

1-1-2014

## The Judiciary in Virginia: Changes and Challenges in Virginia: One Trial Judge's Perspective

Thoma D. Horne Retired Judge

Follow this and additional works at: <http://scholarship.richmond.edu/pilr>



Part of the [Courts Commons](#), and the [State and Local Government Law Commons](#)

---

### Recommended Citation

Thoma D. Horne Retired Judge, *The Judiciary in Virginia: Changes and Challenges in Virginia: One Trial Judge's Perspective*, 18 RICH. J.L. & PUB. INT. 49 (2014).

Available at: <http://scholarship.richmond.edu/pilr/vol18/iss1/6>

This Article is brought to you for free and open access by the Law School Journals at UR Scholarship Repository. It has been accepted for inclusion in Richmond Public Interest Law Review by an authorized administrator of UR Scholarship Repository. For more information, please contact [scholarshiprepository@richmond.edu](mailto:scholarshiprepository@richmond.edu).

THE JUDICIARY IN VIRGINIA: CHANGES AND  
CHALLENGES IN VIRGINIA.  
ONE TRIAL JUDGE'S PERSPECTIVE

*By: Thomas D. Horne, Retired Judge\**

\* Judge Thomas D. Horne is a recently retired circuit court judge from the 20th Judicial Circuit of Virginia. Judge Horne served as Chairman of the 2011 Judicial Boundary Realignment Study and also served on the Judicial Needs Assessment Committee as part of the 2013 Virginia Judicial Workload Assessment Report. Judge Horne would like express his gratitude to his law clerk, Kyle D. Winey, for his research, editing, and review in helping to prepare this article for publication.

## I. INTRODUCTION

With the convening of the 2014 Virginia General Assembly, members of the Senate and House received the anticipated 2013 Judicial Workload Assessment Report<sup>1</sup>—a weighted case load study produced by the National Center for State Courts and commissioned by the legislature during its 2012 session.<sup>2</sup> The purpose of the study was to help guide both the future selection of judges and the allocation of the political boundaries to be served by those judges.<sup>3</sup> The results of the weighted caseload study as contained in the 2013 Report would validate many of those concerns expressed earlier by the 2011 Judicial Boundary Realignment Committee appointed by the Supreme Court.<sup>4</sup> In addition, the 2013 Report would include a myriad of comments and concerns voiced by legislators, lawyers, judges, court personnel, law enforcement, and the general public concerning judicial need in the Commonwealth.<sup>5</sup>

This article will seek to describe the results of the 2013 Virginia Judicial Workload Assessment Report within the context of an evolving dialogue in the Virginia General Assembly concerning judicial resources. It is a dialogue that has taken place since the beginning of the Commonwealth and became a focal point during the General Assembly's 2014 session.<sup>6</sup> This dialogue intensified when House Bill 1990 and Senate Bill 1240 were introduced during the General Assembly's 2011 session.<sup>7</sup>

## II. OVERVIEW OF THE JUDICIARY'S EVOLUTION IN VIRGINIA BY LEGISLATIVE ACTION FROM 1851-1977

Courts represent statewide interests as well as those of the individual political subdivisions of the Commonwealth in which they serve.<sup>8</sup> The busi-

<sup>1</sup> BRIAN J. OSTROM ET AL., NAT'L CTR. FOR STATE COURTS, VIRGINIA JUDICIAL WORKLOAD ASSESSMENT REPORT (2013), available at [http://www.courts.state.va.us/courts/scv/virginia\\_Judicial\\_workload\\_assessment\\_report.pdf](http://www.courts.state.va.us/courts/scv/virginia_Judicial_workload_assessment_report.pdf).

<sup>2</sup> *Id.* at i.

<sup>3</sup> *Id.*

<sup>4</sup> See *id.* at 44; OFFICE OF THE EXEC. SEC'Y, SUPREME COURT OF VA., 2011 JUDICIAL BOUNDARY REALIGNMENT STUDY REPORT 41, available at [http://www.courts.state.va.us/programs/concluded/jbr\\_study/2011\\_1102\\_final\\_report.pdf](http://www.courts.state.va.us/programs/concluded/jbr_study/2011_1102_final_report.pdf).

<sup>5</sup> OSTROM ET AL., *supra* note 1, at 14–17; OFFICE OF THE EXEC. SEC'Y, *supra* note 4, at 84–89.

<sup>6</sup> See Cynthia D. Kinser, Chief Justice, Supreme Court of Va., State of the Judiciary Address 4 (May 13, 2014), available at [http://www.courts.state.va.us/courts/scv/state\\_of\\_the\\_judiciary\\_address.pdf](http://www.courts.state.va.us/courts/scv/state_of_the_judiciary_address.pdf); see also Act of May 23, 2014, 2014 Va. Acts. 812, (to be codified at VA. CODE ANN §§ 16.1-69.6:1, 17.1-507); Act of May 23, 2014, 2014 Va. Acts. 822 (to be codified at VA. CODE ANN §§ 16.1-69.6:1, 17.1-507).

<sup>7</sup> OFFICE OF THE EXEC. SEC'Y, *supra* note 4, at 1.

<sup>8</sup> See *Virginia Courts In Brief*, VA'S JUDICIAL SYSTEM, <http://www.courts.state.va.us/courts/cib.pdf> (last

ness of the courts reflects a blending of statewide standards and local community customs and procedures. Central to the administration of those courts has been the clustering of courts across political boundaries from multi-jurisdictional entities consisting of circuits and districts.<sup>9</sup>

In 1851, the jurisdictional boundaries of the Virginia court system, then served by an elected judiciary, were divided into 21 judicial circuits, 10 districts and five sections.<sup>10</sup> The ratification of the 1902 Constitution created a five member Supreme Court of Appeals and 24 Circuit/Corporation Courts.<sup>11</sup> Concomitant with this action, County Courts, whose origin could be traced to the seventeenth century, were completely removed from the Constitution.<sup>12</sup> In 1928, an amendment to the Constitution of Virginia, the General Assembly granted the legislature the power to establish courts and enlarge the Supreme Court of Virginia to seven members.<sup>13</sup>

The origin of our present system of trial courts, with slight modifications is found in the report of the 1971 Court Study Commission to the Governor and The General Assembly of Virginia, otherwise known as the I'Anson Report.<sup>14</sup> The report contained comments and recommendations, including the following:

Although it has found the circuit an effective administration unit, the Commission has also found that the present system of circuits could be far more efficient. . . . The circuits were designed in 1902 for convenience in an era of horse-and-buggy travel and of slow communication before the telephone was widespread. They were made as small as possible, as the difficulty of covering a large territory was substantial, and rapid communication was impossible. Because travel has become infinitely faster and less time can be allotted for travel and more for hearing cases, some one-judge circuits created in 1902, despite increased caseloads, are still operating with a single judge over substantially similar territory.<sup>15</sup>

---

visited Aug. 30, 2014).

<sup>9</sup> See *My County/My Court*, JOURNEY THROUGH JUSTICE, <http://www.jtj.courts.state.va.us/courtmycourt.html> (last visited Aug. 22, 2014); *Map of Virginia's Judicial Circuits and Districts*, VIRGINIA'S JUDICIAL SYSTEM, <http://www.courts.state.va.us/courts/maps/home.html> (last visited Aug. 22, 2014).

<sup>10</sup> VA. CONST. of 1851, art. VI, § 2; *History of Reform Efforts*, AMERICAN JUDICATURE SOC'Y, [http://www.judicialselection.us/judicial\\_selection/reform\\_efforts/formal\\_changes\\_since\\_inception.cfm?state=](http://www.judicialselection.us/judicial_selection/reform_efforts/formal_changes_since_inception.cfm?state=) (last visited Aug. 16, 2014).

<sup>11</sup> VA. CONST. of 1902, art. VI, § 94.

<sup>12</sup> See *id.*

<sup>13</sup> J. RES., 1927 Gen. Assemb., Extra Sess. (Va. 1927) (voting to enact amendments to the Virginia Constitution of 1902).

<sup>14</sup> See VA. COURT SYS. STUDY COMM'N, REPORT OF THE COURT SYSTEM STUDY COMMISSION TO THE GOVERNOR AND THE GENERAL ASSEMBLY OF VIRGINIA 1 (1971), available at <http://cdm16064.contentdm.oclc.org/cdm/ref/collection/p266901coll6/id/1359>.

<sup>15</sup> *Id.* at 19.

