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## The Business of the Supreme Court of Appeals: Statistical Summary 1960-1965

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# RESEARCH IN VIRGINIA LAW

## THE BUSINESS OF THE SUPREME COURT OF APPEALS: STATISTICAL SUMMARY, 1960-65\*

Four decades ago, Felix Frankfurter and James M. Landis collaborated on a definitive historical and statistical analysis of the work of the Supreme Court of the United States.<sup>1</sup> This ultimately provided a model for an annual summary of the business of that tribunal which has now become a staple reference for many practitioners and laymen.<sup>2</sup> It has been rather remarkable that so few analogous studies have been developed on the subject of business of the highest courts of the several states,<sup>3</sup> and the present research project is intended to provide the basis for such a periodic report on the business of the Virginia Supreme Court of Appeals. Fortuitously, the project also affords a comparative summary of the first five years of the present decade so that, hopefully, future studies will have a perspective for the data which they project.

Another function of this survey of the work of the Virginia Supreme Court of Appeals is to complement the statistical reports on the work of the other courts of record in the Commonwealth which are compiled biennially for the General Assembly.<sup>4</sup> The continuing need for judicial statistics on all facets of the administration of justice is a recurring theme of state and national agencies concerned with the progressive improve-

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\* The project reported herein represents the culmination of a series of studies inaugurated in 1963 and continued annually to the present. Space does not permit acknowledgment of the individual members of the course in *The Legal Profession* (research section on judicial administration) who participated in the work during this period. The final summary was prepared for publication by William F. Swindler, of the Nebraska and District of Columbia Bars, University of Missouri Ph. D. (1942), University of Nebraska LL. B. (1958), Professor of Law, College of William and Mary; and by G. Curtis Overman, College of William and Mary, A.B. (1963), candidate for B. C. L. in June 1966.

1. FRANKFURTER AND LANDIS, *BUSINESS OF THE SUPREME COURT: A STUDY IN THE FEDERAL JUDICIAL SYSTEM* (1927).

2. Cf. *The Supreme Court, 1964 Term*, in 79 HARV. L. REV. AT 103-11 *et seq.* (1965); *The Supreme Court, 1948 Term*, 63 HARV. L. REV. 119 (1948).

3. Among recent state studies, cf. *Kentucky Court of Appeals, 1960-61*, 50 KY. L. J. 86 (1961); *Statistical Study of Cases Decided by the Supreme Court of Pennsylvania, 25 U. PITT. L. REV.* 463 (1963); Chadwick, Donovan and Norvell, *The Work of the Texas Court of Civil Appeals, 1951 to 1958 Inclusive*, 38 TEXAS L. REV. 725 (1960), and Norvell, *The Work of the Texas Court of Civil Appeals, 1951 to 1960, Inclusive—A Supplement*, 40 TEXAS L. REV. 641 (1962).

4. Cf. REPORTS OF THE SUPREME COURT OF APPEALS TO THE GENERAL ASSEMBLY: JUDICIAL STATISTICS FOR 1963 AND 1964 (1966).

ment of the workings of the judicial system,<sup>5</sup> and the inauguration of this program of Research in Virginia Law has as one of its primary objectives the accommodating of this particular need.<sup>6</sup>

The present statistical summary covers the period from 1961 to 1965, either by calendar years or by terms of court beginning in October.<sup>7</sup> There are five tables in all; Table I, consisting of statistics compiled by calendar years, was constructed from data furnished by the Office of the Clerk of the Court; Tables II-V, derived from the printed materials in the official Virginia Reports (Volumes 202 through 206), are compiled by terms of the Court.

Taken together, the five tables are intended to provide a profile of the Supreme Court of Appeals at work. One has only to study the data in Table I, for example, to discern the substantial load—and the rapid increase in the load—borne by the members of the bench in the first half of the present decade. Table II particularizes the handling of docketed cases during the past five terms. Table III breaks down the subject-matter of adjudication into the principal issues involved in the decided cases. Table IV describes the activities of the individual Justices in the preparation of opinions. Table V recapitulates the courts of record within the Commonwealth from which the appeals were taken.

