



THE STATE OF
CIRCUIT COURTS

THE WHEELS OF JUSTICE: OUR REGIONAL CIRCUIT COURTS

A lawyer tells his client, "I have some good news and some bad news."

The client replies, "What is the good news?"

"The length of time of your sentence has been reduced," replies the lawyer.

"That's great! What is the bad news?" replies the client.

The lawyer then says, "You got the death penalty."

- Garrison Keillor

What happens to "parties" (individuals, firms, organizations) that are alleged to have violated criminal law and therefore enter the judicial system? What happens to still other parties that are participants in a civil action in which one has alleged wrongdoing by the other and as a consequence both enter the judicial system?

Many of these situations are handled by a court located in one of the Commonwealth's 31 Circuits. In 2003, the nine Circuits that are wholly or partially located within Hampton Roads dealt with 81,008 cases (35 percent civil and 65 percent criminal). Approximately 29 percent of the civil cases were more than one year old and 13 percent were more than three years old, so the wheels of justice turned slowly in some instances. Criminal cases move much more quickly; only 23 percent were more than six months old.

One of the reasons civilized societies thrive is adherence to the rule of law. Ideally, the exercise of the rule of law should be swift, clear, free of corruption and equitable. Significant departures from these conditions usually result in disorder, political unrest, increased crime and reduced economic prosperity. Witness the problems that have afflicted countries ranging from post-Gorbachev Russia to post-Saddam Iraq. Societies come apart at the seams when their courts either fail, or perhaps have never really existed in an uncompromised state.

Hence, there is ample reason for us to want to know how well our courts are functioning. They are supported by our tax dollars and their efficient operation represents a sine qua non for civilized living. The alternative is anarchy.

In this chapter, we examine the Circuit Court system in Hampton Roads, which constitutes only one part of our system of courts in the region.

Circuit Courts Within the Judicial System of Virginia

Circuit Courts in Virginia have two functions. They: (1) act as appeals courts that hear cases appealed to them from a General District Court, or from a Juvenile and Domestic Relations Court; and (2) hold trials, sometimes by jury, and in this role usually consider larger civil claims, misdemeanor and felony criminal cases, equity suits (such as property disputes) and divorce proceedings. There are 31 Circuits in Virginia, of which nine include some portion of the geography of Hampton Roads (see Table 1). Each Circuit ordinarily contains multiple courtrooms. For example, there are nine Circuit courtrooms and judges in the Norfolk Circuit.

Many legal matters that involve lesser sums of money are considered by 32 General District Courts in Virginia and (within the same boundaries), 32 Juvenile and Domestic Relations District Courts that hear issues such as domestic problems, delinquency, child abuse and custody issues involving divorce. By way of illustration, any matter in which more than \$15,000 is at stake automatically is heard in a Circuit courtroom.

Above the Commonwealth's Circuit Courts stands the Virginia Court of Appeals, which hears appeals of cases from the lower courts, and the Virginia Supreme Court, which, among other things, reviews the decisions from lower courts involving cases that have been granted an appeal.

**TABLE 1
LOCATION OF CIRCUIT COURTS, JUDGESHIPS AND JURIES IN HAMPTON ROADS**

Circuit Court	Locality	Authorized Judgeships	Juries Impaneled	
			Civil	Criminal
1	Chesapeake	4	25	15
2	Accomack, Northampton, Virginia Beach	10	53	26
3	Portsmouth	4	28	47
4	Norfolk	9	73	52
5	Franklin City, Isle of Wight, Southampton, Suffolk	3	24	31
6	Brunswick, Emporia, Greensville, Hopewell, Prince George, Surry, Sussex	2 (plus one shared)	5	29
7	Newport News	5	26	32
8	Hampton	4	8	21
9	Charles City, Gloucester, James City, King and Queen, King William, Mathews, Middlesex, New Kent, Poquoson, Williamsburg, York	4	28	29

Sources: "The Judicial Year in Review: 2002 Supreme Court of Virginia" and the Virginia Circuit Court Caseload Reporting System, 2004

Criminal Activity in Hampton Roads

Table 2 records the distribution of criminal activity in Hampton Roads cities and counties reported to the police in 2003. If a crime is alleged to have been committed, then the matter is placed in the hands of a prosecutor (federal or Commonwealth) who will deal with the case, perhaps by seeking an indictment. Our interest here is with criminal activities that violate state and local laws and are dealt with by a commonwealth's attorney (prosecutor) attached to a city or county.