It is noteworthy that the factors listed in the report are relevant to the plan for legislative action, conducted almost a half a century ago, and continue to be relevant today: transportation, communication, technology, and convenience. The F'Anson Report would go on to observe:

Inherent in this system based on horse travel, however, are inefficiencies which could be eliminated by realigning and enlarging many of the circuits, now possible because of ease of communication and shortened travel time. . . . The greatest argument in favor of realignment or circuits for court of record purposes, however, appears in the caseload statistics.<sup>16</sup>

Lastly, the 1971 Report would state:

It appears that the number of cases which can be effectively handled by a single judge is between 750 and 950 cases a year, depending on the complexity of the cases and the amount of travel necessary. Yet the caseload for a single judge in courts of record in 1970 varied from 72 [Chancery Court in the City of Richmond] to 1891 [Roanoke Hustings Court]. In circuits, the caseload varied from 427 [31st Circuit, Accomac and Northampton] to 1574 [7th Circuit, Henry and Patrick].<sup>17</sup>

These caseload statistics from the 1971 F'Anson Report can be compared with case filings from 2011, which ranged from 1,357 case filings per judge in the 23rd Circuit which includes the City of Roanoke, Roanoke County, and City of Salem, to 2,671 case filings per judge in the 30th Circuit which includes Lee County, City of Norton, Scott County, and Wise County.<sup>18</sup>

Effective July 1, 1973, after receipt of the F'Anson Report, and consistent with the recommendation of the Judicial Council, the General Assembly realigned and consolidated courts of record into thirty judicial circuits.<sup>19</sup> Additionally, consistent with the recommendation of the Judicial Council, the legislature established a system of general district and juvenile and domestic relations courts to serve as courts not of record.<sup>20</sup> The boundaries of the district court would coincide with those of the circuit courts.<sup>21</sup> The statute provided for appeals from the district courts to go up to the circuit courts.<sup>22</sup>

With the exception of the legislative action taken in 1977, which (a) created the Thirty-First Judicial Circuit, consisting of Prince William County, the City of Manassas, and the City of Manassas Park, (b) changed the des-

---

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 19–20.

<sup>18</sup> OFFICE OF THE EXEC. SEC'Y, *supra* note 4, at 25.

<sup>19</sup> See VA. CODE ANN. § 17-119.1:1 (1973), *amended by* VA. CODE ANN. § 17.1-506 (2006).

<sup>20</sup> See VA. CODE ANN. § 16.1-69.8 (1973).

<sup>21</sup> See *id.*

<sup>22</sup> See VA. CODE ANN. § 17-123 (1973), *amended by* VA. CODE ANN. § 17.1-513 (2012).

ignation of the Counties of Accomack and Northampton from the Thirty-First Judicial District to Judicial District 2-A, and (c) assigned Prince William County to the Thirty-First Judicial District, the boundaries established by the General Assembly have essentially remained unchanged.<sup>23</sup> The boundaries of four localities were moved to adjacent circuits/districts in the 1980's and changed in the classification of cities.<sup>24</sup>

As will be noted later, since the adoption of the I'Anson Report's recommendation by the General Assembly, courts, particularly circuit courts, have come to place greater reliance on funding by local governments. The purpose behind the utilization of local funding has been to supply courts with legal and administrative support services, thus reducing the need for judges to perform more routine tasks.<sup>25</sup>

### III. UTILIZING WEIGHTED CASELOADS IN THE JUDICIAL SELECTION PROCESS

This paper seeks to demonstrate that the weighted caseload statistics are the most accurate measure of judicial need and it is imperative that judicial needs be fully and adequately addressed.

There are many variables that may influence an objective evaluation of need. However, such variables influence the issue of judicial need in different ways. Obvious objective factors may include case filings, complexity of cases, jurisdictional population, alternative dispute resolution, availability of support services, crime rates, and growth rates. Other, more subtle factors may include level of experience of the judge, nature of pre-judicial practice, availability of legal services, quality of representation, scheduling culture, workforce composition, and household incomes. For example, in making a decision to try a case with a jury, the historical pattern of jury verdicts may dissuade or encourage the use of more time consuming jury trials. These issues may be a concern when determining communities of interest in circuits and districts.

A major factor in the judicial selection process is the debate and decision making that surrounds the subjective and evaluative component of the judi-

---

<sup>23</sup> Compare VA. CODE ANN. § 17-119.1:1 (1973) (showing pre-1977 judicial circuit allocation), and VA. CODE ANN. § 17-119.1:1 (1997) (establishing thirty-one judicial circuits), with VA. CODE ANN. § 17.1-506 (2006) (maintaining thirty-one judicial circuits).

<sup>24</sup> See VA. CODE ANN. § 17-119.1:1 (1983); see also VA. CODE ANN. § 17-119.1:1 (1986); VA. CODE ANN. § 17-119.1:1 (1987).

<sup>25</sup> See generally VA. COURT SYS. STUDY COMM'N, *supra* note 14 (discussing the findings and recommendations of the Commission regarding the improvement of the judicial system).

cial needs evaluation. In its February 4, 2014 edition, the Richmond Times Dispatch captured the often fiery discussion attendant to the judicial selection process: “During a legislative session, few issues spur partisan bickering more than the selection of judges. ‘There’s no fight like a judge fight around here,’ said Terry G. Kilgore, R-Scott.”<sup>26</sup>

Irrespective of the political jousting, an editorial piece in the February 6, 2014 edition of the Roanoke Times highlighted the need to set aside party differences for the sake of legislative action: “The peek [sic] of partisan jockeying that filtered out to the public underscores the need for a merit-based judicial selection process. It has to start with the lawmakers, who could take one giant step forward by appointing an independent commission.”<sup>27</sup>

A cursory review of the judiciary in Virginia would suggest that the present selection process is an effective way of finding quality judges and does not require the use of a commission.<sup>28</sup> While there may be disagreement over the method of selecting judges, the politics of judicial selection should not interfere with the issue of judicial need—for in the end, it is the public that suffers.

A brief review regarding the legislative response to judicial selection and the establishment of jurisdictional boundaries elucidates the findings of the National Center for State Courts as contained in the 2013 Judicial Workload Assessment Report.

#### A. The 2011 Judicial Boundary Realignment Study Committee

During the 2011 session of the General Assembly, House Bill 1990 won the approval of the House of Delegates but did not pass the Senate Courts of Justice Committee which refrained from taking action on both House Bill 1990 and Senate Bill 1240.<sup>29</sup> Instead the Senate Courts of Justice Committee requested that the Supreme Court of Virginia review the judicial circuits and districts proposed by House Bill 1990 and Senate Bill 1240 and provide

<sup>26</sup> Jim Nolan, *Virginia Senate Debates Judgeship Nominee*, ROANOKE TIMES, Feb. 3, 2014, 8:53 pm, [http://www.roanoke.com/news/politics/article\\_228f8de6-8d3f-11e3-b10a-0017a43b2370.html?TNNNoMobile](http://www.roanoke.com/news/politics/article_228f8de6-8d3f-11e3-b10a-0017a43b2370.html?TNNNoMobile).

<sup>27</sup> Editorial, *Our View: Injudicious Squabbling*, ROANOKE TIMES, Feb. 6, 2014, 4:00 AM, [http://www.roanoke.com/opinion/editorials/our-view-injudicious-squabbling/article\\_bdfec200-8ec1-11e3-80f8-0017a43b2370.html](http://www.roanoke.com/opinion/editorials/our-view-injudicious-squabbling/article_bdfec200-8ec1-11e3-80f8-0017a43b2370.html).

<sup>28</sup> See, e.g., Constance A. Anastopoulou & Daniel J. Crooks III, *Race and Gender on the Bench: How Best to Achieve Diversity in Judicial Selection*, 8 NW. J.L. & SOC. POL’Y. 174, 186 (2013).

<sup>29</sup> See OFFICE OF THE EXEC. SEC’Y, *supra* note 4, at 3.

recommendations for changes to the judicial boundary lines, including the number of judges designated to serve in each judicial circuit and district.<sup>30</sup> The Committee, through its chairman, Henry L. Marsh, III, requested that the Supreme Court submit its recommendations to the Senate Courts of Justice Committee by November 1, 2011.<sup>31</sup>

In response, Chief Justice Cynthia Kinser created a 22 member Judicial Boundary Realignment Study Committee whose charge included the review of extensive statistical information.<sup>32</sup> Equally, if not more important, Justice Kinser tasked the Committee with seeking public comment through public forums held throughout the Commonwealth.<sup>33</sup> These forums elicited observations and comments of concerned constituents interested in securing the best of court systems in the Commonwealth. Upon completion of the report, the Supreme Court reviewed the findings of the Study Committee and made a timely report to Senator Marsh.<sup>34</sup> Those recommendations included the following:

In assessing current and future workloads and associated judgeship needs, the preferred method of analysis is the weighted caseload method of analysis in the weighted case load study. Simply counting cases without a weighted caseload system does not account for the fact that some cases are plea agreements and that may take minutes of a court's time while others may be more complex, multiple day or multiple week trials.<sup>35</sup>

No changes should be made to judicial boundaries until the Judiciary completes a comprehensive study of judicial methods and workloads, including development of a "weighted caseload" system to more precisely measure and compare judicial caseloads.<sup>36</sup>

The Study Committee ultimately recommended the commission a further study based upon what was a keen concern of the Court: the absence of objective data permitting consideration of the nature and complexity of caseloads facing each circuit.<sup>37</sup>

---

<sup>30</sup> See OFFICE OF THE EXEC. SEC'Y, *supra* note 4, at 3.