This summary has not undertaken to interpret or comment upon the state of the law as reflected in the statistics, since the primary purpose of this five-year compilation is to provide a basis for subsequent interpretation and comment. It is anticipated that more sophisticated qualitative analyses will develop in the future. On the other hand, the editors believe that the present statistics are eloquent enough in their own right, and therefore hope that they will be a useful contribution to the legal literature of the state.

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5. Cf. American Bar Association Section on Judicial Administration, *Judicial Statistics*, in *IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE: A HANDBOOK* (4th ed., 1961); Jacoby, *Some Realism about Judicial Statistics*, 25 VA. L. REV. 528 (1939); Judicial Conference of the United States, *Report of the Committee on Judicial Statistics*, 7 FED. B. J. 292 (1946); National Conference of Court Administrative Officers, *ANNUAL REPORT OF THE COMMITTEE ON STATISTICS* (1957-date); Shafroth, *Short Bibliography of Judicial Statistics*, 38 L. LIB. J. 37 (1945).

6. For other contributions to the study of Virginia judicial processes by writers for this Review and its predecessor, see the several issues of the *WILLIAM AND MARY REVIEW OF VIRGINIA LAW*, published from 1949 to 1956; Crandell, *Costs in Virginia*, 1 W. & M. L. REV. 79 (1957); Maxson, *Some Problems of Removal and Appeal from Courts Not of Record in Virginia*, 2 W. & M. L. REV. 40 (1959); Whyte, *Final Argument: Conduct of Virginia Counsel*, 5 W. & M. L. REV. 1 (1964).

7. For the terms of Court, cf. Va. Const. § 93; Va. Code § 17-99; Rules of the Court, 1:1, 205 Va. 961.

**TABLE I**  
**ANNUAL STATISTICS ON BUSINESS OF THE COURT**

	<u>1961</u>	<u>1962</u>	<u>1963</u>	<u>1964</u>	<u>1965</u>
Total petitions filed.....	420	434	503	798	754
Cases acted upon:					
Petitions granted.....	166	171	191	229	266
Petitions refused.....	292	237	269	275	438
Totals.....	458 <sup>1</sup>	408	460	504	704
Petitions withdrawn.....	4	18	22	20	29
Opinions rendered:					
Judgments affirmed.....	79	60	49	67	78
Judgments reversed, remanded, etc...	51	72	69	63	54
Totals.....	130	132	118	130	132
Cases decided by order.....	25	18	25	86	159
Cases dismissed by agreement <sup>2</sup> .....	22	11	15	26	21
Rehearings:					
Petitions granted.....	4	1	—	—	—
Petitions refused.....	15	15	14	6	19
Totals.....	19	16	14	6	19
Local attorneys qualified.....	262	299	282	310	329
Foreign attorneys, etc., qualified.....	25	15	18	22	27
Attorneys appointed for indigent defs....	—	—	16 <sup>3</sup>	53	74
Orders to show cause or respond.....	—	—	135	309	359

<sup>1</sup>Includes a number of petitions filed late in 1960, which because of illness of counsel were not orally presented to a Justice and acted upon until early in 1961.

<sup>2</sup>Also includes cases which were dismissed because printing costs were not paid in accordance with Va. Code § 8-482, or the writ tax was not paid pursuant to Va. Code § 53-74.

<sup>3</sup>Following *Gideon v. Wainwright*, 372 U. S. 335, decided March 18, 1963.

