the "Appeals Refused" listings printed in the official reports and comparing them with the reported decisions for the same periods. The 1982 figures are approximations derived from 1980-81 and 1984 data. The reader should be aware that absolute numbers of petitions were much smaller 50 years ago. For a perspective on the national phenomenon of burgeoning appellate filings, see also Appendix C to the 1994 VBA Report.



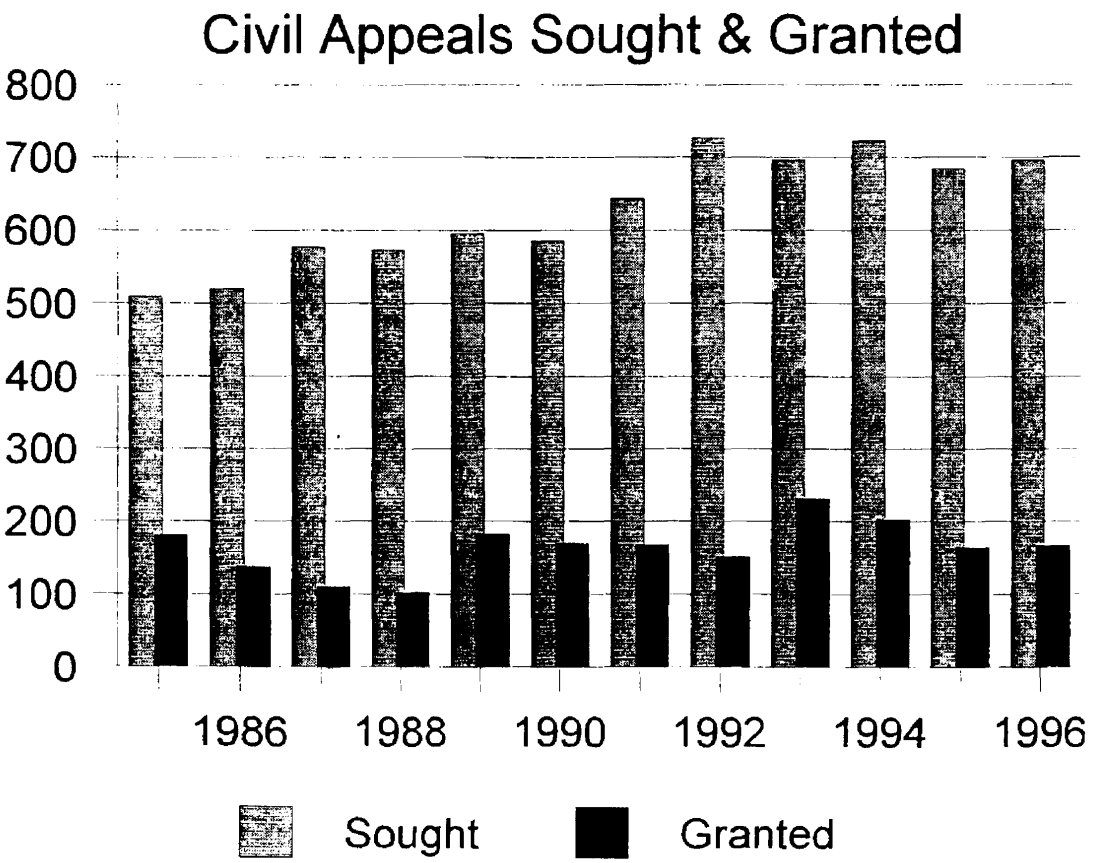
4. Review of Civil Petitions for Direct Appeal

Civil appeals other than domestic relations and workers' compensation cases lie to the Supreme Court, but only on a petition for review basis. In the area of civil appeals, the Supreme Court in recent years has been granting approximately 100 to 200 petitions for appeal:

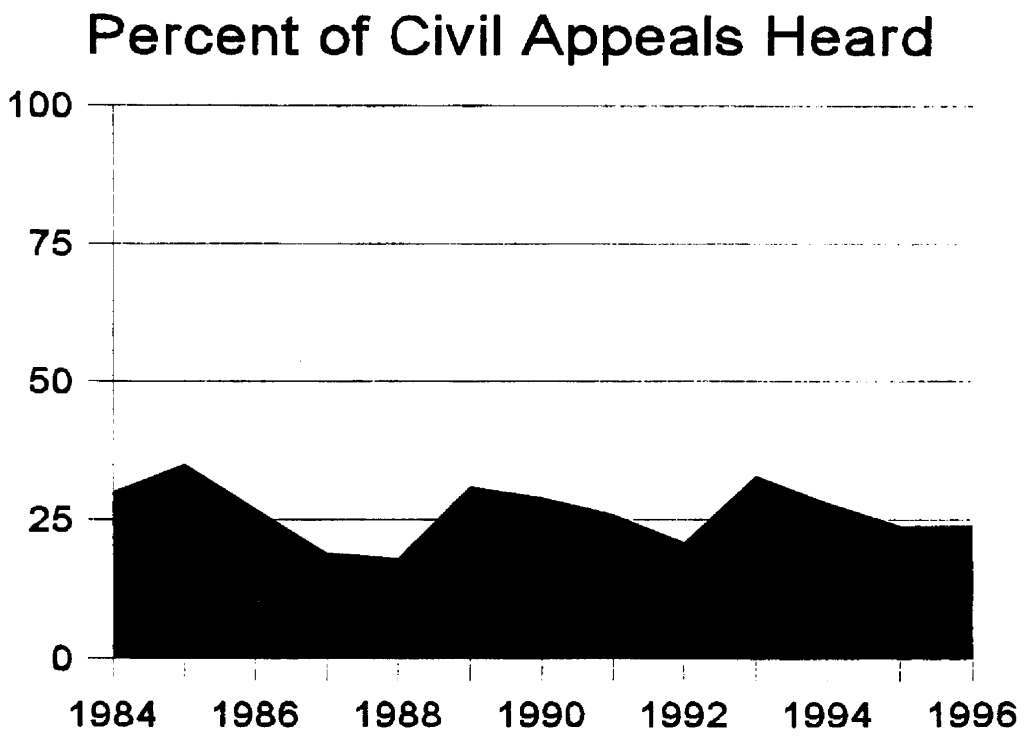
Civil Appeals Sought and Granted

	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
REQUESTS	682	509	520	577	574	596	586	644	726	696	723	684	696
GRANTED	207	181	138	110	102	183	170	168	152	231	203	165	167
% Granted	30%	35%	27%	19%	18%	31%	29%	26%	21%	33%	28%	24%	24%

Source: "Judiciary's Year in Review", reprinted in Appendix C, at p. C-40.



Thus, in light of the volume of discretionary civil petitions for a writ of appeal this volume of granted civil writs results in a percentage of civil cases granted review that has fluctuated during the last decade between 35 and 18 percent, and is currently at approximately 24 percent.



5. Supreme Court Review of Civil Dispositions by the Court of Appeals

For many years between 45 and 70 petitions were filed with the Supreme Court to review civil decisions of the Court of Appeals. The Supreme Court granted between 6 and 9 such petitions annually, approximately 8 to 12 % of the petitions. In 1996, however, the number applications jumped to 101, and the Supreme Court granted 27 appeals.

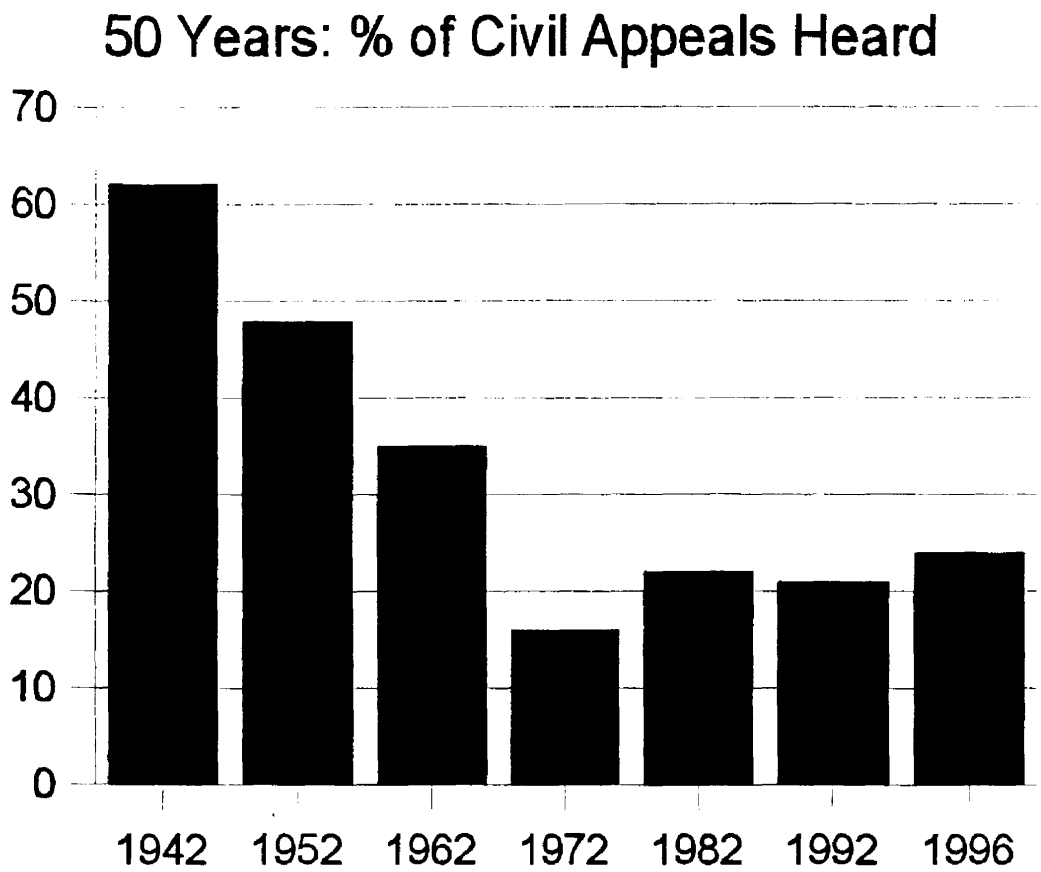
Petitions for Supreme Court review of Civil Decisions of the Court of Appeals

	1991	1992	1993	1994	1995	1996
Petitions Refused	45	45	64	50	69	74
Petitions Granted	4	6	6	6	9	27
Percentage granted	8%	12%	9%	11%	12%	27%

Source: Judiciary's Year in Review, 1996, Appendix C, at p. C-40.

6. A 50-Year Perspective on the Percentage of Civil Appeals Heard in Virginia.

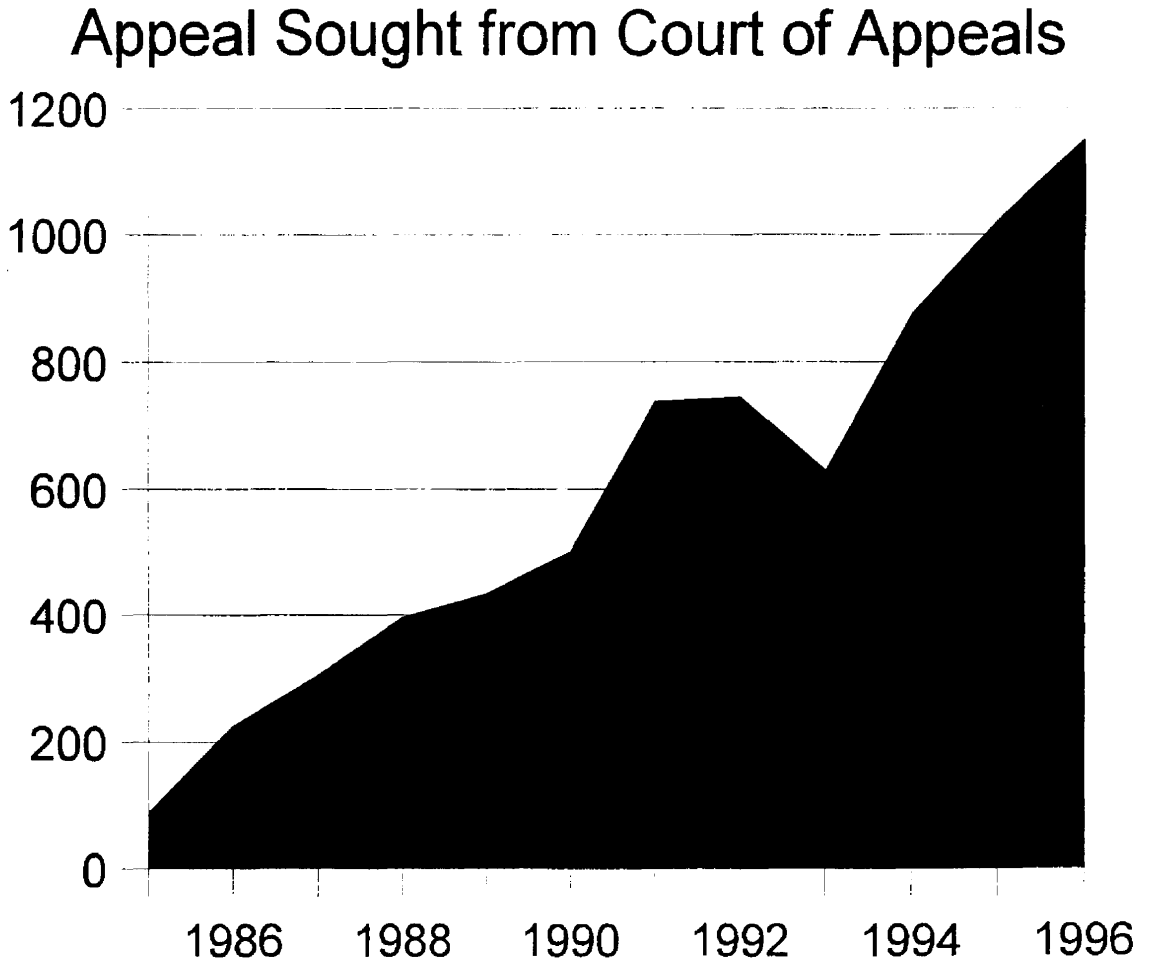
Using a manual count of appeals refused for earlier periods and a manual count of civil opinions issued, it is possible to compare the percentage of civil appeals heard by the Supreme Court over the past several decades.