<sup>31</sup> See OFFICE OF THE EXEC. SEC'Y, *supra* note 4, at 56.

<sup>32</sup> See OFFICE OF THE EXEC. SEC'Y, *supra* note 4, at 4.

<sup>33</sup> See OFFICE OF THE EXEC. SEC'Y, *supra* note 4, at 4.

<sup>34</sup> See OFFICE OF THE EXEC. SEC'Y, *supra* note 4, at 3–4.

<sup>35</sup> OFFICE OF THE EXEC. SEC'Y, *supra* note 4, at 9.

<sup>36</sup> OFFICE OF THE EXEC. SEC'Y, *supra* note 4, at 41.

<sup>37</sup> See OFFICE OF THE EXEC. SEC'Y, *supra* note 4, at 9.



## B. The 2013 Virginia Judicial Workload Assessment Report

Consistent with the 2011 Study Committee's recommendation to Senator Marsh, the General Assembly commissioned the National Center for State Courts to initiate and complete a weighted case load study in time for the General Assembly to address the Commonwealth's judicial needs and jurisdictional boundaries.<sup>38</sup> As a result, on November 15, 2013, the National Center for State Courts delivered the Virginia Judicial Workload Assessment Report for consideration by the General Assembly.<sup>39</sup>

There was extensive participation in the 2013 Judicial Workload Assessment Report. 375 full time judges, or 97 percent of all Virginia trial judges, as well as forty-one retired judges participated in the time study.<sup>40</sup> Judges were asked to accurately report work performed through a web-based survey.<sup>41</sup> The Report further notes the participation of retired judges.<sup>42</sup> Moreover, the evaluative staff visited courts in 11 circuits and districts covering 44 jurisdictions.<sup>43</sup>

The validity of the outcomes reported in the weighted caseload study is attributable in large measure to the support of the judiciary in keeping extensive records and reporting data required to assess the nature of the work performed and time required to complete those tasks on a daily basis.

The Report considered perspectives beyond the raw survey data. Delphi groups composed of experienced circuit, district, and juvenile and domestic relations judges provided a qualitative review of preliminary case weights by recommending adjustments to the survey data.<sup>44</sup> The NCSC study concluded that Delphi adjustments resulted "in a combined increase in judicial workload of 1.7%".<sup>45</sup> Comments made by the Delphi groups included, among other things, consideration of adjustments to the case weights to ac-

---

<sup>38</sup> 2012 Va. Acts ch. 601, available at <http://lis.virginia.gov/cgi-bin/legp604.exe?141+ful+HB234H1+pdf> (directing that Virginia Supreme Court "develop and implement a weighted caseload system to precisely measure and compare judicial caseloads throughout the Commonwealth on the circuit court, general district court, and juvenile and domestic relations district court levels," and recommend a plan for the realignment of the circuit and district boundaries).

<sup>39</sup> OSTROM ET AL., *supra* note 1.

<sup>40</sup> OSTROM ET AL., *supra* note 1, at 7.

<sup>41</sup> OSTROM ET AL., *supra* note 1, at 7.

<sup>42</sup> OSTROM ET AL., *supra* note 1, at 13.

<sup>43</sup> OSTROM ET AL., *supra* note 1, at 14.

<sup>44</sup> OSTROM ET AL., *supra* note 1, at i, ii.

<sup>45</sup> OSTROM ET AL., *supra* note 1, at 19.

count for pre-trial activity and consideration of preparation of written opinions.<sup>46</sup>

Chief Judges also completed a survey in multi-jurisdictional circuits.<sup>47</sup>

Lastly, a Judicial Needs Assessment Committee composed of judges and clerks from across the Commonwealth provided input and perspective in all phases of the project.<sup>48</sup> Thus, the Study is reflective of a true measure of work regarding the adequacy or inadequacy of the current allocation of judgeships throughout the Commonwealth and of the judiciary's ability to respond to demands within the individual circuits and districts.

A principal overview to the NCSC's approach is adeptly described in the Study Report:

The basic methodology used by the NCSC is the calculation of the average amount of work time judges devote to different types of cases. Because cases vary according to complexity, the average times, called "case weights," also vary. When the case weights are applied to filings in individual jurisdictions, the workload in minutes or hours can be calculated. The total judicial need is estimated by dividing workload by the amount of time per year that a judge has available to do case-related work.<sup>49</sup>

To arrive at the number of judges needed the NCSC study used the following formula to which the relevant variables are subsequently explained:

$$\frac{\text{Filings} \times \text{Case Weights (in minutes)}}{\text{Judge Year Value (in minutes)}} = \text{Judge Need (FTE)}^{50}$$

*Filings Data:* Filings data used is the average for each category type (i.e. with respect to the circuit court, 16 case types were identified, such as capital murder and contested divorces).<sup>51</sup>

*Case Weights:* Case weights are developed in minutes from the total time reported by the judges as having been spent on that case type divided by the statewide average filings for that case type and yielding a case weight in minutes.<sup>52</sup>

*Judge Year:* The Judge Year considers that a judge has 216 days available each calendar year. This number represents subtractions from the 365 day calendar

<sup>46</sup>OSTROM ET AL., *supra* note 1, at 18.

<sup>47</sup> OSTROM ET AL., *supra* note 1, at 33.

<sup>48</sup> OSTROM ET AL., *supra* note 1, at 3.

<sup>49</sup> OSTROM ET AL., *supra* note 1, at ii.

<sup>50</sup> OSTROM ET AL., *supra* note 1, at 11.

<sup>51</sup> OSTROM ET AL., *supra* note 1, at 7–8.

<sup>52</sup> OSTROM ET AL., *supra* note 1, at 7–8.

year for weekends, holidays, vacations, sick leave, and conferences. Added to this number is the Judge Day non-case related activities as reported and averaged in the NCSC report. The study assumes a judge day of 8.5 hours. The workday is divided between case-related and non-case-related activities. Case-related time concerns the time the court has available to hear cases. Non-case related activities are those activities not directly related to case proceedings but essential to the efficiency and effectiveness of the court, including such things as docket management, travel, administration, legal research, as well as time for lunch and breaks. Judges reported time spent on non-case related activities during the course of the study. Lastly, the Judge Year Value was calculated by subtracting the non-case related time spent from the 8.5 hour work day to yield the amount of time in hours available for court related work. The number was then multiplied by 60 to arrive at the number of minutes one judge has available for case-related work. Thus, the Judge Year Value was determined.<sup>53</sup>

To account for fractioned judgeships in the weighted caseload calculations, the NCSC recommended the use of the Equal Proportions Method (EPM). In support of the EPM method, the U.S. Congress uses the EPM method to apportion seats in the House of Representatives and is recommended by the National Academy of Sciences.<sup>54</sup> The NCSC observed:

Weighted caseload calculations normally result in estimates of judicial need that contain fractionalized judgeships (e.g., 6.4 judges in the 7th Judicial Circuit). In some instances when implied need exceeds the number of sitting judges (e.g., an implied need of 3.2 judicial FTEs in a circuit with 3 sitting judges), the current complement of judges in a given circuit or district can organize to handle the additional workload, perhaps with the periodic assistance of a retired or substitute judge. However, at some point, the additional workload crosses a threshold that means the circuit/district needs another full-time judicial position to effectively resolve the cases entering the court. The main issue is to identify the threshold. In other words, develop a method to guide the decision of when to round up or down to a whole judicial position and thereby determine the appropriate number of authorized judicial positions in each circuit and district.<sup>55</sup>

Accordingly, using the Equal Proportions Method, the Study observed that: (a) the circuit court maintained an implied need [FTE] of 166.4 judges, (b) the circuit court maintained an implied need with a chief judge [FTE] of 169.5 judges, and (c) the circuit court maintained an implied need with EPM rounding of 171 judges.<sup>56</sup> These figures were then compared to the 158 authorized judgeships to yield a statewide need of 13 additional judgeships.<sup>57</sup> A similar process was applied to the General District Court to yield an implied need with EPM Rounding at 124 judges and a total of 127 au-

---

<sup>53</sup> OSTROM ET AL., *supra* note 1, at 11–12.