**TABLE II**  
**FINAL DISPOSITION OF CASES DOCKETED**  
**BY TERMS OF COURT**

	<u>1960/61</u>	<u>1961/62</u>	<u>1962/63</u>	<u>1963/64</u>	<u>1964/65</u>
<b>ORIGINAL CASES</b>					
Decided on merits <sup>1</sup>					
Mandamus.....	4	4	3	—	7
Habeas corpus.....	—	1	—	—	1
Probation.....	—	1	—	1	1
Denied or dismissed <sup>2</sup>					
Mandamus.....	9	17	10	11	23 <sup>5</sup>
Habeas corpus.....	19	12	20	18	7
Prohibition.....	2	1	3	2	2
Writ of error coram nobis.	—	1	—	—	—
Bill of complaint.....	—	—	1	—	—
<b>APPELLATE CASES</b>					
Decided on merits					
Appeal.....	46	42	32	34	24
Writ of error.....	70	74	74	84	88
Denied or dismissed <sup>2</sup>					
Appeal.....	56	50	49	48	41 <sup>5</sup>
Writ of error.....	186	172	210	179	160
<b>TOTALS.....</b>	<b>392</b>	<b>374</b>	<b>402</b>	<b>377</b>	<b>354</b>
<b>METHOD OF DISPOSITION</b>					
Written opinions (indiv.)...	118	119	108	118	120
Per curiam.....	2	3 <sup>4</sup>	1	1	1
Denied or dismissed (supra).	273 <sup>3</sup>	253	293	258	233 <sup>5</sup>
<b>TOTALS.....</b>	<b>393</b>	<b>375</b>	<b>402</b>	<b>377</b>	<b>354</b>

NOTE: Table I is expressed in terms of annual statistics for the calendar year; Tables II-V are compiled from data for the five terms of court beginning with October 1960. The data in Table I have been supplied by the Office of the Clerk of the Court; the data for the other Tables are derived from the volumes of *Virginia Reports* for these terms.

<sup>1</sup>Includes motions denied or dismissed after argument and opinion rendered. The motions allowed and those denied or dismissed may be recapitulated as follows:

	1960/61		1961/62		1962/63		1963/64		1964/65	
	A	D	A	D	A	D	A	D	A	D
Mandamus.....	3	1	2	2	2	1			3	4
Habeas corpus.....				1						1
Prohibition.....				1			1			1

<sup>2</sup>i.e., without opinions.

<sup>3</sup>Includes one remand for trial.

<sup>4</sup>Includes one case affirmed without opinion by equally divided Court.

<sup>5</sup>Incomplete data; part of the statistics for the 1964/65 term will not appear until 206 Va. is published in bound form—i. e., the data on appeals and writs of error refused do not appear in the advance sheets. Since Volume 206 was being prepared for press as this article was being completed, the statistics were not available from the files of the Office of the Clerk.

**TABLE III**  
**PRINCIPAL ISSUES IN ADJUDICATION**

	<u>1960/61</u>	<u>1961/62</u>	<u>1962/63</u>	<u>1963/64</u>	<u>1964/65</u>
<b>General public law</b>					
Constitutional law.....	12	14	15	13	16
Due process.....	1	1	2	4	1
Equal protection.....	1		1	1	1
Mandamus.....	4	4	3		7
Habeas corpus.....		1			1
Prohibition.....		1		1	1
Administrative law.....		1	2	4	1
International law.....		1			
<b>Governmental processes</b>					
Statutes.....	6	7	9	7	6
Taxation.....	3	6	1	7	2
Municipal corporations...	7	7	4	5	6
Annexation.....	1	1	1	3	
Eminent domain.....	2	3	3	3	7
Licenses.....			2	1	3
Schools.....	2	2		1	1
Streets, highways....	3				1
Zoning.....	1				1
<b>Criminal law</b>					
Procedure.....	9	6	7	9	10
Evidence.....	5	1	4	5	8
Substantive issues.....	9	9	9	8	14
<b>Civil actions</b>					
Procedure.....	29	26	36	33	16
Damages.....	4	2	2	4	2
Evidence.....	13	11	12	14	7
Statute of limitations....	2		1	1	1
Declaratory judgments...		1		1	
Equity.....	1	3	2	2	1
<b>Private actions</b>					
Agency.....	1		1		1
Attorneys.....	1		1	1	1
Bailments.....					1
Bank accounts.....		1		1	1
Bills and notes.....		1	2		
Carriers.....	2	1	4	3	7
Chattel mortgages.....					1
Conditional sales.....			2		1
Contracts.....	10	5	3	6	9