As noted above, the absolute number of petitions for appeal was smaller decades ago, and the data here should be taken only to reflect the proportion of desired appeals that were allowed. This information does not demonstrate a decline in the number of cases considered on appeal, but rather the relationship between the volume of petitions and the number of appeals granted.

7. Overall Review of Court of Appeals Dispositions by the Supreme Court

With the exception of criminal appeals for non-capital offenses connected with a death penalty case, and perhaps other, rare circumstances, appeal from the Court of Appeals to the Supreme Court is discretionary, under the standard requiring that the matter raise substantial constitutional questions or matters of significant precedential value. The number of petitions for appeal from matters initially presented to the Court of Appeals has grown geometrically over the period since the creation of the Court of Appeals, from 89 petitions in the first year (1985) to over 1,151 applications last year. Most of these petitions to the Supreme Court are in criminal cases, though some are in the civil subject matters allocated to the Court of Appeals for hearing in the first instance.



Source: "Judiciary's Year in Review", reprinted in Appendix C to this report at p. C-47.

Fraction granted appeal. Based on the Supreme Court's most recent published statistics, covering the 1996 statistical year, the Supreme Court accepted appeals in only a handful of the huge number of petitions from the Court of Appeals (4%). These included 27 civil cases (domestic relations, workers' compensation or administrative), and 20 criminal appeals. This acceptance experience reflects a low and declining rate of appeals granted in matters from the Court of Appeals until 1997, when the numbers increased substantially.

Cases in which Appeal is Sought from Court of Appeals Disposition

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Sought	89	226	305	397	434	501	739	745	629	877	1,002	1,151
Granted	1	3	10	14	13	11	14	12	19	17	17	47
Certified	5	6	4	3	6	5	4	8	5	7	5	0
% Heard:	**7%**	**3%**	**4%**	**4%**	**4%**	**3%**	**2%**	**3%**	**3%**	**3%**	**2%**	**4%**

Source: "Judiciary's Year in Review", reprinted in Appendix C, at p. C-40 [totaling "Civil Granted from CAV" and "Criminal Granted from CAV" as "Granted" and adding cases certified].

Thus, it appears that in 1996 the Supreme Court has taken strides to increase its review of Court of Appeals' decisions, increasing the percentage of petitions granted from 2 % in 1995 to 4 % in 1996.

While the numbers for the most recent statistical period show marked increase, we believe, based on the overall levels of these statistics, that there are very real concerns about the basic pattern of appellate control in Virginia. The vast numbers of petitions for appeal to the Supreme Court are resolved in short orders stating simply that the Court is of opinion that there is no reversible error in the judgment complained of. The statutory authority for seeking review in the Supreme Court, discussed in the Committee's 1994 report, has not led to a significant number of instances where guidance from the Supreme Court is added to the case law of the Commonwealth in the categories of cases committed to the Court of Appeals in the first instance. In practice, given the patterns described by these statistics, grounds for concern still exist on the issue whether the Court of Appeals functions almost as a court of last resort for non-capital criminal cases and for domestic relations as well as workers' compensation law in Virginia.

A P P E N D I C E S

Appellate Review in Virginia

A Report by the Judiciary Committee of The Virginia Bar Association

David Craig Landin, Chair

This Study Is Financially Assisted By The
Interest On Lawyers Trust Accounts Program
of the Virginia Law Foundation

Copies of the Report may be obtained from The Virginia Bar Association, 701 East Franklin Street, Suite 1120, Richmond, Virginia 23219, (804) 644-0041.

Executive Summary

The Judiciary Committee of the Virginia Bar Association has completed a two-year study of the appellate process in Virginia. Our work has been guided by two persuasive points:

1. There is an avalanche of appellate filings in the United States. Virginia is no exception. The number of appellate filings in Virginia is more than 60% higher than when the Court of Appeals of Virginia was founded eight years ago. Although our appellate courts have remained essentially unchanged since that time, the Court has greatly increased its production of opinions since its creation. Yet despite its best efforts, a backlog now seems inevitable. For example, at present, it takes approximately 18 months to resolve a criminal case in Virginia. This time period, which includes both the adjudication of the petition for appeal as well as the time required for final disposition, falls well beyond the American Bar Association Standard and is considered unacceptable by many of those who work within the appellate system. Despite the herculean efforts of judges and staff to resolve cases in a fair and timely fashion, the current amount of time required to address so important a part of our judicial process raises fundamental questions about the adequacy of our current appellate process.

2. To those who stand before the court, the perception of fairness is as important as the reality. Only Virginia, New Hampshire, and West Virginia provide only discretionary appeal to civil litigants and criminal defendants. The other states, the District of Columbia and the entire federal court system all provide one level of error correction automatically by simply filing notice of an appeal. The discretionary appeal adds another step to the appeal process that may not be the most effective way of insuring timely review of court rulings and may lead to the perception that the exercise of "discretion" is influenced by capacity.

After a great deal of deliberation, survey of opinions and interviews with judges and lawyers, we have concluded several points and have developed specific recommendations intended to improve our system of appeal.

Key Findings

1. One basic purpose of the appellate process is to correct error, should any exist, in court rulings. This process ensures fundamental fairness to those who come before the courts of the Commonwealth. The perception of fairness is important. By providing no level of appeal of right, are we leaving the mistaken impression that all are not treated equally before the law? We believe that all civil litigants and those charged with criminal behavior should have the right to appeal through a streamlined process designed to balance fairness and efficiency.

2. *Although a rapid system of appeal is essential, the process that some states use of what might be called "administrative review" is not desirable in Virginia. The Committee was unanimous that should the Commonwealth provide for "appeal by right," the review ought to be provided by a judge, not by a clerk or administrative assistant.*

3. *The Committee is aware that the above recommendations may be misunderstood as contradictory. Are we really saying that there is a growing backlog of appeals, and therefore we ought to make it easier to appeal? No. We are simply arguing that our current system of appeal by petition is unnecessary and inefficient. We wish to guarantee every litigant a review of the application of the law in each case, so as to ensure that no significant error was committed in the adjudication of the case. Our judges do not commit errors on purpose nor in any greater number than in other states. But if errors are committed, a process for correction should be easily available to ensure that justice is well served.*

4. *Any revision of our appeals practice must correspond with more adequate funding of our Court of Appeals, so that opinions can be rendered in a more timely fashion. While the Supreme Court has been essentially current in its case load, there exists a backlog at the Court of Appeals level. Moving to a system of appeal by right, and adequately funding additional judges and staff for the Court of Appeals will ensure fundamental fairness in our appellate system.*

5. *The second basic purpose of the appellate process is to assure authoritative rulings on the evolving legal issues facing the Commonwealth, resolving ambiguities, interpreting legislation and setting policy. This function can only be discharged by a unitary Supreme Court. The clarity of this paramount role for the Supreme Court of Virginia will be enhanced by fully realigning the error-correction function with the Court of Appeals.*

6. *Additionally, we must ensure a periodic review of our appellate system since the needs of our judicial system are changing as the society which depends upon it changes. We propose a simple revision of the law to ensure an ongoing review of the efficiency of the appellate court system. This provision will ensure that we can avoid a future problem of the magnitude we face at present.*

7. *Finally, recognition of the limited resources of the Commonwealth and equally important, of the desirability of following the conservative, gradual approach to change inherent in Virginia dictates that recommendations to adjust our present appellate system should be implemented on a phased-in basis over a period of years so that progress can be measured and certain.*

Recommendations

The following recommendations are submitted with the highest respect for our Judiciary and the men and women who serve the people of Virginia as our judges and court officials:

First, that current staff needs of the Court of Appeals be funded immediately;

Second, that the Legislature amend Virginia Code Annotated § 17-116.01 to allow the Judicial Council of Virginia to prepare periodic reviews and reports to the Legislature about the size and staffing of the Court of Appeals. This should assure that recommendations for additional judgeships and staff are made in a timely fashion after full investigation, just as the Judicial Council does for circuit court judgeships under Virginia Code Annotated § 17-119.1:2. Since the size of the Court of Appeals has not been studied since the Court was created, the current situation should be assessed as soon as possible with annual or biennial reports thereafter;

Third, that all civil cases be made appealable to the Court of Appeals in the first instance by petition as is the case with criminal cases now;

Fourth, that Virginia Code Annotated § 17-116.07 be amended to make cases in all subject matters eligible for appeal after action by the Court of Appeals by petition to the Supreme Court, permitting the Supreme Court the maximum ability to deal with the evolving legal issues facing the state, to resolve ambiguities in the law, interpret legislation and set policy;

Fifth, that, over time, the Commonwealth adopt a system whereby appeal to the Court of Appeals shifts from petition to "notice of appeal," which does not require a separate petition for "leave to appeal." This change would assure one level of appellate review; and

Sixth, that the time frame set for this change be one which allows for analysis and development of systems which do not lower the quality of review afforded litigants from that currently enjoyed, and which allows for the practical necessity of funding both normal growth needs and necessary changes in the appellate system.

The rest of this report is designed to provide more information about our recommendations. The charts and graphs are intended to demonstrate visually the urgency of the situation. The section entitled "Not for History Buffs Only" gives a fuller explanation of the development of our Courts of Appeals, and should help the reader understand the historical context of our recommendations.

HOUSE JOINT RESOLUTION NO. 546

Requesting the Judiciary Committee of the Virginia Bar Association to update its 1994 report and its study of the capacity of the Court of Appeals of Virginia.