<sup>54</sup> OSTROM ET AL., *supra* note 1, at 22.

<sup>55</sup> OSTROM ET AL., *supra* note 1, at 22.

<sup>56</sup> OSTROM ET AL., *supra* note 1, at 22–23.

<sup>57</sup> OSTROM ET AL., *supra* note 1, at 23.

thorized judgeships.<sup>58</sup> The process was equally applied to the Juvenile and Domestic Relations Courts to yield an implied need with EPM rounding of 134 judges as compared to 117 authorized judgeships, indicating a need of 17 additional judgeships.<sup>59</sup> Thus the study ultimately concluded:

Additional judges are needed to enable Virginia's trial court judiciary to manage and resolve court business effectively and without delay, and to provide equal access to justice throughout the Commonwealth.

Circuit court has an implied need of 171 FTE judges. The weighted caseload model shows a need to fill nearly all current vacancies as well as creating an additional 13 judgeships to add to the current total of 158 authorized judgeships.

General district court has a need for 124 FTE judges. As of July 1, 2013 there were 118 sitting judges (with nine vacancies), indicating a need to fill at least six of the vacant positions.

Juvenile and domestic relations district court shows a need for 134 FTE judicial positions. This is an increase of 17 judgeships from the current total of 117 authorized judicial positions.

NCSC strongly recommends that the General Assembly begin to fill judicial positions, and in some instances create new authorized judicial positions.<sup>60</sup>

As to the relocation of boundaries for circuits and districts, the Report indicated: "No scheme of judicial boundary realignment can reduce the total judicial workload in the Commonwealth's trial courts or result in an appreciable change in the total number of judges required to handle that workload at a statewide level."<sup>61</sup> In commenting on the issue of judicial boundary realignment, the Study indicated that it was guided by certain principles, namely, "an efficient use of judicial resources; an equitable allocation of judicial resources among circuits and districts; . . . continuity, respect for communities of interests; and preserving the basic shape of existing circuits and districts."<sup>62</sup> Consequently, the Study concluded: "The NCSC found no concrete benefits to be gained from realigning circuit and district boundaries or moving to a regional model, and therefore, recommends that the Commonwealth of Virginia retain the current court structure and existing jurisdictional boundaries."<sup>63</sup>

---

<sup>58</sup> OSTROM ET AL., *supra* note 1, at 24.

<sup>59</sup> OSTROM ET AL., *supra* note 1, at 25.

<sup>60</sup> OSTROM ET AL., *supra* note 1, at ii.

<sup>61</sup> OSTROM ET AL., *supra* note 1, at iii.

<sup>62</sup> OSTROM ET AL., *supra* note 1, at ii.

<sup>63</sup> OSTROM ET AL., *supra* note 1, at iii.

In summary, the Report recommended that the legislature fill vacancies to bring the number of judges statewide to 402 and, in addition, create 27 additional judgeships for a total number of 429 judges statewide.<sup>64</sup>

While the existing courts are making considerable use of retired judges in responding to ever-increasing judicial demands, the Study is premised upon a need for full time judges authorized and funded by the General Assembly.<sup>65</sup> Retired judges face the challenge of limited and uncertain availability to judicial resources, such as law clerks and administrative personnel.<sup>66</sup> These challenges have been overcome principally by retired judges' dedication to public service. This dedication occurs despite the current need for additional judges. However, substitute judges are, for many of the same reasons, not the answer.

With the publication of the 2013 Judicial Workload Assessment Report, debate ensued which largely echoed sentiments expressed in open forums and via citizen correspondences as part of the initiative undertaken by the 2011 Judicial Boundary Realignment Study Committee.<sup>67</sup> In addition, the General Assembly responded by expressing concern over funding.<sup>68</sup>

More recently, sentiments regarding the judicial selection process have been publically voiced and captured by the press. The January 19, 2014 edition of the Newport News Daily Press reported that Robert Stenzhorn, then president of the Newport News Bar Association, commented:

Newport News in one of the nation's focal points when it comes to asbestos litigation.

Each year, hundreds of retired shipyard worker sue asbestos makers for exposure to the lethal fibers decades earlier while working at the yards.

The time and complexity of such cases—and the delays they create in the court system—is...the “900-pound gorilla in the room,” Stenzhorn said. “These asbestos trials to take up very large blocks of time.”

---

<sup>64</sup> OSTROM ET AL., *supra* note 1, at 44.

<sup>65</sup> See OSTROM ET AL., *supra* note 1, at 44.

<sup>66</sup> OSTROM ET AL., *supra* note 1, at 13, 15–16, 44.

<sup>67</sup> See *The VBA Voice*, VA. BAR ASSN. (Dec. 9, 2013), <http://archive.constantcontact.com/fs187/1108302653785/archive/1115794611583.html>; OFFICE OF THE EXEC. SEC'Y, *supra* note 4, at 1–2.

<sup>68</sup> See Chelyen Davis, *Study Calls for More Judges in Virginia*, NEWS DESK, Nov. 30, 2013, 8:54 PM, <http://news.fredericksburg.com/newsdesk/2013/11/30/study-calls-for-more-judges-in-virginia/>.

The new statewide judicial workload report says Newport News needs six judges—two more than the four sitting judges the court has had for the past two years, and one more than the five judges currently authorized by law.<sup>69</sup>

Similarly, Virginia Lawyers Weekly reported in its January 3, 2014 edition that Delegate J. Randy Minchew referred to the Report's recommendation when suggesting that the number of judges in the 20th Circuit be increased from the currently authorized four judges to five.<sup>70</sup> Delegate Minchew is quoted as contending, "Loudoun County is probably, judge for judge, the busiest in the entire Commonwealth."<sup>71</sup>

#### IV. THE DEBATE

The continuing debate over the issue of judgeships did not terminate with the findings provided by the NCSC and has recently taken center stage in the form of a political standoff.

The February 18, 2014 edition of the Virginia Lawyers Weekly reported that:

Despite a recent study that recommends a total of 429 trial judges in Virginia, the House and Senate appear to be holding the line on new spending for judges.

Neither of the February 16 budget reports from the two chambers offered to pay for more than 402 judgeships included in the final two-year budget of former Governor Bob McDonnell. McDonnell's plan marked an increase of 25 paid judgeships from the current number.

The Senate proposes paying for 401 judges as of July 1 of this year and 399 as of July 1, 2015.

A Senate panel said it is "vitaly important" that as additional money becomes available, "we continue to move forward towards the goal of filling all of the 429 judgeships" authorized by Senate legislation.

The House plan would put the governor's \$19 million for judgeships back in the state general fund to be spent "as authorized" in the current code or in House legislation that—as it stands—would pay for just 388 judges.

The House proposes to have the state code include only those trial judge positions that can be funded, a plan opposed by some legislators.

---

<sup>69</sup> Peter Dujardin, *Will Judge Vacancies be Filled?*, DAILY PRESS, Jan. 19, 2014, [http://articles.dailypress.com/2014-01-19/news/dp-nws-evg-judges-20140119\\_1\\_more-judges-permanent-judges-newport-news-circuit-court](http://articles.dailypress.com/2014-01-19/news/dp-nws-evg-judges-20140119_1_more-judges-permanent-judges-newport-news-circuit-court).

<sup>70</sup> Peter Vieth, *Judicial Overhaul Bill is Expected for Virginia*, VA. LAWYERS WEEKLY, Jan. 6, 2014, at 1.

<sup>71</sup> *See id.*

There are other differences between the House and Senate plans that would affect judges, courts, and lawyers.<sup>72</sup>

On February 20, 2014, Virginia Lawyers Weekly reported, “The House Appropriations Committee has proposed to leave in place the general freeze on judicial vacancies, pulling \$2 million back into state central accounts to be spent only as legislators can agree on actually filling judgeships.”<sup>73</sup> The article captured the tenor of the judicial debate by observing the responses made by several legislators:

“Cutting judgeships will have far-reaching consequences,” Delegate Vivian Watts, D-Fairfax, told colleagues Thursday as she tried—without success—to block a House plan intended to reduce the number of judgeships funded in the next state budget.