	<u>1960/61</u>	<u>1961/62</u>	<u>1962/63</u>	<u>1963/64</u>	<u>1964/65</u>
Corporations.....	2	2	1	3	
Detinue.....					1
Domestic relations					
Adoptions.....		2			
Alimony.....	1	2	1		2
Child custody.....	1	3		3	
Child support.....	3				
Divorce.....	5	4	4	3	3
Insurance.....	9	7	6	9	10
Labor unions.....					1
Negotiable instruments...	1				
Partnerships.....	1		1	1	
Real property.....	8	7	13	6	10
Deeds.....	6		1		1
Mechanics' liens.....	1	1		1	1
Sales.....	1	5			5
Sureties.....	1		2		
Torts.....	2	4	1	2	1
Automobiles.....	15	17	21	22	14
Defamation.....	1				
Master/servant.....	1	3	2		
Negligence.....	11	9	11	12	12
Nuisance.....		1	1		1
Products liability....		1			
Wrongful death.....	4		1	1	
Trusts.....	1				1
Utilities.....	1		1		2
Wills.....	4	3		4	
Executors.....		1			
Workmen's Compensation.		6	3	1	4

NOTE: The classification of subjects is based partly upon empirical judgment and partly on the suggestions of the editorial headnotes combined with an examination of the treatment of the subject matter in the text of the opinions. Several different points of law often appear in the same case; conversely, several subdivisions of the same subject have frequently been grouped under one heading. The total number of subjects enumerated by this editorial process, accordingly, does not have any practical correlation with the number of cases listed in the other tables of this summary. The actual figures are intended to suggest the range of subjects coming before the court over a succession of terms.



TABLE IV  
OPINIONS OF INDIVIDUAL JUSTICES

	1960/61			1961/62			1962/63			1963/64			1964/65		
	O	C	D	O	C	D	O	C	D	O	C	D	O	C	D
Eggleston, C. J..	17		3	18	2		16	1	1	17		2	20		
Buchanan.....	18		3	17	1		16		1	17	1		18	1	1
Carrico <sup>1</sup> .....	9			17			15		1	18	1		18		
Gordon <sup>2</sup> .....													9	2	1
F'Anson.....	18		1	18			16	1	1	16	1	1	19		1
Miller <sup>3</sup> .....	6														
Snead.....	19			18			15		1	17	1		18		
Spratley.....	16		3	15	1	2	15	1	1	15	1	1	17	1	1
Whittle <sup>4</sup> .....	15			16	1	1	15		1	18	1	1	1		
Per curiam.....	2			3			1			1			1		
<b>TOTALS.....</b>	<b>120</b>	<b>10</b>	<b>122</b>	<b>5</b>	<b>3</b>	<b>109</b>	<b>3</b>	<b>7</b>	<b>119</b>	<b>6</b>	<b>5</b>	<b>121</b>	<b>4</b>	<b>4</b>	<b>4</b>

O = Opinion of Court    C = Concurring Opinion    D = Dissenting Opinion

<sup>1</sup>Qualified January 30, 1961.

<sup>2</sup>Qualified February 17, 1965.

<sup>3</sup>Retired December 20, 1960.

<sup>4</sup>Retired February 1, 1965.

**TABLE V**  
**SOURCES OF APPELLATE CASES**

	1960/61			1961/62			1962/63			1963/64			1964/65		
	A	R	D	A	R	D	A	R	D	A	R	D	A	R	D
<b>CIRCUIT COURTS</b>															
<b>1st Circuit</b>															
Chesapeake City <sup>1</sup> ...	3	1	9	2		13	3	3	4	1	2	3	2	3	3
<b>2nd Circuit</b>															
Nansemond.....			2							1		3			1
Southampton.....					1							1		1	1
Suffolk City.....			1		1					1					1
<b>3rd Circuit</b>															
Brunswick.....	1		1					2							3
Greensville.....			1									1			1
Hopewell City.....			1	1						1					
Prince George.....			1							1			1		
Surry.....												1			
Sussex.....															
<b>4th Circuit</b>															
Amelia.....										1					
Dinwiddie.....			1												
Nottoway.....	1														
Petersburg City....															
Powhatan.....					2			1			1				2
<b>5th Circuit</b>															
Appomattox.....				2	2										
Buckingham.....													1		1
Charlotte.....							1	1			1				1
Cumberland.....	2	1	1					1							
Prince Edward.....				1											1
<b>6th Circuit</b>															
Bedford.....			1	1	1	2			1						1
Campbell.....			1				1	2	1		4	1			1
Lynchburg City....	1	3	1		3	2	1				1				1