Agreed to by the House of Delegates, January 30, 1997
Agreed to by the Senate, February 19, 1997

WHEREAS, in 1989, the Commission on the Future of Virginia's Judicial System submitted recommendations for a study and review of the Commonwealth's system of appellate review in civil cases, and a joint subcommittee was formed to study those recommendations pursuant to House Joint Resolution No. 329 (1989); and

WHEREAS, the joint subcommittee, in 1990, recommended that the appellate system not be changed at that time, but recommended a reevaluation in the future of both the civil and criminal appellate systems; and

WHEREAS, in 1994, the Judiciary Committee of the Virginia Bar Association (the "Committee") completed a two-year study of the appellate process in Virginia, which was endorsed by the Virginia Bar Association and, in January 1995, was released to all members of the judiciary of the Commonwealth, the members of the General Assembly, leaders of the organized bar, and other interested persons in the Commonwealth; and

WHEREAS, the study received much favorable comment for its breadth and depth; and

WHEREAS, the Boyd Graves Conference reviewed the study and its recommendations at its meeting in October 1995, and endorsed the call of the Virginia Bar Association for further legislative study of this issue; and

WHEREAS, in the 1996 Session, the legislature acted on the recommendations of the study to allow the Judicial Council of Virginia to prepare periodic reviews of staffing of the Court of Appeals; and

WHEREAS, the study recommended that current staff needs of the Court of Appeals be funded on an ongoing basis; and

WHEREAS, the study also recommended that all civil cases be made appealable to the Court of Appeals in the first instance by petition, as is now true with criminal cases; and

WHEREAS, the study further recommended that § 17-116.07 be amended to make all cases eligible for appeal by petition to the Supreme Court following action by the Court of Appeals, permitting the Supreme Court the maximum ability to deal with the evolving legal issues facing the Commonwealth, resolve ambiguities in the law, interpret legislation, and set policy; and

WHEREAS, the study also recommended that, over time, the Commonwealth adopt a system whereby appeal to the Court of Appeals shifts from petition to "notice of appeal," which does not require a separate petition for "leave to appeal," thus assuring one level of appellate review; and

WHEREAS, the study additionally recommended that the time frame set for this change be one which allows for analysis and development of systems which do not lower the quality of review afforded litigants from that currently enjoyed, and which allows for the practical necessity of funding both normal growth needs and necessary changes in the appellate system; and

WHEREAS, since it has been several years since the Committee prepared a thorough study of the capacity of the Court of Appeals of Virginia, it is believed that the Committee needs to revisit and update the issues it addressed in the previous study so that the General Assembly will have before it current information as it considers establishing a joint subcommittee for the study and review of the Commonwealth's system of appellate review; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Judiciary Committee of the Virginia Bar Association be requested to update its 1994 report and its study of the capacity of the Court of Appeals of Virginia. The Committee shall complete its work by December 1, 1997, and shall submit its findings and recommendations to the Governor and the 1998 Session of the General Assembly.

SUPREME COURT OF VIRGINIA

Jurisdiction and Structure

The Supreme Court of Virginia concluded 217 years of existence in 1996. It is one of the oldest continuously operating courts in the United States. Founded on August 30, 1779, the Supreme Court of Virginia's roots are deep in the English legal system dating to Jamestown, the first permanent English settlement in North America.

The Supreme Court sits in Richmond and is composed of seven Justices. The Justice most senior in service is the Chief Justice. The Supreme Court meets for five-day sessions beginning in September of each year and every seventh week until completion of the June docket. There are no formal sessions of court during July and August.

The Court's original jurisdiction may be invoked by way of petition for habeas corpus, mandamus or prohibition. Appellate jurisdiction is invoked by appeal or writ of error attacking the judgment of a trial court. The Court hears appeals from the circuit courts involving civil cases (excluding domestic relations cases), criminal cases in which a sentence of death has been imposed, habeas appeals, and appeals from the State Corporation Commission.

Additionally, the Supreme Court is empowered to deal with matters concerning judicial censure, retirement and removal. Subject to some statutory limitations, cases decided by the Court of Appeals may be appealed to the Supreme Court. The Supreme Court may, on its own motion or that of the Court of Appeals, certify a case originally appealed to the Court of Appeals for review by the Supreme Court before it has been determined by the Court of Appeals.

During the recess periods between sessions of the court, the Justices conduct extensive legal research upon cases awaiting decision, draft and review opinions, study cases in which petitions for appeal have been filed, conduct hearings on petitions for appeal and attend to administrative duties.

In addition to its appellate functions of examining results reached in lower courts and of redefining and developing the body of state law, the Supreme Court is also authorized to adopt rules of practice and procedure and to oversee changes in the organization of lower courts. The Supreme Court is responsible for the general supervision of the entire Virginia Judicial System.

Review of 1996 Caseload Activity

In 1996, the number of filings in the Supreme Court of Virginia increased to 2,634, 290 cases more than recorded in 1995. See Table 3 and Display 11. Overall, petitions for appeal increased from 1,753 to 1,903 or 8.6 percent. Criminal appeals increased approximately 14 percent from 935 in 1995 to 1,065 in 1996. Civil appeals rose by 12 or less than two percent from 684 to 696 while the number of habeas corpus appeals increased from 59 to 83. Among original jurisdiction petitions, the number of writs of habeas corpus showed an increase of over 19 percent and totaled 577. Writs of mandamus increased from 98 to 133, an increase of 35 or nearly 36 percent, while the number of writs of prohibition rose, from 8 to 21. Judicial inquiry petitions also increased during 1996 from 591 to 731, a growth of 140 petitions or 23.7 percent. See Table 4.

The total number of cases acted on increased from 2,321 in 1995 to 2,455 in 1996, an increase of nearly six percent. This was the third year in a row during which total cases acted on exceeded 2,000. The total number of appeals either granted or refused fell slightly from 1,774 to 1,745, a decrease of 1.6 percent. The total number of original jurisdiction cases disposed rose from 547 to 710, an increase of 163 cases or nearly 30 percent. As in 1995, there were 200 petitions for appeal granted in 1996. Among them, 140 or 70 percent were civil petitions and 47 were civil and criminal appeals granted from the Court of Appeals.

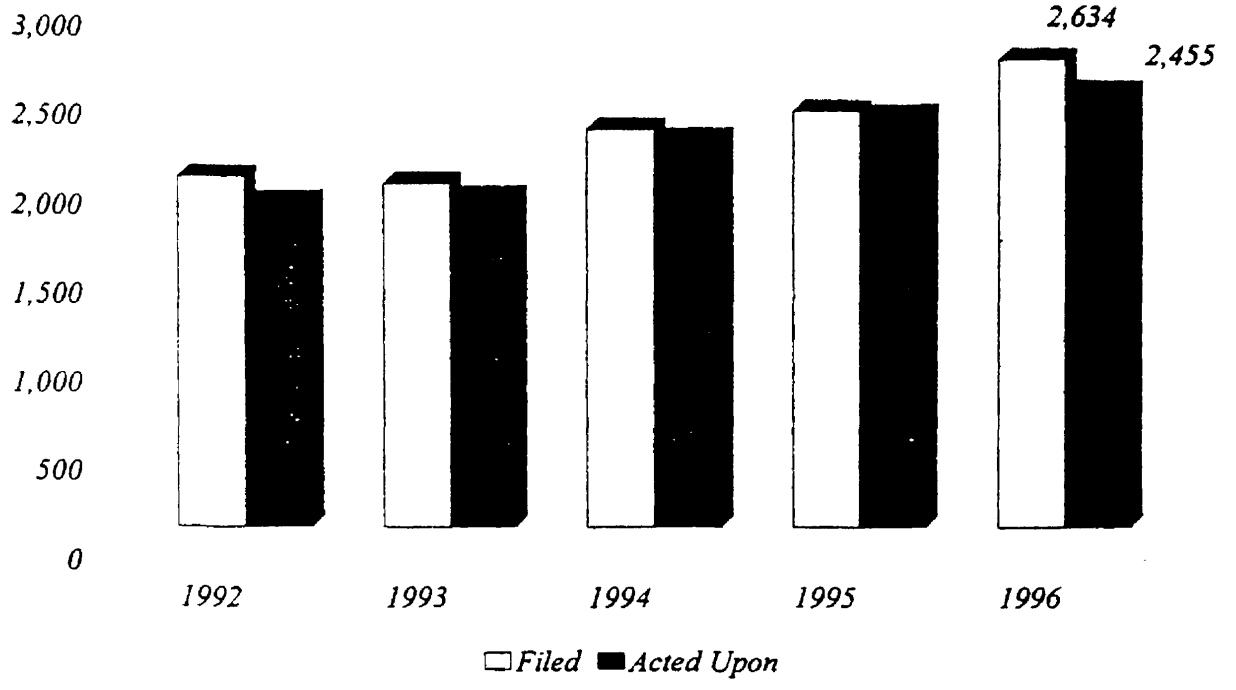
There were 130 cases decided by opinion last year while another 90 cases were decided by orders. In 57 or 43.8 percent of the cases decided by opinion, the judgment of the lower court was affirmed, nearly identical to the affirmance rate the previous year. The number of opinions in which judgments were reversed or remanded in 1996 totaled 64 or 49.2 percent of the cases decided by opinion. See Table 3.

The number of pending petitions at year's end rose from 554 in 1995 to 647 in 1996. See Table 5. The number of cases waiting to be argued before the Supreme Court stood at 61 at the end of the year, down by 11 cases from 1995's year end total. The goal of the Supreme Court is to dispose of all cases within 12 months of the filing of the petition for appeal.

Display 11

Supreme Court of Virginia

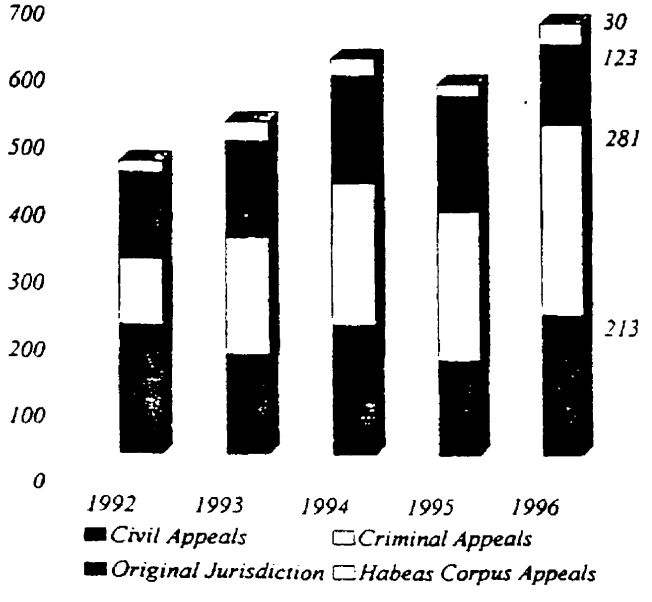
1992-1996 Petitions Filed and Acted Upon



Display 12

Supreme Court of Virginia

1992-1996 Year End Pending Petitions



Display 13

Supreme Court of Virginia

1992-1996 Cases Waiting to be Heard

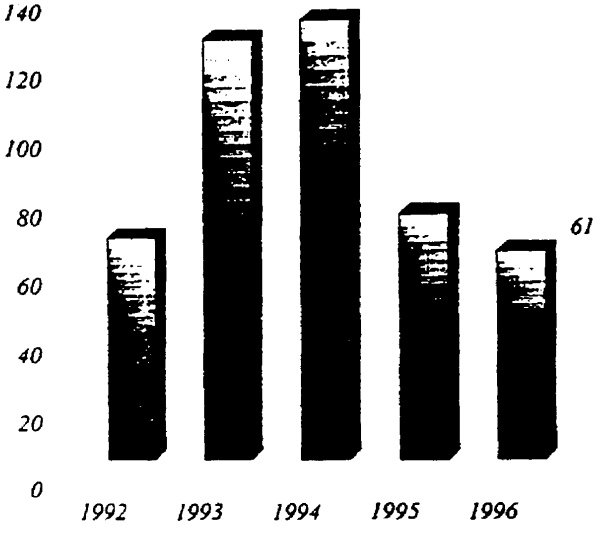


Table 3

Supreme Court of Virginia

1992-1996 Annual Statistics

		1992	1993	1994	1995	1996
1	Filed--petitions for appeal and original jurisdiction petitions	1,971	1,936	2,240	2,344	2,634
2	Granted petitions for appeal and awarded original jurisdiction petitions	247	349	337	276	297
3	Refused--petitions for appeal and original jurisdiction petitions	1,588	1,512	1,850	2,045	2,157
4	Cases certified from the Court of Appeals	8	5	7	5	0
5	Withdrawn--petitions withdrawn before being acted on	33	48	39	46	38
6	Cases decided by					
	Number of opinions in which judgments were affirmed	61	59	66	72	57
	Number of opinions in which judgments were reversed, remanded, etc.	80	80	95	88	64
	Number of memorandum opinions	3	1	4	0	2
	Number of opinions in original jurisdiction cases	1	0	1	0	1
	Number of appeals dismissed	0	0	1	1	1
	Certified questions of law	0	2	1	1	5
	Total cases decided by opinions	145	142	168	163	130
7	Number of cases decided by orders*	129	68	96	93	90
8	Rehearings Filed	232	205	267	283	273
	Rehearings Granted	8	38	16	12	13
	Rehearings Refused	237	166	235	257	261
	Rehearings Withdrawn	2	1	2	0	0
9	Local attorneys qualified	1,138	1,243	1,006	1,092	1,129
10	Foreign attorneys licensed and qualified	167	189	136	136	142
11	Professors licensed and qualified	0	1	0	0	0
12	Attorneys appointed by this court to represent indigents	1	1	5	7	9
13	Orders entered to show cause or respond	303	293	259	299	363

* Includes appeals awarded and cases remanded, Writs of Habeas Corpus awarded and made returnable to trial courts, cases dismissed, agreed, etc.