Del. David B. Albo, R-Springfield, chair of the House Courts committee, also has questioned the Appropriation’s wait-and-see approach. Under that plan, he said, the state code would not reflect the judgeships deemed necessary but only the positions that can be funded and filled in any given year.<sup>74</sup>

On March 6, 2014, Virginia Lawyers Weekly provided an update regarding the judgeship bill by reporting:

Reconciling the competing judgeship bill and electing judges are tasks likely to be pushed to the Assembly veto session on April 23 [2014].

The delay on judge decisions follows a pattern of the last four years, said Del. Greg Habeeb, R-Salem.

The House and Senate have approved separate judgeship schedules—the Senate with 429 judgeships tracking the recommendations of a recent study—and the House plan for 388 judges. The House plan would be expanded as money is available, budget leaders say.<sup>75</sup>

Similar speculation was reported in the March 6, 2014 edition of the *Roanoke Times*, where it was stated:

The General Assembly had been scheduled to act Wednesday on filling vacant judgeships around the state, but uncertainty about the state budget and the number of judgeships that will be funded has forced lawmakers to postpone the appointments until next month.

---

<sup>72</sup> Peter Vieth, *No Extra Judgeship Money in Virginia Assembly Budget Plans*, VA. LAWYERS WEEKLY, Feb. 24, 2014, at 2.

<sup>73</sup> Peter Vieth, *Virginia Delegate Condemns Cuts in Judge Funding*, VA. LAWYERS WEEKLY, Feb. 20, 2014, <http://valawyersweekly.com/2014/02/20/delegate-condemns-cuts-in-judge-funding/>.

<sup>74</sup> *Id.*

<sup>75</sup> Peter Vieth, *Judge Selection Delayed at General Assembly*, VA. LAWYERS WEEKLY, March 10, 2014, at 2.

“The budget is holding up everything,” said Senator John Edwards, D-Roanoke. Lawmakers likely will act on judgeships when they return to Richmond for the assembly’s one-day veto session, which is scheduled for April 23.<sup>76</sup>

On March 8, 2014, Virginia Lawyers Weekly reported the Assembly’s approval of a new judgeship plan:

Both House and Senate agreed on a plan that calls for 429 judgeships in circuit, general district and juvenile and domestic relations courts as the House agreed to drop a committee proposal to trim the recommended number.

The plan that emerged from a House-Senate conference committee is “pretty near a best case scenario,” said Del. Greg Habeeb, R-Salem.

A Senate proponent explained the action does not yet put judges on the bench.

“This is what is authorized by statute. It does not mean it is automatically funded. That will be a budget decision,” Sen. Chap Peterson told Senate colleagues Saturday.

The Assembly-approved plan is close to the Senate version of the judgeship plan.

“We got what we wanted,” Peterson said.<sup>77</sup>

However, Supreme Court Chief Justice Kinser cautioned, “We haven’t won the battle yet,” urging lawyers and their business clients to contact legislators.<sup>78</sup>

An article appearing in the March 26, 2014 edition of the Newport News Daily Press sent a poignant reminder warning that authorized judgeships do not necessarily translate into active, serving judges:

There have been no new developments about filling a Newport News Circuit Court seat that’s been vacant for three years.

But Newport News Bar Association President Robert Stenzhorn said that while local lawmakers have been meeting with the candidates, the legislators can’t vote on judges until the state budget passes with money for them.

---

<sup>76</sup> Michael Sluss, *Budget Impasse Delays Action on Judgeships*, ROANOKE TIMES, March 5, 2014, available at [http://www.roanoke.com/news/budget-impasse-delays-action-on-judgeships/article\\_0b7bfcdc-a4d9-11e3-a388-0017a43b2370.html?mode=print](http://www.roanoke.com/news/budget-impasse-delays-action-on-judgeships/article_0b7bfcdc-a4d9-11e3-a388-0017a43b2370.html?mode=print).

<sup>77</sup> Peter Vieth, *General Assembly Agrees to a 429-Judgeship Plan*, VA. LAWYERS WEEKLY, March 17, 2014, at 2.

<sup>78</sup> *Id.*



Mary Kate Felch, a senior research associate with the General Assembly's Courts of Justice Committees, agreed. "If we don't have a budget, we don't have funded judgeships," Felch said.<sup>79</sup>

Two weeks later, on April 8, 2014, Virginia Lawyers Weekly reported that the Governor of Virginia, Terry McAuliffe, was weighing in on the issue of providing additional judgeships and funding for both authorized and proposed judgeships recommended by the NCSC:

Gov. McAuliffe is adding language to the General Assembly's judgeship allocation bills to make the bills contingent on budget support, even though the judgeship plan was not dependent on the funding.

By tying the new statewide trial judge plan to the budget, McAuliffe [a Democrat] could stymie efforts to fund and fill many of the vacant judgeships, one Republican delegate said.

Most of the bills had spending provisions, but the judgeship bills, House Bill 606 and Senate Bill 443, merely established the allocation of judges for Virginia's circuits and districts.<sup>80</sup>

The article observed that Governor McAuliffe has recommended appropriation amendments to appropriation bills in an apparent effort to pressure Republicans resisting the effort to expand Virginia's Medicaid program, stating: "McAuliffe nevertheless declined to sign the judgeship bills, instead proposing the following language: 'That the provisions of this act shall not become effective unless an appropriation effectuating the purposes of this act is included in a general appropriation act passed in 2014 by the General Assembly that becomes law.'"<sup>81</sup>

In her State of the Judiciary Address at the 2014 Judicial Conference on May 13, 2014, Chief Justice Cynthia Kinser expressed concern over the legislative gridlock: "Virginia's legislature and governor are still in a budget stalemate, but the judiciary 'does not have a seat at the table'".<sup>82</sup> Justice Kinser urged the governor and legislature to seek a common ground and to respond to the needs identified objectively in the 2013 NCSC Study—not only by filling existing judicial vacancies resulting from the 2010 freeze on

---

<sup>79</sup> Peter Dujardin, *Bar Endorses Two for Judgeships*, DAILY PRESS, March 26, 2014, at A5.

<sup>80</sup> Peter Vieth, *Governor Puts Judgeship Bills on Hold*, VA. LAWYERS WEEKLY, April 8, 2014, <http://valawyersweekly.com/2014/04/08/governor-puts-judgeship-bills-on-hold/>.

<sup>81</sup> *Id.*

<sup>82</sup> Deborah Elkins, *Va. Courts Coping, But Need More Judges, Kinser Says*, VA. LAWYERS WEEKLY, May 13, 2014, <http://valawyersweekly.com/2014/05/13/courts-coping-but-need-more-judges-kinser-says/>.

filling judgeships, but also by fully funding additional judgeships identified in the 2013 NCSC Study.<sup>83</sup> In so doing, the Chief Justice noted:

The court system continues to make heavy use of retired and recalled judges. During calendar year 2013, the state tallied 4,279 days for retired and recalled judges sitting in circuit courts, and 4,555 days for judges filling in district courts. Substitute judges—lawyers taking a break from their own practices—also sit in district courts.<sup>84</sup>

On June 9, 2014, The Washington Post reported that Sen. Phillip P. Puckett (D-Russell) resigned from the Senate, affording Republicans a 20-19 advantage in the chamber, a potential tipping point in the political debate:

Once Puckett resigns, Senate Republicans are expected to take advantage of their newfound majority by calling members back to Richmond—something that nine members of the Senate can make happen. The legislature has been in a special session for months but has not been meeting regularly. With the Senate back in Richmond, the chamber's new Republican majority could pass a budget without Medicaid expansion.<sup>85</sup>

On June 9, 2014, in light of the looming July 1 budget deadline, Virginia Lawyers Weekly reported: “A deal may be closer, hastened by Democratic Sen. Phil Puckett’s June 9 announcement that he is resigning his legislative seat.”<sup>86</sup> However, the June 9 article conveyed cautionary pragmatism from Sen. Henry Marsh (D-Richmond), co-chair of the Senate Courts of Justice Commitment, in which Sen. Marsh stated: “‘Nothing else is going to go through until we get a decision [regarding the health care issues in the budget].’ Nevertheless, Sen. March indicated that he is ‘reasonably optimistic because there are so many ways we can solve the health care matter.’”<sup>87</sup>

On June 20, 2014, Virginia Lawyers Weekly reported that the General Assembly passed a new state budget on June 12, which appropriated money to fund 396 trial court judgeships, including several judicial vacancies, out of 429 authorized positions.<sup>88</sup> The state budget was adopted only after integrating a Republican-endorsed amendment to ensure that Governor

---

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Laura Vozella, *Virginia Democratic Senator Puckett to Resign, Possibly Dooming Push to Expand Medicaid*, WASH. POST, June 8, 2014, <http://thewashingtonpost.newspaperdirect.com/epaper/viewer.aspx>.