	1960/61			1961/62			1962/63			1963/64			1964/65		
	A	R	D	A	R	D	A	R	D	A	R	D	A	R	D
<b>14th Circuit</b>															
Charles City County				1											
New Kent.....	1			1				1							
Williamsburg and James City Co....				1									1	1	
York.....										1	1		1		
<b>15th Circuit</b>															
Caroline.....		1		1	1		1				2				2
Hanover.....	1	1		1	1	2	1	1		1			1		2
<b>16th Circuit</b>															
Alexandria City....				1	1		2	1							1
Fairfax.....	6	10		3	3	17	1	1	16	4	2	15	1	1	18
Prince William.....	1	2		1	4		2	2							1
<b>17th Circuit</b>															
Clarke.....		3				1									1
Frederick.....		1					1	1			1				3
Shenandoah.....				1					1						
Warren.....	1	1							1	1		1			
Winchester City....															
<b>18th Circuit</b>															
Augusta.....	2					1			4				1		
Buena Vista City...												1			1
Highland.....									1						1
Rockbridge.....	1	1		1											
<b>19th Circuit</b>															
Alleghany.....		3		2	1	4	1		1	2	1				2
Bath.....	1	1							1						
Botetourt.....	1	1		1	1					1					
Craig.....															
Clifton Forge.....															
<b>20th Circuit</b>															
Roanoke.....	2	1		1	2	3	1		2	2	1				5
Roanoke City.....	1					1			4		4				1

	1960/61			1961/62			1962/63			1963/64			1964/65		
	A	R	D	A	R	D	A	R	D	A	R	D	A	R	D
<b>21st Circuit</b>															
Carroll.....			1			1						1	1		
Grayson.....						1	1					1			1
Pulaski.....			3	1	1	5			2			1	1		
Wythe.....	1	1				2			3	1		1			
<b>22nd Circuit</b>															
Bland.....												1			
Giles.....			2	1				1	3		1				
Tazewell.....			2				1	2							
<b>23rd Circuit</b>															
Bristol City.....							1								
Smyth.....	1	1	1			1	1	2		1	1	2	1		
Washington.....			2	1				2				1			1
<b>24th Circuit</b>															
Lee.....			1			1	2	1			1				
Scott.....	1					1	1	3				1			2
<b>25th Circuit</b>															
Page.....							1				1				
Rockingham.....	2	2		1	2		1	1							3
<b>26th Circuit</b>															
Fauquier.....			8			1		1	1	3					1
Loudoun.....	1			1	2	1	1	4	1	1			1		
Rappahannock.....				1		1									
<b>27th Circuit</b>															
Buchanan.....	1	5	1	2	2	2	1								2
Dickenson.....			1	2	1	1				1	1	1			1
Russell.....			1	1	3						2				1
<b>28th Circuit</b>															
Isle of Wight.....			3					1			1				2
Virginia Beach City <sup>2</sup>									2	1	6	1	1		4