Table 4

Supreme Court of Virginia

Petitions for Appeal and Original Jurisdiction Petitions

	1992	1993	1994	1995	1996
APPEALS					
Filed					
Civil Appeals	726	696	723	684	696
Criminal Appeals	682	639	866	935	1,065
Habeas Corpus	63	82	71	59	83
Other	41	54	64	75	59
Total	1,512	1,471	1,724	1,753	1,903
Granted					
Appeals of Right	10	21	34	15	9
Civil Granted	146	225	197	156	140
Civil Granted from CAV	6	6	6	9	27
Criminal Granted	-	1	1	-	-
Criminal Granted from CAV	6	13	11	8	20
Habeas Appeals Granted	-	-	4	1	2
Cases Certified from CAV	8	5	7	5	-
Appeals Granted and judgment reversed					
Appeals Granted and judgment modified					
Certified Questions of Law Accepted	2	1	2	6	2
Remanded from U.S. Supreme Court	-	-	5	-	-
Total	178	272	267	200	200
Refused					
Civil Refused	420	477	461	525	471
Civil Refused from CAV	45	64	50	69	74
Criminal Refused	3	2	4	2	4
Criminal Refused from CAV	688	546	814	916	922
Habeas Appeals Refused	57	65	77	60	60
Habeas Appeals Refused from CAV	1	1	-	1	11
Certified Questions of Law Rejected	-	-	1	1	3
Total	1,214	1,155	1,407	1,574	1,545
Total Appeals Granted and Refused	1,392	1,427	1,674	1,774	1,745
ORIGINAL JURISDICTIONS PETITIONS					
Filed					
Writ of Habeas Corpus	396	389	414	485	577
Writ of Mandamus	58	69	90	98	133
Writ of Prohibition	5	7	12	8	21
Judicial Inquiry	-	-	-	-	-
Total	459	465	516	591	731
Awarded					
Writ of Habeas Corpus	68	76	70	75	96
Writ of Mandamus	-	1	-	1	-
Writ of Prohibition	-	-	-	-	1
Total	69	77	70	76	97
Refused					
Writ of Habeas Corpus	299	305	331	361	462
Writ of Mandamus	70	46	101	100	133
Writ of Prohibition	5	6	11	10	17
Total	374	357	443	471	612
Total Original Jurisdiction Cases Disposed	444	437	514	547	710
GRAND TOTAL OF CASES ACTED ON	1,836	1,864	2,188	2,321	2,455
TOTAL PETITIONS FILED	1,971	1,936	2,240	2,344	2,634

Table 5

Supreme Court of Virginia

Pending Petitions

Year	Civil Appeals	Criminal Appeals	Habeas Corpus Appeals	Original Jurisdiction	Total
1992	196	96	15	130	437
1993	153	172	27	145	497
1994	198	208	24	162	592
1995	146	219	15	174	554
1996	213	281	30	123	647

Total Granted Cases Left to Be Argued At End of Sessions

Session	1992	1993	1994	1995	1996
January	75	74	112	108	71
March	76	77	126	118	68
April	70	92	112	98	72
June	75	148	137	101	91
September	66	136	129	79	70
November	65	123	129	72	61

Breakdown of Cases Refused in 1996

Category	Session 1	Session 2	Session 3	Session 4	Session 5	Session 6	Total
Civil							
Refused	84	62	36	104	71	60	417
Refused (CAV)	7	10	7	18	8	10	60
Refused Procedural			11	14	11	18	54
Refused Procedural (CAV)			4	2	5	3	14
Criminal							
Refused	2		1		1		4
Refused (CAV)	93	115	178	209	106	156	857
Refused Procedural							
Refused Procedural (CAV)			10	20	12	23	65
Habeas Appeal							
Refused	10	7	10	12	7	12	58
Refused (CAV)							
Refused Procedural			2	2	2	7	13
Refused Procedural (CAV)							
Certified Question of Law							
Rejected	1				2		3
Total	197	194	259	381	225	289	1,5

COURT OF APPEALS

Jurisdiction of the Court

The Court of Appeals of Virginia completed its twelfth full year of operation in 1996. Established in 1985, the Court of Appeals hears appeals from circuit courts in all criminal matters except death penalty cases and in all domestic relations matters. In addition, appeals from decisions of the Virginia Workers' Compensation Commission and from most administrative agencies are taken to the Court of Appeals.

The Court of Appeals has original jurisdiction to issue writs of mandamus, prohibition, and habeas corpus in any case over which the Court would have appellate jurisdiction. The Court has authority to hear appeals as a matter of right from:

- any final judgment, order, or decree of a circuit court involving affirmance or annulment of a marriage, divorce, custody, spousal or child support, or control or disposition of a child, as well as other domestic relations cases;
- any final decision of the Virginia Workers' Compensation Commission (a state agency responsible for handling workers' compensation claims);
- any final decision of a circuit court on appeal from a decision of an administrative agency (example: the Department of Health); and
- any interlocutory order granting, dissolving, or denying an injunction or adjudicating the principles of a cause in any of the cases listed above.

The Court of Appeals also has authority to consider petitions for appeal from:

- final orders of conviction in criminal and traffic matters except where a death penalty is imposed;
- final decisions of a circuit court on an application for a concealed weapons permit; and
- certain preliminary rulings in felony cases when requested by the Commonwealth.

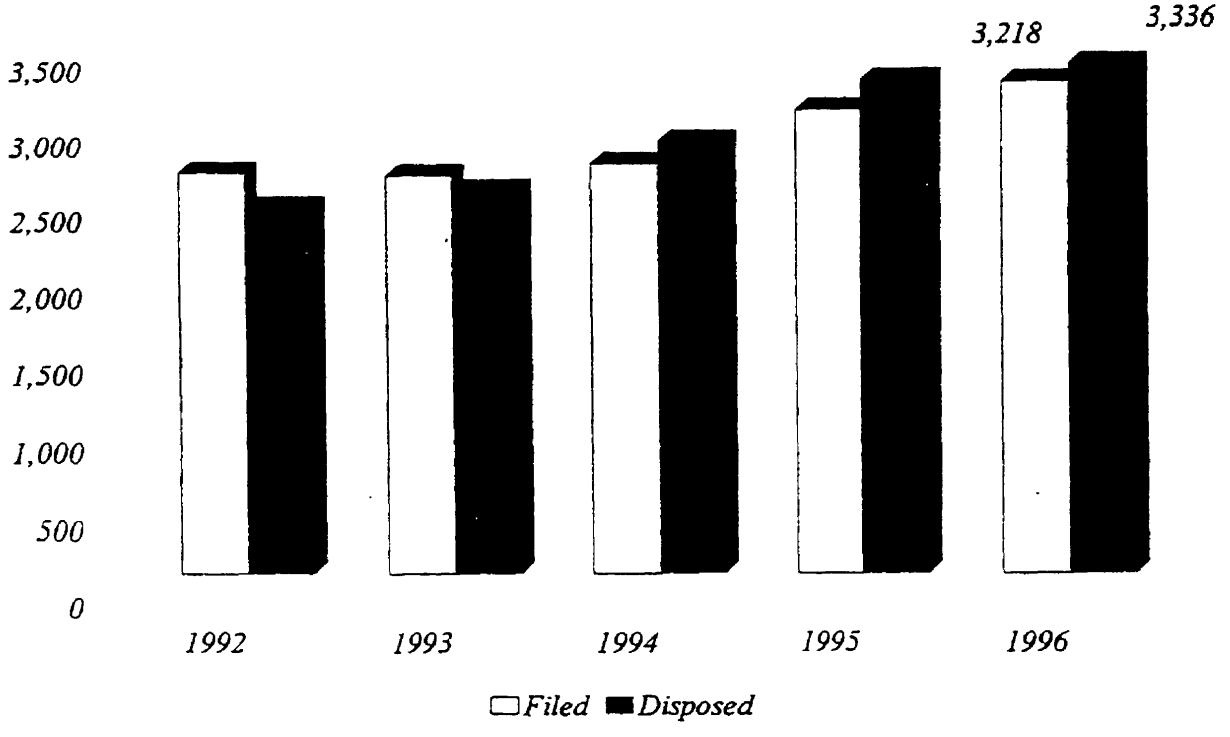
The Court's Annual Review of Case Processing

From its beginning, the Court of Appeals has been concerned with the timeliness of its decisions and the capacity of the Court to handle the volume of petitions coming before it. Soon after its establishment, the Court began to conduct periodic reviews of its appellate capacity and the average processing times for various stages of the appellate process. A Time

Display 14

Court of Appeals of Virginia

1992-1996 Cases Filed and Disposed

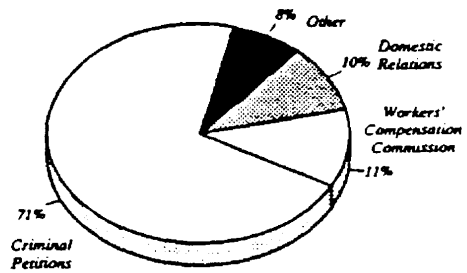


Standards Committee comprised of Judges of the Court, Clerk's office personnel, and staff from the Supreme Court have since that time reviewed annual data on the work of the Court.

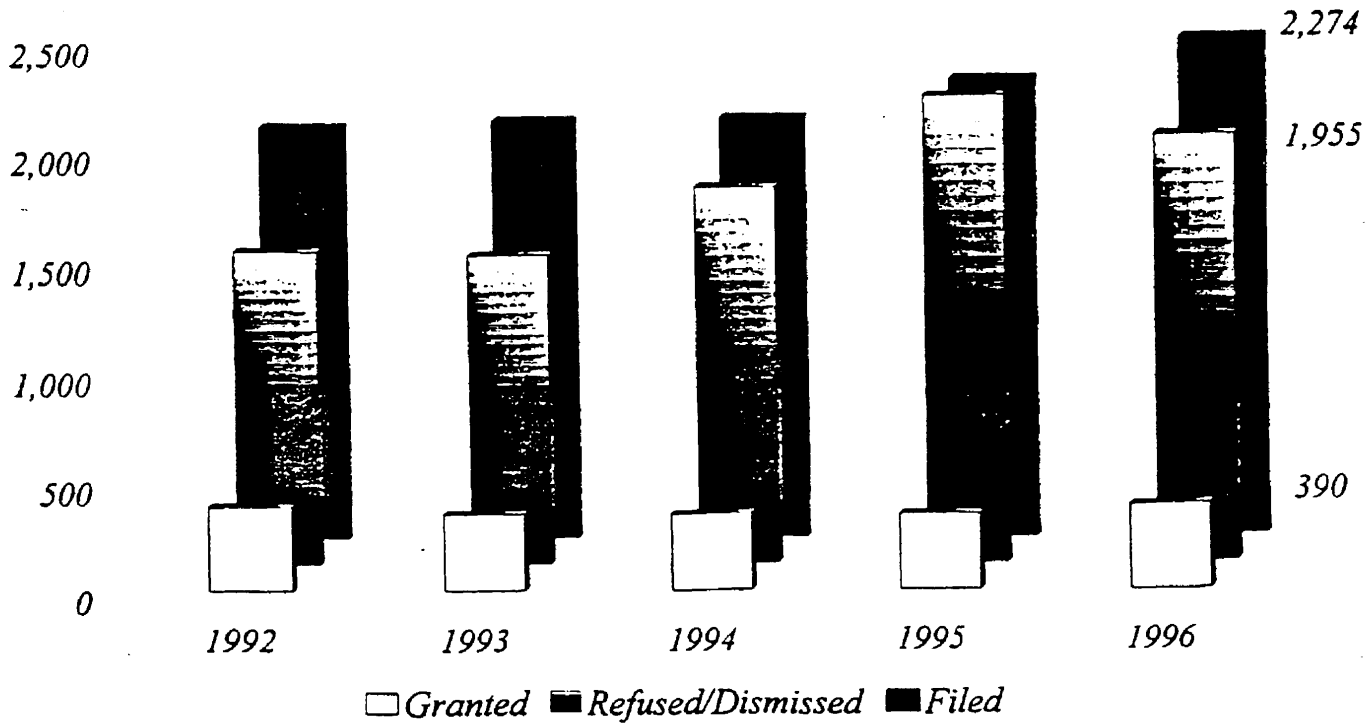
During 1996, the Court continued to explore ways in which to deal more expeditiously with its caseload. Concerned with issues of capacity and timeliness, the Court implemented a "one-judge" review procedure for criminal matters in mid-1994 and in 1996 completed a major redesign of its case review and analysis procedures in order to accommodate the modified stages of the appellate process. During the past year, the Court also continued to define its needs for management information and information on its performance and implemented many of the recommendations of nationally recognized experts in the area of delay reduction for state intermediate appellate courts. The Court of Appeals continues to participate in national studies to examine issues related to timeliness and court performance.