<sup>86</sup> Deborah Elkins, *Delay Likely for Judge Review Program*, VA. LAWYERS WEEKLY, June 16, 2014, at 2.

<sup>87</sup> *Id.*

<sup>88</sup> Peter Vieth, *Assembly Budget Includes Judgeship Money*, VA. LAWYERS WEEKLY, June 23, 2014, at 2.

McAuliffe could not expand Medicaid without legislative approval.<sup>89</sup> The article referenced a press release made by the Supreme Court of Virginia, which stated, “The General Assembly has not named which of the vacancies it will fill, and, until that time, we are uncertain as to how many judges will be funded.”<sup>90</sup>

In light of the passage of the new state budget, on June 18, 2014, Virginia Lawyers Weekly reported comments made by an optimistic Supreme Court Chief Justice Cynthia Kinser in regard to the judicial selection process:

Despite the struggle to fill vacancies Kinser said she welcomed approval this year of a schedule of 429 trial court judgeships based on a judicial caseload study.<sup>91</sup>

“I think that was a step forward. I know we are not going to get them all funded this year, but it’s at least a recognition that we actually need more judges in Virginia overall than we have right now.”

Kinser said she hoped all vacancies will be filled with judges in the next few years. “They are terribly needed in Virginia,” she said.<sup>92</sup>

On June 20, 2014, Virginia Lawyers Weekly reported that Governor Terry McAuliffe vowed to veto the General Assembly’s budget provision for 36 additional judgeships because it would detract from his ability to appoint circuit court judges while the Assembly was out of session:

“I am vetoing funding for all new judgeships in which confirmation is limited to a regular or special session of the General Assembly. This language is plainly an attempt to significantly limit the power of the Governor and is thus unacceptable,” McAuliffe said in a news release Friday.<sup>93</sup>

The language of the Assembly-passed budget to which Governor McAuliffe alluded includes a lump sum of nearly \$19 million dollars allotted for circuit, general district, and juvenile and domestic judges over the course of two years—enough money to fund approximately 36 additional judgeships, for a total of 396 judgeships.<sup>94</sup>

---

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> See Peter Vieth, *Chief Justice Looking for Lifestyle Change*, VA. LAWYERS WEEKLY, June 18, 2014, at 1; see also VA. CODE ANN. § 17.1-507 (2014); VA. CODE ANN. § 16.1-69.6:1 (2014).

<sup>92</sup> Vieth, *supra* note 91, at 1.

<sup>93</sup> Peter Vieth, *Governor to Veto Extra Judge Money*, VA. LAWYERS WEEKLY, June 20, 2014, <http://valawyersweekly.com/2014/06/20/governor-to-veto-extra-judge-money/>.

<sup>94</sup> *Id.*

On June 23, 2014, Virginia Lawyers Weekly published an article that observed a ruling from Speaker of the House William Howell, which found that Governor McAuliffe's veto of money allocated to fund additional judgeships was "out of order," noting: "McAuliffe's veto was based on a Constitutional objection—he said the Assembly-approved spend-as-you-go judge funding plan would eliminate his prerogative under the state Constitution to make appointments to unfilled judgeships after the Assembly finishes its work."<sup>95</sup> The article further observed: "Howell's move restores funding for as many as 396 trial judges if the Assembly can agree on candidates to fill those seats...[although] [n]o date has yet been set for the Assembly to attempt to fill judgeships."<sup>96</sup>

On July 10, 2014, the Richmond Times Dispatch reported that House Speaker William J. Howell (R-Stafford) announced his plan to call the House into special session during the week of September 22, 2014 to debate health care and budget issues and observed the underlying political forces at play:

Senate Republican leaders say they will [] honor their commitment to act[] on the [health care coverage] issue separately from the state budget, while blocking the governor from expanding coverage without legislative approval.

Since the impending shortfall [regarding health care expenditures] became apparent in late May, supporters of a Senate plan to expand health coverage agreed to remove it from the budget and address the issue separately.

House and Senate leaders said they will issue a formal call for the chambers to reconvene after Labor Day. The assembly has been in special session since March 24, locked in a stalemate over a Senate proposal to expand health coverage through the budget until the looming revenue shortfall broke the impasse.<sup>97</sup>

## V. LOCAL RESPONSE

In fashioning a response to the demands placed upon the judiciary, localities have shouldered the responsibilities for providing helpful judicial resources in their respective annual operating budgets.<sup>98</sup> Expenditures within each circuit's operating budget are largely allocated in an effort to equip in-

<sup>95</sup> Peter Vieth, *Money for Judges Stays in Budget*, VA. LAWYERS WEEKLY, June 30, 2014, at 1.

<sup>96</sup> *Id.*

<sup>97</sup> Michael Martz, *Debate on Medicaid Planned*, RICHMOND TIMES-DISPATCH, July 10, 2014, [http://www.timesdispatch.com/debate-on-medicaid-planned/article\\_687b1ccc-974b-51d6-9cf0-ae88a1bd26f1.html](http://www.timesdispatch.com/debate-on-medicaid-planned/article_687b1ccc-974b-51d6-9cf0-ae88a1bd26f1.html).

<sup>98</sup> JOINT LEGISLATIVE AUDIT AND REVIEW COMM'N, OPERATIONAL AND CAPITAL FUNDING FOR DISTRICT AND CIRCUIT COURTS, S. 2009-12, Reg. Sess., at iv (Va. 2009), available at <http://jlar.c.virginia.gov/reports/Rpt393.pdf>.

dividual judges with personnel and other resources necessary to facilitate the judicial decision-making process.<sup>99</sup> These expenditures include the hiring of staff attorneys, law clerks, secretaries, and administrative assistants—investments designed to release judges from the handling of more routine tasks.<sup>100</sup> In addition, local courts allocate funding for the benefit of the collective chambers.<sup>101</sup> These resources compliment, but do not conflict with, the clusters of the respective clerks of court.

While localized investment in judicial resources has become an indispensable component of our modern judicial system, such investment is largely constrained and contingent upon the local population's ability to support heavier judicial operating budgets. Many of the circuits with more affluent communities, such as those in Northern Virginia, may experience less difficulty in providing the financial resources necessary to support an understaffed judiciary. However, many of the less affluent or rural communities may experience greater, if not insurmountable hardship in providing additional funding for their local court system. Lastly, such resources can only supplement but not replace the work of the trial judge.

There are great disparities between jurisdictions with large operating budgets and those jurisdictions with more modest operating budgets.<sup>102</sup>

In addition, crime rates may dictate demand on judicial resources. The obvious judicial demand arising from higher crime rates is that more crime equates to more individuals before a court. Similarly, greater law enforcement equates to more prosecution, which results in greater demands on the court's time.

There are broad disparities across jurisdictions in terms of those with widespread criminal activity and higher staffed police forces compared to those jurisdictions with more modest criminal activity and lesser staffed police forces.<sup>103</sup>

Lastly, docket management results in delay of litigants' cases because of the lack of judicial resources. In most jurisdictions, several cases will be set at the same time to account for the reasonably foreseeable probability that

---

<sup>99</sup> *Id.* at 23.

<sup>100</sup> See generally SUPREME COURT OF VA. BENCHBOOK COMMITTEE, VA. CIVIL BENCHBOOK FOR JUDGES AND LAWYERS (2011) (Examples of these kinds of routine tasks that lessen the work of trial judges are reflected in the completion of checklists, such as those contained in the Appendix of Virginia Benchbook).

<sup>101</sup> See Va. S. 2009-12.

<sup>102</sup> See Appendix A.

<sup>103</sup> See Appendix B.

most cases will settle—either by a guilty plea in criminal cases or by dismissal or nonsuit in civil actions.

## VI. CONCLUSION

The author has attempted to provide an objective review of the background for the current legislative debate over the issues of need and funding for trial court judgeships in the Commonwealth. It would be wrong not to offer some personal observations concerning the issue of judicial need. These comments come from my own experiences, discussions with others in the legal community, including judges throughout the Commonwealth, and participation in the studies surrounding the current need.

The Commonwealth enjoys a singularly remarkable and rich history with respect to its judiciary. Virginia judges are esteemed throughout the United States for their exemplary service and for the ethical standards they have established.