	1960/61			1961/62			1962/63			1963/64			1964/65		
	A	R	D	A	R	D	A	R	D	A	R	D	A	R	D
<b>29th Circuit</b>															
Amherst.....	1		1	1		1	2		5	2		3	3		1
Nelson.....		1	1			2	2			1		1			1
Waynesboro City...	1		4	1		1				1					1
<b>30th Circuit</b>															
Franklin.....	1		1			2			1			1			2
Pittsylvania.....	2		2			2	1		4			3	3		5
<b>31st Circuit</b>															
Accomack.....	2	1		1			2	1	3			2	1		
Northampton.....			1												
<b>32nd Circuit</b>															
Norfolk City.....	8		14	5	4	18	3	3	9	3	2	11	5	2	8
<b>33rd Circuit</b>															
Wise.....			3	1		1	2		1	1		2	1	1	1
<b>34th Circuit</b>															
Halifax.....	1		2	1	2	1			1	1	1	1	1	1	1
Lunenburg.....						3			1						
Mecklenburg.....	1			2	1	1			3	1	1				1
<b>35th Circuit</b>															
Arlington.....	3		9	2	1	11	2		6	1	1	5	1	1	8
<b>36th Circuit</b>															
Floyd.....						1									
Montgomery.....			3	5			2		1	1		2			1
Radford City.....				1	1							1			
<b>37th Circuit</b>															
Chesterfield.....			1			2			2	1		4	2	2	3
Colonial Hgts. City.															1

	1960/61			1961/62			1962/63			1963/64			1964/65		
	A	R	D	A	R	D	A	R	D	A	R	D	A	R	D
<b>38th Circuit</b>															
Portsmouth City....	2		1			6	1	1	4	1	1	3	1		4
<b>39th Circuit</b>															
Fredericksburg City.		1		1					1						
King George.....		1													1
Spotsylvania.....			2		1	1		4			1				1
Stafford.....					1					1					3
<b>40th Circuit</b>															
Newport News City.	1	1	1					1		1	1		1	1	4
<b>CITY COURTS</b>															
Alexandria Corpora- tion.....			1			7			2			4			1
Bristol Corporation...	1		1	1				1	1			2		2	
Charlottesville Corpo- ration.....		1	1			1			1		3	3		1	2
Chesapeake Corpora- tion.....	1														
Danville Corporation..		1	2	1		1					1	8			1
Lynchburg Corpora- tion.....			5	1		14	1	1	5		3	3	1		
Newport News Corpo- ration.....			2			2	1	2	2	2	1	1		1	
Newport News Corpo- ration II.....			1			1		1	1						
Newport News Hust- ings.....									2			1	2	1	2
Norfolk Corporation..	2		3	2		2	2		3	3		4	3	2	6
Norfolk Corporation II			1			2			2		1	3		3	1
Norfolk Law & Chan- cery.....	9	1	17	1	4	8	3	5	7	3	4	16	7	2	11
Petersburg Hustings..							1		1			3			
Portsmouth Hustings.	3	2	3	1	2	4	1		5	1	1	2			4

	1960/61			1961/62			1962/63			1963/64			1964/65		
	A	R	D	A	R	D	A	R	D	A	R	D	A	R	D
Richmond Chancery...				2		2			2	1		1		1	2
Richmond Hustings...	2	35		1	1	9	2	1	6	2	3	16	2	2	5
Richmond Hustings II.	1	3	8	1	1	8		1	6		2	4	3		4
Richmond Law & Equ- uity.....	4	2	7	2	1	7	2	2	6	4	2	13	3	2	3
Roanoke Hustings....	2		4			2				2	1	3			1
Roanoke Law & Chan- cery.....									2	4		1	3		4
Staunton Corporation.	1						1			1					
Winchester Corpora- tion.....	2			1			1								
STATE COMMISSIONS															
Corporation Commis- sion.....				3	2		2	2		6			1		
Industrial Commission.	1	10		2	3	6	1		8		8	1		9	
Milk Commission.....							1	1		1		1			
TOTALS <sup>3</sup> .....	87	34	273	64	58	222	51	57	259	64	59	220	69	45	206

A = affirmed    R = reversed and/or remanded    D = denied or dismissed

<sup>1</sup>Formerly Norfolk County.

<sup>2</sup>Formerly Princess Anne County.

<sup>3</sup>Totals of affirmations and reversals exceed the totals computed in Table II because they include certain cases affirmed in part and reversed in part. Petitions refused are computed from the statistics in the bound volumes of *Virginia Reports* and are incomplete for the 1964/65 term.