In 1996, the Court of Appeals had 3,218 case filings, 187 or 6.2 percent more than the number filed in 1995. Except for a slight decline in the number of filings in 1993, the number of cases filed with the Court has increased annually since 1985 when the Court was established. See the tables on the following pages. There were 2,274 criminal petitions in 1996, 193 more than in 1995. The number of domestic relations appeals increased to 325 while workers compensation commission cases decreased by 63 and totaled 368. The number of administrative agency appeals fell by 22 to 24 and original jurisdiction petitions rose by

Display 15
Court of Appeals of Virginia
1996 Distribution of Cases Filed



Display 16
Court of Appeals of Virginia
1992-1996 Criminal Petitions



five to 30 petitions. See the 1996 Yearly Statistics for the Court of Appeals in the Appendix.

The number of cases disposed of by the Court of Appeals grew from 3,230 cases in 1995 to 3,336 in 1996, a 3.3 percent rise. Dispositions of criminal cases totaled 2,354, 70.6 percent of all cases concluded. Between 1986 and 1996, annual final dispositions have risen nearly 126.0 percent. In 1996, the Court rendered 803 opinions (both published and unpublished), 120 fewer than in 1995.

The Court of Appeals received 2,274 or 193 more criminal petitions in 1996 than it did the previous year. Since 1985, the number of annual criminal petitions has increased 109.6 percent. In 1996, the number of criminal petitions granted increased by 40 from 350 in 1995 to 390. This constituted 17.2 percent of the criminal petitions filed.

Filings of appeals of right totaled 890 in 1996 compared to 889 in 1995. Of these cases, 325 or 36.5 percent were domestic relations cases and 368 or 41.3 percent were workers compensation commission cases. The remaining cases were divided between administrative agency matters (24) and other cases (56). (There were 117 cases classified as "No Jurisdiction," meaning that the Court does not have jurisdiction in these matters and that they are candidates for transfer to the Supreme Court of Virginia).

Table 7

Court of Appeals of Virginia

1992-1996 Annual Statistics - Part 2

	1992	1993	1994	1995	1996
Criminal Petitions					
Filed	1,866	1,894	1,908	2,081	2,274
Granted	387	353	351	350	390
Refused/Dismissed/Other	1,422	1,404	1,714	1,828	1,955
Percent Granted	21.40	20.10	17.00	16.10	16.60
Pre-Trial Petitions Filed by Commonwealth					
Filed	17	26	28	35	23
Granted	11	13	8	11	14
Refused/Dismissed/Other	6	13	19	15	14
Original Jurisdiction					
Filed					
Habeas Corpus	24	18	22	12	16
Mandamus/Prohibition	9	39	10	13	14
Total	33	57	32	25	30
Disposed					
Habeas Corpus	21	22	21	13	14
Mandamus/Prohibition	9	35	16	9	18
Total	30	57	37	22	32
Appeals of Right					
Filed					
Domestic Relations	317	285	273	295	325
Workers' Compensation Commission	340	289	354	431	368
Administrative Agency	21	26	36	46	24
Habeas Appeals	0	0	0	0	0
No Jurisdiction	0	0	0	79	117
Other *	17	13	15	38	56
Total	695	613	678	889	890
Total Cases Filed	2,611	2,590	2,652	3,031	3,218
Total Petitions Refused and Cases Disposed	2,380	2,491	2,819	3,230	3,336

* Includes concealed weapons applications, appeals by the Commonwealth before the end of trials and contempt.

Table 8

Court of Appeals of Virginia

1992-1996 Petitions and Cases Disposed

	1992	1993	1994	1995	1996
Criminal Petitions					
Granted	387	353	351	350	390
Refused/Dismissed	1,286	1,275	1,583	1,961	1,805
Withdrawn, Dismissed on Appellant's Motio	136	129	124	146	150
Pre-Trial Petitions Filed by Commonwealth					
Granted	11	13	8	11	14
Refused/Dismissed/Other	6	13	14	12	12
Withdrawn	0	0	4	3	2
Original Jurisdiction					
Habeas Corpus					
Granted	1	0	0	0	0
Refused/Dismissed	20	22	21	13	14
Mandamus					
Granted	0	0	1	0	1
Refused/Dismissed	7	28	9	5	13
Prohibition					
Granted	0	1	0	0	0
Refused/Dismissed	2	6	6	4	4
Appeals of Right and Granted Petitions					
Decided by Opinion					
Affirmed	459	563	525	707	630
Reversed	128	152	143	168	130
Dismissed	8	6	7	6	5
Affirmed in part, Reversed in part	28	31	32	39	37
Other *	0	3	5	3	1
Decided by Order					
Affirmed	19	3	0	9	8
Reversed	14	17	10	14	30
Dismissed	109	90	127	242	211
Affirmed in part, Reversed in part	0	0	0	0	1
Withdrawn, Settled	129	122	124	91	115
Other *	16	14	33	75	94
Concealed Weapon Permit Applications					
Granted	4	4	1	4	22
Refused/Dismissed	6	5	10	6	51
Withdrawn	0	1	0	2	1

* Data gathered beginning in 1991.

Of the 1,262 appeals disposed of by the Court of Appeals in 1996, 190 (15.1 percent) were by published opinion and 613 (48.6 percent) were by unpublished opinion. A total of 459 (36.8 percent) were disposed of by order. The judges of the Court issued nearly 58 percent more published opinions and 190 percent more unpublished opinions in 1996 than they did in 1989. The number of orders issued in 1996 rose to 459 from 431 the year before.

There were 1,151 cases appealed from the Court of Appeals to the Supreme Court of Virginia in 1996. This was 127 or 12.4 percent more than the 1,024 appeals that went to the Supreme Court in 1995.

Overview of Case Processing Times for 1996

In 1989, the Court of Appeals undertook an active program to reduce appellate delay by establishing case processing time standards. Since that year, the Court has conducted an annual review of the age of disposed petitions and appeals. As mentioned earlier, during 1996 the Court undertook a major effort to explore the impact of its establishment of the "one-judge" review process in criminal matters on the age of concluded cases.

Criminal Cases. In 1996, the median processing time for criminal cases was 414 days, 96 days less than in 1995 and 77 days less than in 1994. This significant decline reflects the implementation of the "one-judge" process in criminal cases as well as other efforts of the Court to process cases more expeditiously. Data show that the median processing time for criminal appeals granted by one judge was 397 days in 1996 compared to 531 days for appeals granted by three judges.

In 1996, petitions took 204 days from filing to disposition while appeals took 414 days. An examination of the processing times for stages of the appellate process shows significant declines in the number of days required for the "Pull to Disposition Date" and for the "Appellee Brief to Panel Date." A review of criminal cases reveals that 75 percent of these cases are disposed of within 310 days, while 95 percent are concluded within 502 days of filing.

Domestic Relations Cases. The median processing time for domestic relations cases was 209 days in 1996, 5 days less than in 1995. Since 1993 when file-to-disposition time reached 271 days, there has been a constant decline in the average time required to dispose of these cases. In 1996, 75 percent of these cases were disposed of within 301 days while ninety-five percent were disposed of within 453 days from filing.

Workers Compensation Cases. Workers Compensation Commission cases took an average of 176 days from filing to disposition in 1996, the same as in 1995. Significantly, however, this represented a decrease of 32 days since 1993 when the median processing time reached 208 days. Processing times in the late 1980s and early 1990s averaged nearly 300 days. Among these cases, 75 percent were concluded within 242 days of filing, while 95 percent were concluded within 405 days.

Original Jurisdiction Cases. In 1996, it took an average of 77 days (3 days more than in 1995 and 10 days less than in 1994) to dispose of original jurisdiction cases.

Note: The ABA "Reference Model" for Intermediate Appellate Courts suggest that 75 percent of appeals should take 290 days or fewer to resolve and 95 percent of appeals should take 365 days or fewer to resolve. The "Reference Model" does not establish guidelines for civil and criminal appeals, but instead suggests guidelines for all appeals combined (Hanson, 12).

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Court of Appeals of Virginia

Annual Review of Case Activity and Case Processing Times

Prepared by:

OFFICE OF THE EXECUTIVE SECRETARY
APRIL 1997

Introduction to the Report

Jurisdiction of the Court

The Court of Appeals of Virginia completed its twelfth full year of operation in 1996. Established in 1985, the Court of Appeals hears appeals from circuit courts in all criminal matters except death penalty cases and in all domestic relations matters. In addition, appeals from decisions of the Virginia Workers' Compensation Commission and from most administrative agencies are taken to the Court of Appeals.

The Court of Appeals has original jurisdiction to issue writs of mandamus, prohibition, and habeas corpus in any case over which the Court would have appellate jurisdiction. The Court has authority to hear appeals as a matter of right from:

- any final judgment, order, or decree of a circuit court involving affirmance or annulment of a marriage, divorce, custody, spousal or child support, or control or disposition of a child, as well as other domestic relations cases;
- any final decision of the Virginia Workers' Compensation Commission (a state agency responsible for handling workers' compensation claims);
- any final decision of a circuit court on appeal from a decision of an administrative agency (example: the Department of Health); and
- any interlocutory order granting, dissolving, or denying an injunction or adjudicating the principles of a cause in any of the cases listed above.

The Court of Appeals also has authority to consider petitions for appeal from:

- final orders of conviction in criminal and traffic matters except where a death penalty is imposed;
- final decisions of a circuit court on an application for a concealed weapons permit; and
- certain preliminary rulings in felony cases when requested by the Commonwealth.

The Court's Annual Review of Case Processing

From its beginning, the Court of Appeals has been concerned with the timeliness of its decisions and the capacity of the Court to handle the volume of petitions coming before it. Soon after its establishment, the Court began to conduct periodic reviews of its appellate capacity and the average processing times for various stages of the appellate process. A Time Standards Committee comprised of Judges of the Court, Clerk's office personnel, and staff from the Supreme Court have since that time reviewed annual data on the work of the Court.

This report for 1996 is significant for two reasons. First, it reflects the ongoing work of the Court to deal more expeditiously with its caseload. Concerned with issues of capacity and timeliness, the Court implemented a "one-judge" review procedure for criminal matters in mid-1994. This change required a "redesign" of the case review and analysis procedures in order to accommodate the modified stages of the appellate process. This report represents these changes.

Second, the Court continues to define its needs for management information and information on its performance. This report reflects the recommendations of nationally recognized efforts to define the most important types of management information reports for state intermediate appellate courts. Many of the specific tables in this report are based on those recommended in *Handbook for Appellate Judges: Management Information and Court Performance*, (Hanson, NCSC, 1995) and *Time on Appeal* (Hanson, NCSC, 1996). The Court of Appeals continues to participate in national studies to examine issues related to timeliness and court performance. In the months ahead, the Court will continue to develop more useful and complete reports as part of its ongoing efforts to better serve the citizens of Virginia.

Review of 1996 Caseload Activity

In 1996, the Court of Appeals had 3,218 case filings, 187 or 6.2 percent more than the number filed in 1995. Except for a slight decline in the number of filings in 1993, the number of cases filed with the Court has increased annually since 1985 when the Court was established. See the tables on the following pages. There were 2,274 criminal petitions in 1996, 193 more than in 1995. The number of domestic relations appeals increased by 10 to 325 while workers compensation commission cases decreased by 63 and totaled 368. The number of administrative agency appeals fell by 22 to 24 and original jurisdiction petitions rose by five to 30 petitions. See the 1996 Yearly Statistics for the Court of Appeals in the Appendix.

The number of cases disposed of by the Court of Appeals grew from 3,230 cases in 1995 to 3,336 in 1996, a 3.3 percent rise. Dispositions of criminal cases totaled 2,354, 70.6 percent of all cases concluded. Between 1986 and 1996, annual final dispositions have risen nearly 126.0 percent. In 1996, the Court rendered 803 opinions (both published and unpublished), 120 fewer than in 1995.

The Court of Appeals considered 2,274 or 193 more criminal petitions in 1996 than it did the previous year. Since 1985, the number of annual criminal petitions has increased 109.6 percent. In 1996, the number of criminal petitions granted increased by 40 from 350 in 1995 to 390. This constituted 17.2 percent of the criminal petitions filed.