Judges are selected from a pool of lawyers licensed to practice law in the Commonwealth.<sup>104</sup> Judges must be members of a State Bar that prides itself on delivering ethical, professional, and dedicated service to its clients and to the administration of justice.<sup>105</sup> Lawyers are required to take professionalism training upon arrival to licensure and to continue accreditation by completing regular ethics training.<sup>106</sup> Virginia has been the home of giants in American jurisprudence, such as Chief Justice John Marshall and Justice Lewis Powell.<sup>107</sup>

In asking a judge to serve, the public demands that they forego personal and professional relationships others freely enjoy, be subject to criticism for their decisions, and remain a constant student in an ever-changing legal landscape. A judge's area of practice is limited only by statute and the common law and not by design. School is never out for judges.

Judicial decision-making is not, and should not be, an easy task. A judge's calendar does not allow for last minute changes to the docket. Homework is a constant reminder that to serve as a judge, well-reasoned,

---

<sup>104</sup> *Circuit Court's Informational Pamphlet*, VA. JUDICIAL SYS., <http://www.courts.state.va.us/courts/circuit/circuitinfo.pdf> (last visited Sept. 30, 2014).

<sup>105</sup> *See id.*; VA. STATE BAR, *Professional Guidelines*, <http://www.vsb.org/pro-guidelines/index.php/rules/preamble/> (last visited Aug. 22, 2014).

<sup>106</sup> VA. STATE BAR, *Mandatory Continuing Legal Education Regulations*, <http://www.vsb.org/pro-guidelines/index.php/mcle-regs/> (last visited Sept. 30, 2014).

<sup>107</sup> Legal Information Institute, *Supreme Court: Chief Justices*, CORNELL LAW SCHOOL, <http://www.law.cornell.edu/supct/justices/histBio.html> (last visited Aug. 22, 2014).

thoughtful analysis of the issues is demanded. In addition, these decisions must be promptly made.

The needs of the judiciary have been the subject of much debate over the years with the intensity of interest in judicial selection waxing and waning over time. Challenges in demographics, science, technology, and social relationships have resulted in a tidal ebb and flow of interest in how our third branch of government can best respond to the demands placed upon it. A courtroom is reflective of the issues facing contemporary society at large.

Judicial education has always been a priority with the judges and justices in Virginia. The Supreme Court of Virginia has made available a number of opportunities for judicial training, beginning with programs designed for new judges assuming the bench for the first time as well as programs offered throughout the duration of the judge's service. Alas, there is no substitute for experience. As in all professions that require personal decision making, the ability to make individualized, reasoned decisions has on-the-job training as a key component.

Unfortunately, the nature of the judicial practice does not permit the recently appointed judge to follow along with his or her colleagues as is often the case with medical residents, student teachers, or law enforcement officers. While objective decision making skills can be learned in a classroom, those skills are no substitute for the responsiveness and flexibility that comes from the comfort of having experienced the demands of the courtroom in like circumstances.

By failing to fully fund and fill positions, the judiciary suffers in other ways. As noted, the judiciary has, until now, relied upon a balance of experienced and less experienced judges in the allocation of case loads. The benefit of this mix of various levels of experience is readily identifiable. More senior judges act as mentors and can take on more complex tasks, while newer judges can bring fresh ideas from their practice and yet learn new skills with the careful guidance of their colleagues. Less time is required for an experienced judge to attend to the broad range of legal issues relative to a new judge who comes from a limited practice.

The I'Anson Report, the 2011 Judicial Boundary Realignment Study, and the 2013 Weighted Case Load Study all concluded that there are basic issues to be addressed in any evaluation of judicial need and allocation of judicial resources throughout the Commonwealth. They are:

1. To determine judicial need statewide. How many judges does it take to achieve a court system responsive to the public need? In assessing need it is important to consider caseloads and types of cases heard in a specific court.


That need is best determined by looking at the time required for the work performed.

2. In allocating needed judgeships it is important to consider local communities of interest that may, or may not, cross political boundaries. This would include an evaluation of resources, technology, transportation needs, and methods of communication.

The General Assembly has addressed these issues by providing for authorized judgeships in each of the Circuits and Districts in the Commonwealth. However, it is now time to provide funding for those resources.

I am thankful to the General Assembly for their confidence in permitting me and other judges to serve the Commonwealth. Each day for me is filled with new challenges that present an opportunity to fashion solutions which resolve conflict. We can aspire to no greater service. Having now acted as a judge designate in retirement, I better understand the challenges faced by our retired judiciary who may only serve limited days a year, have no budget for legal resources, and may earn less per day than the bailiff or courtroom clerk. However, I, along with my retired colleagues, or those who will someday retire, welcome with open arms the opportunity to bring closure to controversy. By doing so, we make our communities better places to live. While retired judges offer a short-term answer to our judicial shortage, retired judges cannot be substitutes for a full time commitment to resolving legal disputes.

In summary, I wish to add this paper to the comments of the Chief Justice, Bar leaders, legislators, judges, and public—who have urged full funding of the judicial vacancies noted with clarity in the Weighted Caseload Study.



Thomas D. Horne.



APPENDIX A

Operating Budget Stastics												
Circuit	Current Active Judges <sup>108</sup>	Judgeships Authorized <sup>109</sup>	2010 Population <sup>110</sup>	2013 Population (Est.) <sup>111</sup>	Persons Per Judge (2010) <sup>112</sup>	Persons Per Judge (2013 Est.) <sup>113</sup>	Court's 2011 Operating Budget <sup>114</sup>	Court's 2011 Op. Budget Dollars Spent Per Person (2010 Pop.) <sup>115</sup>	Court's 2011 Op. Budget Dollars Spent Per Person (2013 Pop. Est.) <sup>116</sup>	Court's 2011 Op. Budget Dollars Spent Per Active Judge <sup>117</sup>	Local Income Per Capita in Past 12 Months (2008-2012) (Using 2010 Pop.) <sup>118</sup>	Local Median Household Income (2008-2012) (Using 2010 Pop.) <sup>119</sup>
1	3	5	222,209	230,571	55,552	57,643	\$286,302.00	\$1.29	\$1.24	\$71,575.50	\$30,138.00	\$70,244.00
2	9	9	483,547	493,752	53,727	54,861	\$675,305.00	\$1.40	\$1.37	\$75,033.89	\$31,024.07	\$63,440.09
3	3	4	95,535	96,205	31,845	32,068	\$360,429.00	\$3.77	\$3.75	\$120,143.00	\$23,363.00	\$46,269.00
4	6	8	242,803	246,139	40,467	41,023	\$643,659.00	\$2.65	\$2.62	\$107,276.50	\$24,631.00	\$44,164.00
5	2	3	147,007	148,150	73,504	74,075	\$170,926.00	\$1.16	\$1.15	\$85,463.00	\$28,178.05	\$61,575.58
6	2	3	119,225	119,356	59,613	59,678	\$175,961.00	\$1.48	\$1.47	\$87,980.50	\$22,053.04	\$48,527.11
7	4	6	180,719	182,020	45,180	45,505	\$602,550.00	\$3.33	\$3.31	\$150,637.50	\$25,549.00	\$50,744.00
8	3	3	137,436	136,699	45,812	45,566	\$367,224.00	\$2.67	\$2.69	\$122,408.00	\$25,198.00	\$51,584.00
9	3	4	264,051	270,452	88,017	90,151	\$370,765.00	\$1.40	\$1.37	\$123,588.33	\$33,436.49	\$70,614.24
10	3	4	136,009	133,178	45,336	44,393	\$81,163.00	\$0.60	\$0.61	\$27,054.33	\$18,976.60	\$38,140.02
11	2	3	117,010	117,219	58,505	58,610	\$137,493.00	\$1.18	\$1.17	\$68,746.50	\$23,559.79	\$51,075.14

<sup>108</sup> See *Map of Va. Judicial Circuits and Districts*, VIRGINIA'S JUDICIAL SYSTEM, <http://www.courts.state.va.us/courts/maps/home.html>; *List of Va. Judges*, VIRGINIA'S JUDICIAL SYSTEM, [http://www.courts.state.va.us/directories/judges\\_rule115.pdf](http://www.courts.state.va.us/directories/judges_rule115.pdf) (last visited Aug. 2, 2014).

<sup>109</sup> See VA. CODE ANN. § 17.1-507 (2014).

<sup>110</sup> *State & County QuickFacts, Virginia*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/51000.html> (last visited Aug. 2, 2014); *Individual Circuit Court Homepages*, VIRGINIA'S JUDICIAL SYSTEM, <http://www.courts.state.va.us/courts/circuit.html> (last visited Aug. 2, 2014) (in order to get to the totals in the table you must use the court home pages to find which county is in which circuit, then use the census quickfacts page, select each county, and add all those populations up).