Filings of appeals of right totaled 890 in 1996 compared to 889 in 1995. Of these cases, 325 or 36.5 percent were domestic relations cases and 368 or 41.3 percent were workers compensation commission cases. The remaining cases were divided between administrative agency matters (24) and other cases (56). (There were 117 cases classified as "No Jurisdiction," meaning that the Court does not have jurisdiction in these matters and that they are candidates for transfer to the Supreme Court of Virginia).

Of the 1,262 appeals disposed of by the Court of Appeals in 1996, 190 (15.1 percent) were by published opinion and 613 (48.6 percent) were by unpublished opinion. A total of 459 (36.8 percent) were disposed of by order. The judges of the Court issued nearly 58 percent more published opinions and 190 percent more unpublished opinions in 1996 than they did in 1989. The number of orders issued in 1996 rose to 459 from 431 the year before.

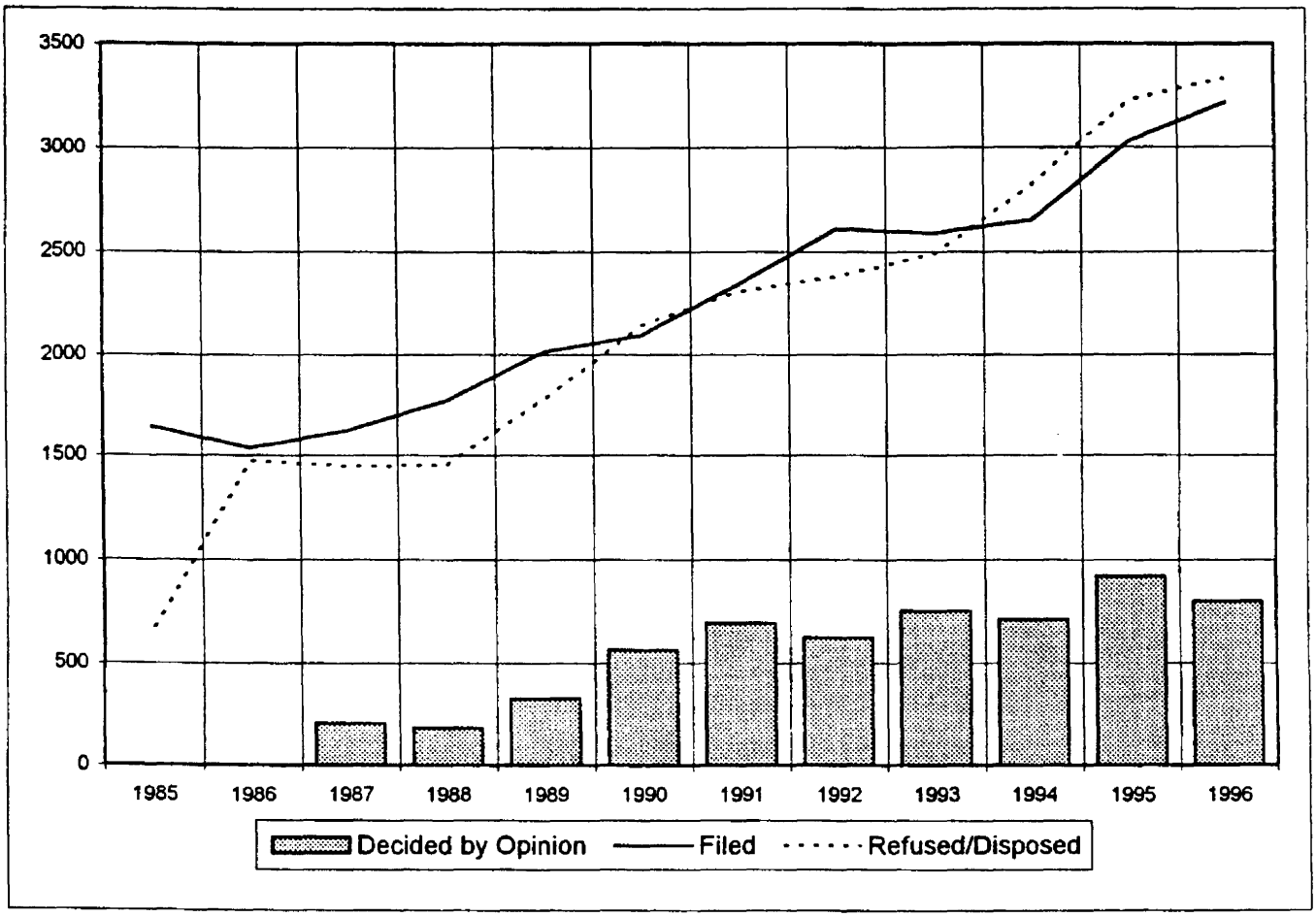
There were 1,151 cases appealed from the Court of Appeals to the Supreme Court of Virginia in 1996. This was 127 or 12.4 percent) more than the 1,024 appeals that went to the Supreme Court in 1995.

Court of Appeals of Virginia
Case Filings 1996

Case Type	Filed	Percent of Caseload
Criminal Petitions	2,274	70.7%
Domestic Relations	325	10.1%
Workers Comp. Commission	368	11.4%
Administrative Agency	24	0.7%
Original Jurisdiction	30	0.9%
Other	197	6.1%
TOTAL	***3,218***	***100%***

COURT OF APPEALS OF VIRGINIA
HISTORICAL CASELOAD VOLUME 1985-1996

Petitions Filed and Disposed,
Appeals of Right and Granted Petitions Decided by Opinion



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COURT OF APPEALS OF VIRGINIA
ANNUAL CASELOAD VOLUME TREND

Actual Cases Filed

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Criminal Petitions	1,085	1,087	1,189	1,253	1,498	1,547	1,797	1,866	1,894	1,908	2,081	2,274
Domestic Relations	250	197	194	225	209	251	247	317	285	273	295	325
Workers Comp. Comm.	191	197	202	197	213	173	200	340	289	354	431	368
Administrative Agency	34	29	25	33	22	40	43	21	26	36	46	24
Original Jurisdiction	18	26	12	38	24	23	21	33	57	36	25	30
No Jurisdiction											79	117
Other	63	0	2	22	44	58	35	34	39	45	74	80
Total Filings	1,641	1,536	1,624	1,768	2,010	2,092	2,343	2,611	2,590	2,652	3,031	3,218

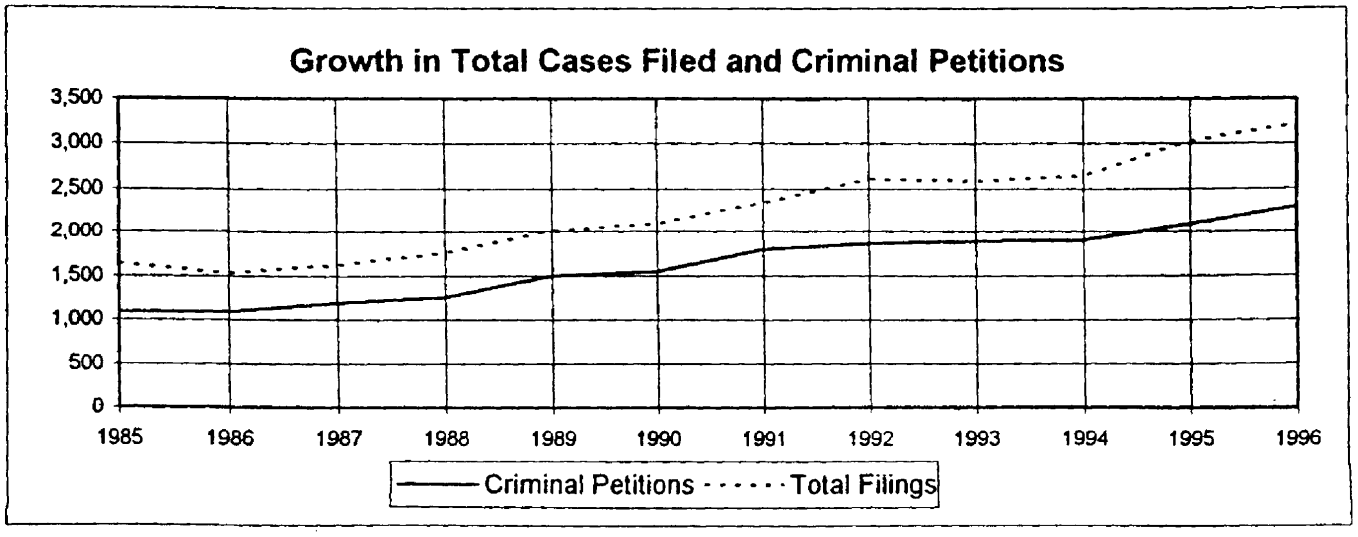
Projected Cases

Method 1: Average Annual Growth 1985-1996

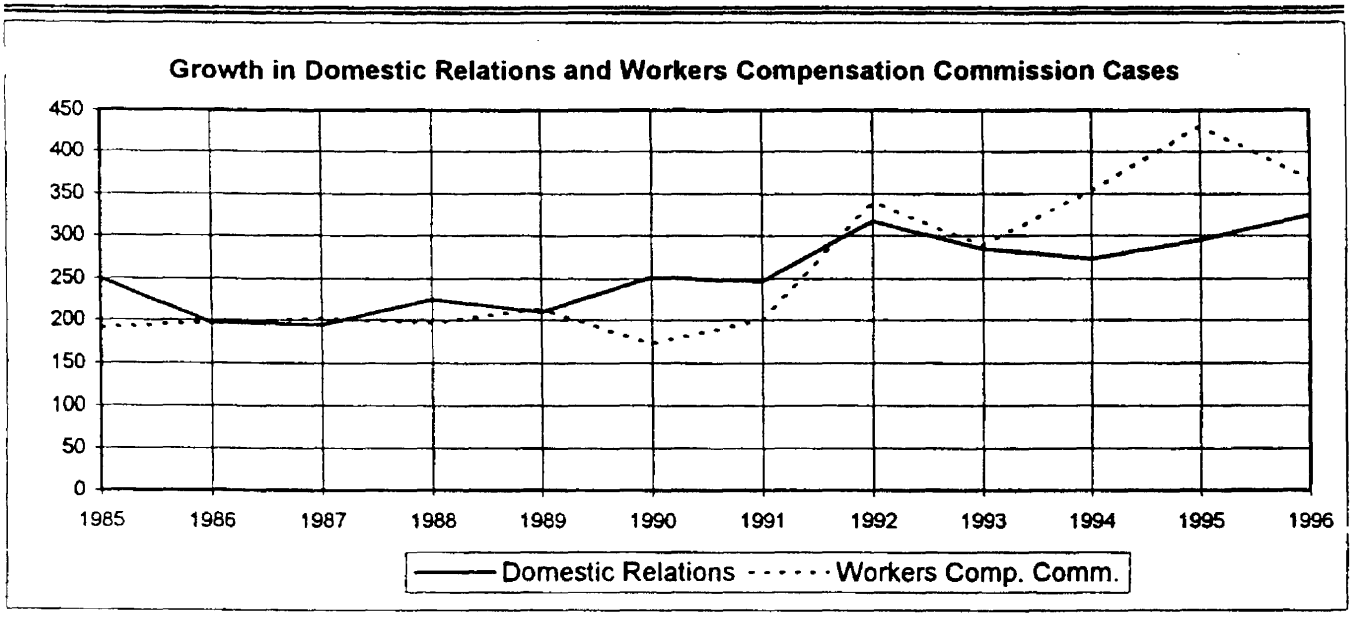
	1997	1998	1999	2000	2001	2002	2003	2004	2005
Criminal Petitions	2,432	2,601	2,782	2,976	3,183	3,405	3,642	3,895	4,166
Domestic Relations	333	341	349	358	366	375	384	393	403
Workers Comp. Comm.	391	415	440	467	496	526	559	593	629
Administrative Agency	23	23	22	21	20	20	19	19	18
Original Jurisdiction	31	33	34	36	38	40	42	43	46
No Jurisdiction	Insufficient data for trend determination.								
Other	82	84	85	87	89	91	93	95	97
Total Filings	3,421	3,637	3,867	4,111	4,370	4,646	4,940	5,252	5,583

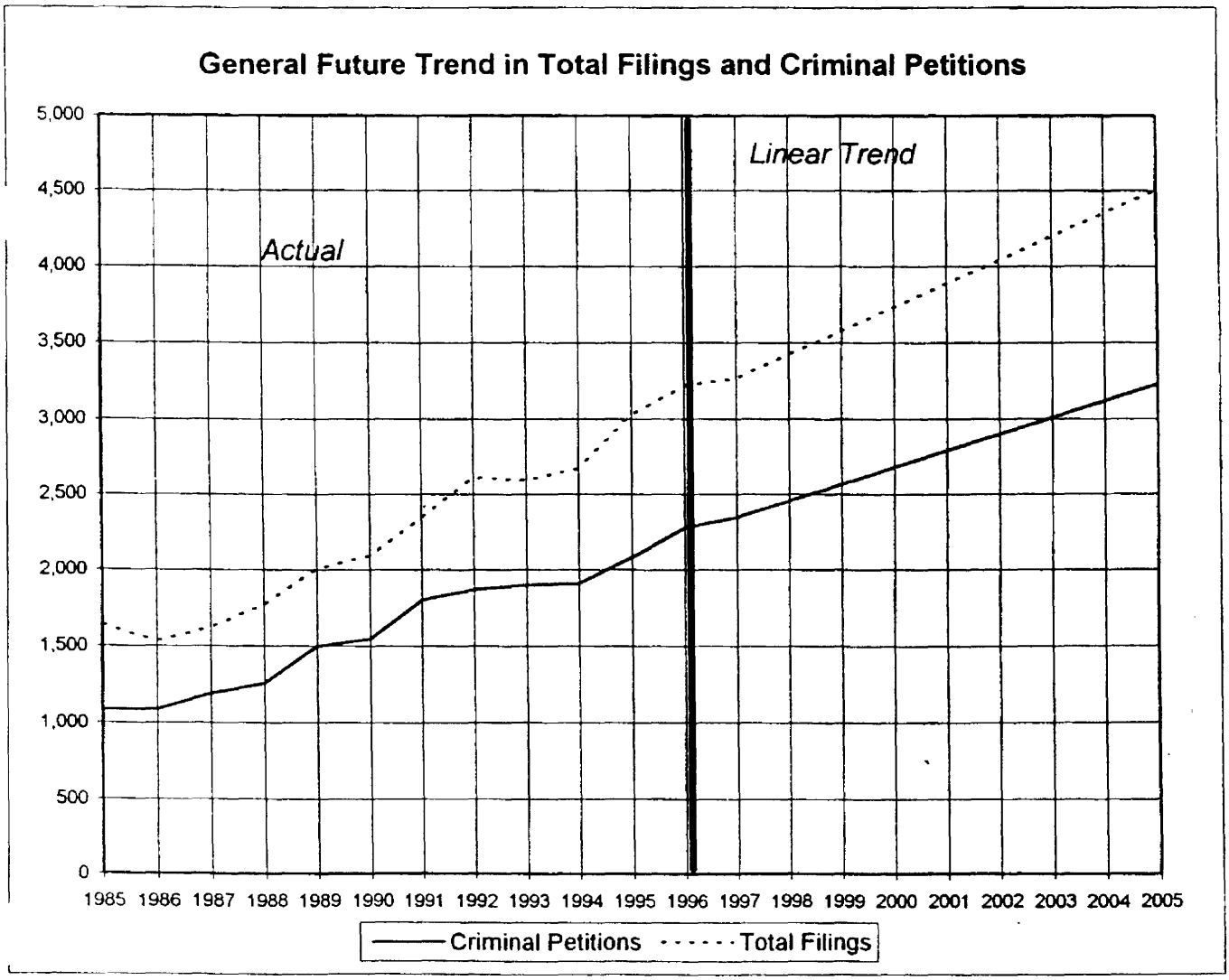
Method 2: Trend Line Analysis (Linear Least Squares)

	1997	1998	1999	2000	2001	2002	2003	2004	2005
Criminal Petitions	2,342	2,453	2,564	2,674	2,785	2,895	3,006	3,117	3,227
Domestic Relations	321	331	341	351	361	371	382	392	402
Workers Comp. Comm.	399	420	441	462	483	504	524	545	566
Administrative Agency	34	34	34	34	35	35	35	36	36
Original Jurisdiction	38	39	41	42	44	45	47	48	49
No Jurisdiction	Insufficient data for trend determination.								
Other	68	72	77	81	85	89	93	97	101
Total Filings	3,267	3,422	3,576	3,731	3,886	4,041	4,195	4,350	4,505



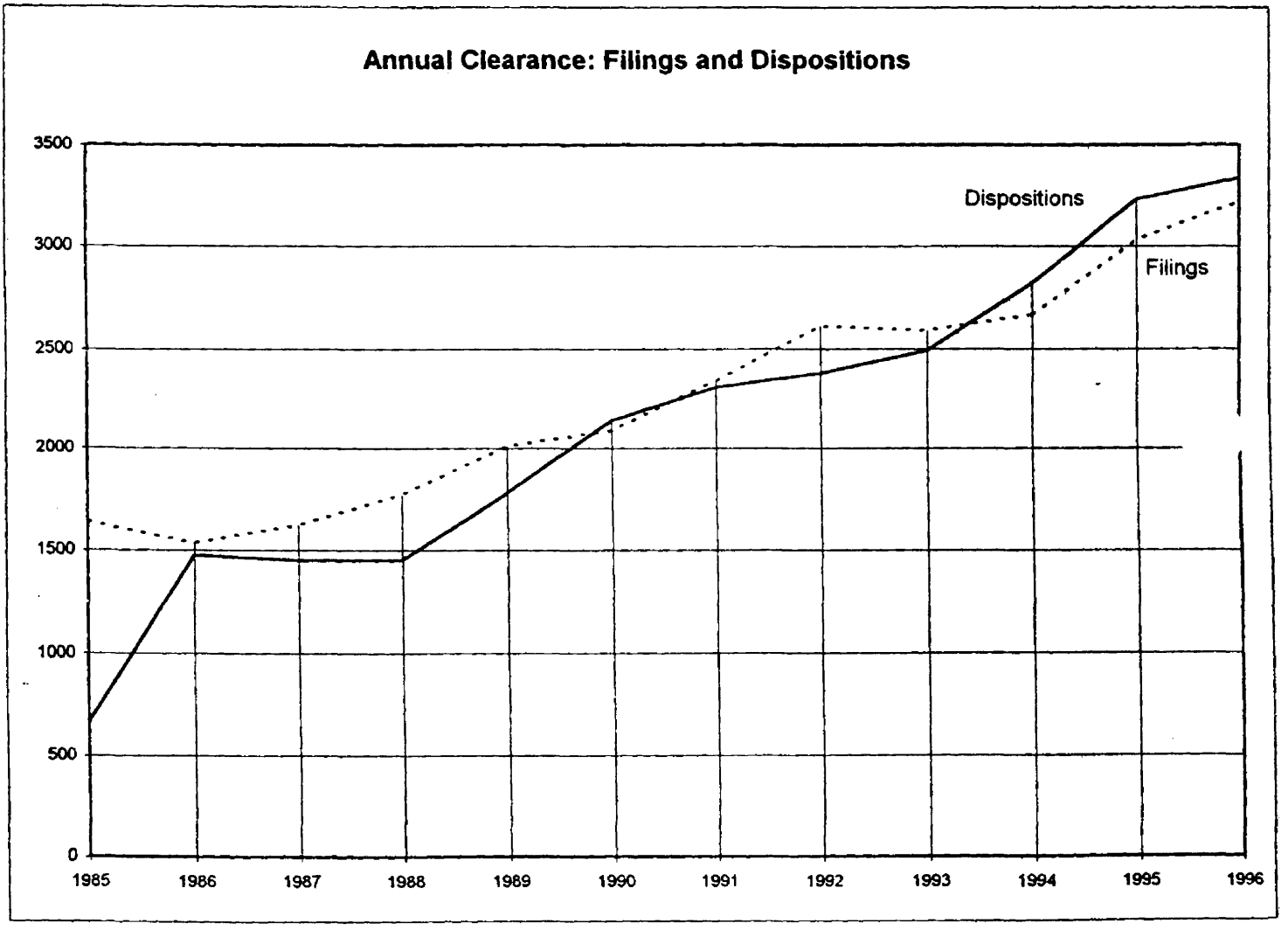
COURT OF APPEALS OF VIRGINIA
ANNUAL CASELOAD VOLUME TREND





COURT OF APPEALS OF VIRGINIA
PRODUCTIVITY REPORT: CLEARANCE RATES 1985-1996

All Cases	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Filings	1,641	1,536	1,625	1,768	2,010	2,092	2,343	2,611	2,590	2,667	3,031	3,218
Dispositions	667	1,476	1,450	1,454	1,777	2,140	2,308	2,380	2,491	2,819	3,230	3,336
Clearance Rate *	40.6%	96.1%	89.2%	82.2%	88.4%	102.3%	98.5%	91.2%	96.2%	105.7%	106.6%	103.7%
3-Yr. Clearance Rate **	n/a	n/a	74.8%	88.9%	86.6%	91.5%	96.6%	96.9%	95.2%	97.7%	103.0%	105.3%



* The clearance rate is the number of dispositions achieved in a given time period divided by the number of filings in the same time period, multiplied by 100.

** The three-year clearance rate is the total of the dispositions in the year plus those in the prior two years, divided by the corresponding number of filings, expressed as a percentage.

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Overview of Case Processing Times for 1996

In 1989, the Court of Appeals undertook an active program to reduce appellate delay by establishing case processing time standards. Since that year, the Court has conducted an annual review of the age of disposed petitions and appeals. This report reviews the findings for cases concluded in 1996, incorporating the changes made with the establishment of the "one-judge" review process in criminal matters.

Criminal Cases. In 1996, the median processing time for criminal cases was 414 days, 96 days less than in 1995 and 77 days less than in 1994. This significant decline reflects the implementation of the "one-judge" process in criminal cases as well as other efforts of the Court to process cases more expeditiously. Data show that the median processing time for criminal appeals granted by one judge was 397 days in 1996 compared to 531 days for appeals granted by three judges.

This report presents timeliness information for criminal petitions and criminal appeals (those petitions which are granted for hearing by the court). Briefly, in 1996, petitions took 204 days from filing to disposition while appeals took 414 days. An examination of the processing times for stages of the appellate process shows significant declines in the number of days required for the "Pull to Disposition Date" and for the "Appellee Brief to Panel Date." A review of criminal cases reveals that 75 percent of these cases are disposed of within 310 days, while 95 percent are concluded within 502 days of filing.

Domestic Relations Cases. The median processing time for domestic relations cases was 209 days in 1996, 5 days less than in 1995. Since 1993 when file-to-disposition time reached 271 days, there has been a constant decline in the average time required to dispose of these cases. In 1996, 75 percent of these cases were disposed of within 301 days while ninety-five percent were disposed of within 453 days from filing.

Workers Compensation Cases. Workers Compensation Commission cases took an average of 176 days from filing to disposition in 1996, the same as in 1995. Significantly, however, this represented a decrease of 32 days since 1993 when the median processing time reached 208 days. Processing times in the late 1980s and early 1990s averaged nearly 300 days.

Among these cases, 75 percent were concluded within 242 days of filing, while 95 percent were concluded within 405 days.

Original Jurisdiction Cases. In 1996, it took an average of 77 days (3 days more than in 1995 and 10 days less than in 1994) to dispose of original jurisdiction cases.

Note: The ABA "Reference Model" for Intermediate Appellate Courts suggest that 75 percent of appeals should take 290 days or fewer to resolve and 95 percent of appeals should take 365 days or fewer to resolve. The "Reference Model" does not establish guidelines for civil and criminal appeals, but instead suggests guidelines for all appeals combined (Hanson, 12).