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* (equals the "2010 Population" divided by the "Current Active Judges" for the respective jurisdiction).

<sup>113</sup> *Id.* (equals the "2013 Population (Est.)" divided by the "Current Active Judges" for the respective jurisdiction).

<sup>114</sup> OFFICE OF THE EXEC. SEC'Y, SUP. CT. OF VA., *Local Operating Budgets*, in 2011 JUDICIAL BOUNDARY REALIGNMENT STUDY REPORT (2011) (on file with Author and Journal) (equals the total cash expenditure allotted by each respective jurisdiction in their 2011 operating budget for judicial-related services).

<sup>115</sup> *Id.* (equals the "2011 Operating Budget" divided by the "2010 Population" for the respective jurisdiction).

<sup>116</sup> *Id.* (equals the "2011 Operating Budget" divided by the "2013 Population (Est.)" for the respective jurisdiction).

<sup>117</sup> *Id.* (equals the "2011 Operating Budget" divided by the "Current Active Judges" for the respective jurisdiction).

<sup>118</sup> See United States Census Bureau, *State & County QuickFacts* (July 8, 2014, 6:37 PM), <http://quickfacts.census.gov/qfd/states/51000.html> (equals the respective circuit's weighted average income per capita and was calculated with data collected from the counties or cities comprising the respective circuit).

<sup>119</sup> See *id.* (equals the respective circuit's weighted average median household income and was calculated with data collected from the counties or cities comprising the respective circuit).

Circuit	Current Active Judges	Judgeships Authorized	2010 Population	2013 Population (Est.)	Persons Per Judge (2010)	Persons Per Judge (2013 Est.)	Court's 2011 Operating Budget	Court's 2011 Op. Budget Dollars Spent Per Person (2010 Pop.)	Court's 2011 Op. Budget Dollars Spent Per Person (2013 Pop. Est.)	Court's 2011 Op. Budget Dollars Spent Per Active Judge	Local Income Per Capita in Past 12 Months (2008-2012) (Using 2010 Pop.)	Local Median Household Income (2008-2012) (Using 2010 Pop.)
12	3	6	333,647	345,379	111,216	115,126	\$685,418.00	\$2.05	\$1.98	\$228,472.67	\$32,260.50	\$71,280.13
13	6	8	204,214	214,114	29,173	30,588	\$668,329.00	\$3.27	\$3.12	\$95,475.57	\$26,796.00	\$39,445.00
14	5	5	306,935	318,611	61,387	63,722	\$476,160.00	\$1.55	\$1.49	\$95,232.00	\$33,343.00	\$61,300.00
15	8	11	489,216	508,964	61,152	63,621	\$684,690.00	\$1.40	\$1.35	\$85,586.25	\$32,029.69	\$76,695.96
16	4	6	334,887	344,096	83,722	86,024	\$465,596.00	\$1.39	\$1.35	\$116,399.00	\$31,655.73	\$62,648.42
17	3	3	219,959	238,414	73,320	79,471	\$416,157.00	\$1.89	\$1.75	\$138,719.00	\$61,114.20	\$103,601.88
18	3	4	139,966	148,892	46,655	49,631	\$1,297,020.00	\$9.27	\$8.71	\$432,340.00	\$54,767.00	\$83,996.00
19	13	15	1,104,291	1,154,897	84,945	88,838	\$1,244,087.00	\$1.13	\$1.08	\$95,699.00	\$50,422.17	\$109,161.90
20	3	5	384,887	424,364	128,296	141,455	\$644,300.00	\$1.67	\$1.52	\$214,766.67	\$45,381.96	\$115,182.56
21	3	2	86,462	84,740	28,821	28,247	\$144,475.00	\$1.32	\$1.35	\$38,158.33	\$19,700.41	\$33,750.73
22	4	5	162,720	161,668	40,680	40,417	\$273,998.00	\$1.68	\$1.69	\$68,499.50	\$21,861.11	\$40,100.14
23	5	5	214,210	217,288	42,842	43,458	\$717,725.00	\$3.35	\$3.30	\$143,545.00	\$27,338.00	\$49,466.30
24	4	5	252,681	255,989	63,170	63,997	\$306,612.00	\$1.21	\$1.20	\$76,653.00	\$24,071.50	\$46,177.33
25	4	5	222,102	223,704	55,526	55,926	\$309,599.00	\$1.39	\$1.38	\$77,399.75	\$24,574.40	\$49,440.68
26	5	8	347,380	357,223	69,476	71,445	\$258,380.00	\$0.74	\$0.72	\$51,676.00	\$26,258.59	\$54,256.27
27	5	7	266,913	268,509	53,383	53,702	\$263,280.00	\$0.99	\$0.98	\$52,656.00	\$21,929.90	\$40,334.12
28	3	4	104,919	103,900	34,973	34,633	\$194,384.00	\$1.85	\$1.87	\$64,794.67	\$22,375.54	\$38,174.80
29	4	5	113,976	111,450	28,494	27,863	\$341,857.00	\$3.00	\$3.07	\$85,464.25	\$18,720.93	\$33,401.24
30	3	4	94,174	92,431	31,391	30,810	\$197,587.00	\$2.10	\$2.14	\$65,862.33	\$19,032.06	\$34,957.59
31	5	6	454,096	496,434	90,819	99,287	\$620,961.00	\$1.37	\$1.25	\$124,192.20	\$36,137.33	\$93,268.61
	135	171	8,001,024	8,260,405			\$14,052,392.00					

## APPENDIX B

Criminal Statistics						
Circuit	Current Active Judges <sup>120</sup>	Judgeships Authorized <sup>121</sup>	2010 Population <sup>122</sup>	2013 Population (Est.) <sup>123</sup>	Total Arrests (2011) (Both Adult and Juvenile) <sup>124</sup>	Number of Sworn Police Officers (2011) <sup>125</sup>
1	4	5	222,209	230,571	9,086	354
2	9	9	483,547	493,752	27,205	166
3	3	4	95,535	96,205	7,666	242
4	6	8	242,803	246,139	20,834	721
5	2	3	147,007	148,150	4,566	343
6	2	3	119,225	119,356	4,192	238
7	4	6	180,719	182,020	9,443	398
8	3	3	137,436	136,699	9,311	277
9	3	4	264,051	270,452	6,533	395
10	3	4	136,009	133,178	4,826	320
11	2	3	117,010	117,219	5,681	244
12	3	6	333,647	345,379	18,742	521
13	7	8	204,214	214,114	14,770	727
14	5	5	306,935	318,611	11,641	568
15	8	11	489,216	508,964	20,064	805
16	4	6	334,887	344,096	10,953	547
17	3	3	219,959	238,414	5,237	393
18	3	4	139,966	148,892	4,284	300
19	13	15	1,104,291	1,154,897	27,265	1,549
20	3	5	384,887	424,364	9,506	792
21	3	2	86,462	84,740	4,560	188
22	4	5	162,720	161,668	9,436	344
23	5	5	214,210	217,288	14,733	469

<sup>120</sup> Individual Circuit Court Homepages, SUPREME COURT OF VIRGINIA (2009), <http://www.courts.state.va.us/courts/circuit.html> (equals the sum of all judges listed under the respective circuit court's homepage).

<sup>121</sup> VA. CODE ANN. § 17.1-507 (West 2014).

<sup>122</sup> United States Census Bureau, *supra* note 114.

<sup>123</sup> United States Census Bureau, *supra* note 114.

<sup>124</sup> See Va. Dep't of State Police, *Crime In Virginia* 105-127 (2011), [http://www.vsp.state.va.us/downloads/Crime\\_in\\_Virginia/Crime\\_in\\_Virginia\\_2011.pdf](http://www.vsp.state.va.us/downloads/Crime_in_Virginia/Crime_in_Virginia_2011.pdf).

<sup>125</sup> See *id.* at 77-80.

2014]

THE JUDICIARY IN VIRGINIA

75

Circuit	Current Active Judges	Judgeships Authorized	2010 Population	2013 Population (Est.)	Total Arrests (2011) (Both Adult and Juvenile)	Number of Sworn Police Officers (2011)
24	4	5	252,681	255,989	10,367	410
25	4	5	222,102	223,704	7,756	407
26	5	8	347,380	357,223	16,507	653
27	5	7	266,913	268,509	12,327	560
28	3	4	104,919	103,900	4,824	205
29	4	5	113,976	111,450	5,949	205
30	3	4	94,174	92,431	5,101	190
31	5	6	454,096	496,434	16,760	696
	135	171	8,001,024	8,260,405	340,125	14,227