COURT OF APPEALS OF VIRGINIA
PROCESSING TIMES (DAYS) FOR CASE FILING TO DISPOSITION

By Year Concluded

SUMMARY FOR ALL CASE TYPES

Median Time from Filing to Disposition

	Median Processing Time in Days										Change
Case Type	*1987*	*1988*	*1989*	*1990*	*1991*	*1992*	*1993*	*1994*	*1995*	*1996*	*1995-96*
Criminal *	-	573	611	588	558	502	554	593	N/A	N/A	
Criminal Petitions (Not Granted)								259	210	204	-6
Criminal Appeals (Granted)								491	510	414	-96
Admin. Agency								63	154	292	138
Domestic Relations	100	309	344	354	272	241	271	238	214	209	-5
Workers Comp Com	115	294	314	288	207	175	208	186	176	176	0
Original Jurisdiction	6	113	111	158	127	94	82	88	74	77	3

Mean Time from Filing to Disposition

	Mean Processing Time in Days										Change
Case Type	*1987*	*1988*	*1989*	*1990*	*1991*	*1992*	*1993*	*1994*	*1995*	*1996*	*1995-96*
Criminal *	-	577	617	605	576	513	569	591	N/A	N/A	
Criminal Petitions (Not Granted)								267	229	222	-7
Criminal Appeals (Granted)								475	502	426	-76
Admin. Agency								153	197	285	88
Domestic Relations	121	300	320	326	289	251	281	265	228	214	-14
Workers Comp Com	145	265	291	259	224	184	217	200	183	197	14
Original Jurisdiction	25	129	115	149	139	99	99	108	79	79	0

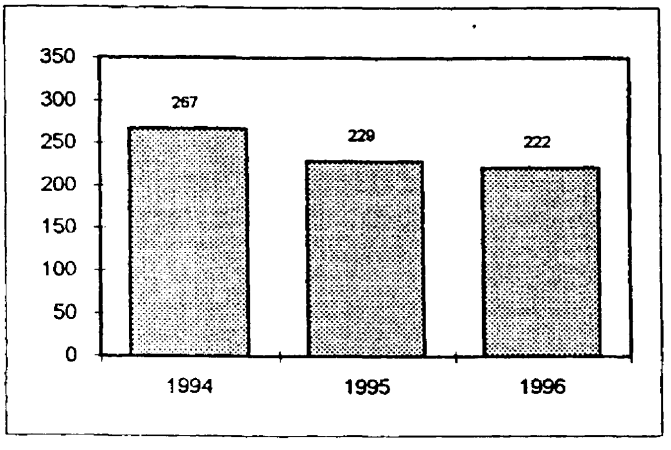
* Note: Beginning in 1996, criminal cases were separated into Petitions and Appeals for purposes of analysis and the analysis looked back at cases concluded in 1994, 1995, and 1996.

CRIMINAL PETITIONS (NOT GRANTED)
PROCESSING TIMES (DAYS) FOR DIFFERENT STAGES OF THE APPELLATE PROCESS

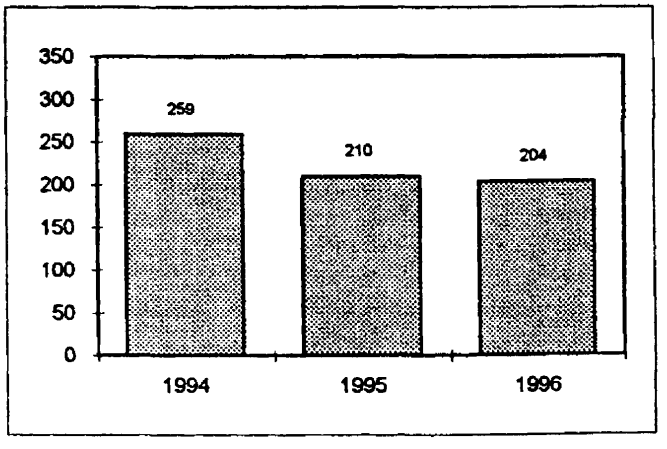
Stage of the Appellate Process	*Mean Number of Days for Cases Concluded in*			*Median Number of Days for Cases Concluded in*		
	1994	*1995*	*1996*	*1994*	*1995*	*1996*
Notc to Record	65	64	70	62	62	67
CR Record to Pet	40	40	40	40	41	41
Pet to Brf Opp	22	20	20	20	20	20
Brf Opp to Panel	150	150	165	144	144	153
Brf Opp to 1-Judge	26	34	42	24	30	36
1-Judge to Pull	7	19	16	7	12	10
1-J Pull to 1-J Disp	19	16	16	21	15	13
1-J Disp to CR Panel		78	88		73	76
1-J Disp to Open						
CR Panel to Pull	17	14	7	9	9	4
CR Pull to Disp	27	24	6	28	22	5
CR Disp to Open						
Open to Appl Brf						
Appl Brf to Panel						
AR Panel to Pull						
AR Pull to Disp						
CR Pet Time	267	229	222	259	210	204
File to Disp	267	229	222	259	210	204
Pet to Disp	167	181	162	154	188	166
FR to Grant/Refusal						
Grant to Hearing						
Hearing to Disp on Rhrg						
Disp to Disp on Rhrg						

Filing to Disposition

Mean Number of Days



Median Number of Days



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CRIMINAL PETITIONS AND APPEALS
PROCESSING TIMES (DAYS) FOR CASE FILING TO DISPOSITION

	Mean Number of Days for Cases Concluded in			*Median Number of Days for Cases Concluded in*		
	1994	*1995*	*1996*	*1994*	*1995*	*1996*
Criminal Appeals						
Granted by 1 Judge	-	371	399	-	379	397
Granted by 3 Judges	475	533	501	491	533	531
Total	475	502	426	491	510	414
Criminal Petitions						
Refused by 1 Judge	127	188	197	128	186	189
Granted by 1 Judge	-	371	399	-	379	397
Granted by 3 Judges	475	534	490	491	533	525
Refused by 3 Judges	269	301	298	231	298	287
Summarily Disposed	-	228	198	-	193	198
Total	286	294	261	269	241	222

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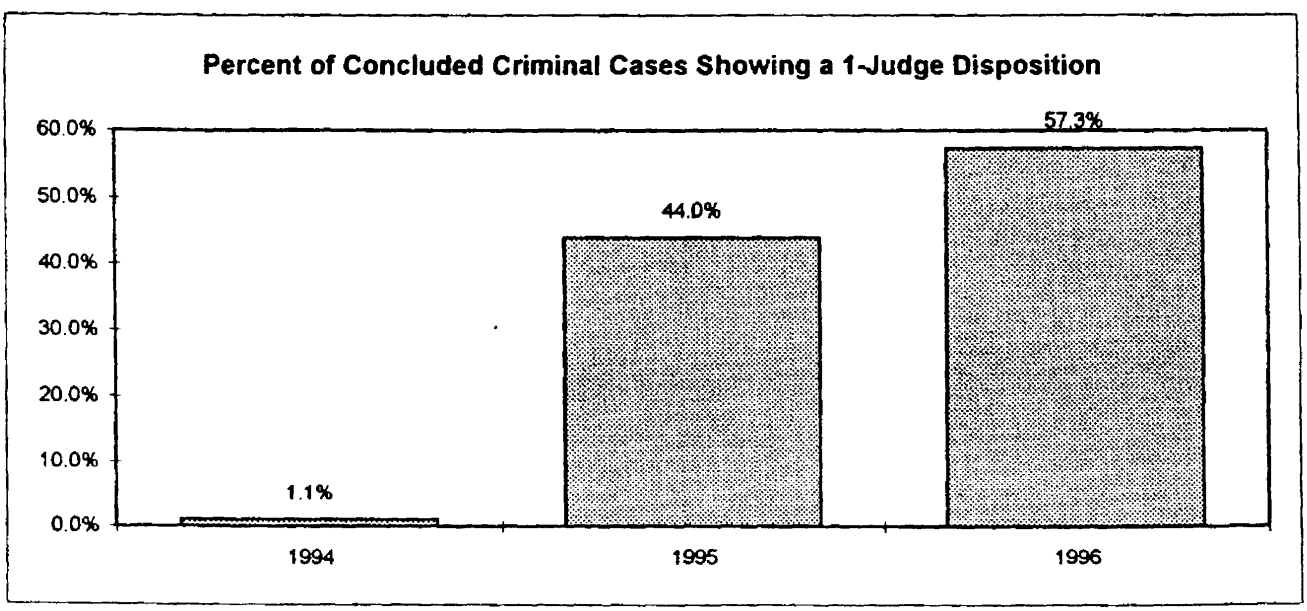
COURT OF APPEALS OF VIRGINIA
FREQUENCY OF 1-JUDGE AND 3-JUDGE DISPOSITIONS FOR CRIMINAL CASES

By Year Concluded

	1994		1995		1996	
	Number	*Percent*	*Number*	*Percent*	*Number*	*Percent*
One Judge Dispositions						
Granted by 1 Judge	0	0.0%	85	4.0%	315	12.5%
Refused by 1 Judge	20	1.1%	1,072	50.0%	1,624	64.2%
Criminal Cases Not Showing a 1-Judge Disposition	1,821	98.9%	987	46.0%	590	23.3%
Total Criminal Cases Concluded	1,841	100.0%	2,144	100.0%	2,529	100.0%
Three Judge Dispositions						
Certified to SCV	3	0.2%	4	0.2%	0	0.0%
Dismissed	246	13.4%	240	11.2%	373	14.7%
Granted	129	7.0%	345	16.1%	163	6.4%
Refused	1,270	69.0%	491	22.9%	376	14.9%
Transferred to SCV	23	1.2%	0	0.0%	3	0.1%
Void	21	1.1%	23	1.1%	11	0.4%
Withdrawn	129	7.0%	97	4.5%	153	6.0%
Criminal Cases Not Showing a 3-Judge Disposition	20	1.1%	944	44.0%	1,450	57.3%
Total Criminal Cases Concluded	1,841	100.0%	2,144	100.0%	2,529	100.0%



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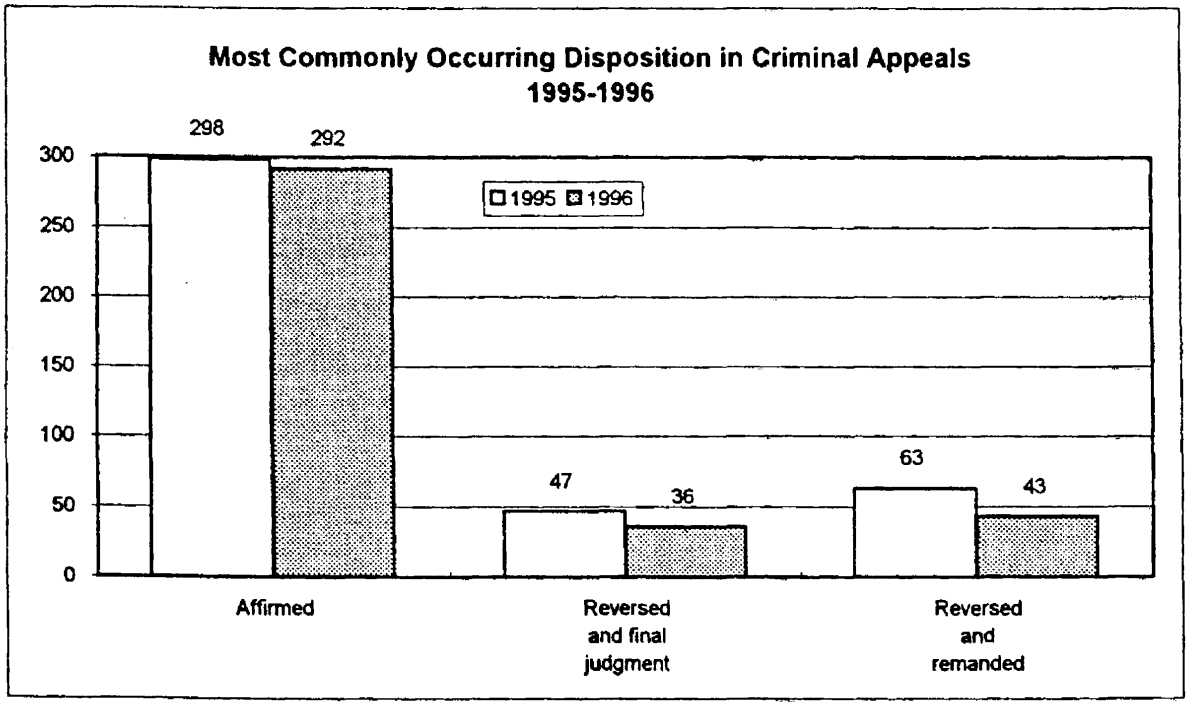
CRIMINAL APPEALS
FREQUENCY OF DISPOSITIONS

For Cases Disposed of in 1995 and 1996

Disposition	*1995*		*1996*	
	Number	*Percent*	*Number*	*Percent*
Affirmed	298	69.6%	292	74.7%
Affirmed in part, reversed in part	7	1.6%	2	0.5%
Certified to SCV	1	0.2%		0.0%
Dismissed	10	2.3%	8	2.0%
Modified	0	0.0%	1	0.3%
Reversed and final judgment	47	11.0%	36	9.2%
Reversed and remanded	63	14.7%	43	11.0%
Withdrawn	2	0.5%	9	2.3%
Total	428	100.0%	391	100.0%



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