On a per capita basis, Newport News, Norfolk and Portsmouth report more criminal activity than other cities and counties in the region. Portsmouth had the largest proportion of cases per capita involving murder, robbery and assault, while Newport News had the highest burglary rate by far, and Norfolk clearly had the highest larceny and car theft rates. Suffolk had the highest rate of reported rapes, and arson cases were most numerous in Suffolk and Newport News.

Not surprisingly, there exists a positive relationship between population density and crime, though a negative relationship is evident between household income and crime. Reasonably prosperous, rural areas and/or smaller communities such as Poquoson and Williamsburg are, in general, much less likely to experience criminal activity. Among the larger cities, Hampton, Virginia Beach and Chesapeake boast the lowest crime rates in the region.

TABLE 2
INDICES OF REPORTED CRIME, HAMPTON ROADS, 2003

Crime/City	Rates per 100,000 Population									
	Williamsburg	Hampton	Suffolk	Newport News	Portsmouth	Poquoson	Chesapeake	Virginia Beach	Norfolk	H R Average
Overall Index	2,930	3,867	4,145	9,694	5,841	1,546	3,553	3,525	6,294	3,599
Murders	0	6.77	2.82	14.79	17.81	0	2.38	5.46	16.52	7.39
Rapes	50.67	37.89	53.63	51.49	42.55	0	4.29	27.08	35.53	33.68
Robberies	76	166.47	155.24	213.07	398.77	0	128.28	92.84	296.19	169.65
Assaults	84.45	194.21	351.42	406.98	432.42	25.35	324.27	85.79	223.07	236.44
Burglaries	202.67	606.32	575.82	4,623.56	1,166.63	168.99	472.58	486.51	736.96	490.72
Larceny	2,406.69	2,476.03	2,781.70	3,006.60	3,288.15	1,301.23	2,366.71	2,644.42	4,391.99	2,740.39
Car Thefts	109.78	378.95	224.40	536.80	494.76	50.70	254.65	183.18	894.03	347.47
Arsons	8.44	27.07	47.98	46.56	15.83	16.90	8.77	42.78	9.09	23.85

Sources: "2003 Federal Bureau of Investigation Crime Reports," FBI, Washington, D.C., and city of Chesapeake data for 2002, <http://www.chesapeake.va.us/services/depart/police/police/stats.shtml>

Disposition of Circuit Court Cases

Cases that come to a Circuit Court are either civil or criminal. Civil cases involve disagreements between parties, perhaps over an alleged injury to person or property. Issues such as damage to a home or business, or personal injuries suffered because of an automobile accident or medical malpractice, fall into this category. Criminal cases involve the violation of a specific law or statute, for example, those against robbery, rape, malicious wounding or murder. Criminal acts may be further subdivided into those which are classified as misdemeanors (crimes that may result in a maximum punishment of a fine of \$2,500 and/or a year in jail) and more serious acts such as robberies and murders that are considered felonies (punishment could include execution). In Hampton Roads, 38 percent of all cases that enter the Circuit Courts involve misdemeanor charges, while the remaining 62 percent involve felonies.

What happens to an individual who enters the court system in Hampton Roads as a defendant? Tables 3 and 4 address our region.

**TABLE 3
DISPOSITION OF CIRCUIT COURT CIVIL CASES
HAMPTON ROADS, 2004**

Circuit	Settled / Dismissed	Default Judgment	Trial by Judge	Decree on Deposition	Report by Commis- sioner	Trial by Jury	Purged – 2- or 3- Year Rule	Other	Total Cases
Ches	25%	1%	15%	0%	22%	1%	14%	9%	2,520
VaBch	25%	2%	27%	0%	23%	0%	10%	13%	7,223
Portsmouth	57%	3%	2%	2%	7%	1%	25%	5%	4,180
Norfolk	33%	2%	55%	0%	3%	1%	0%	5%	5,671
Suffolk	37%	1%	17%	18%	5%	1%	2%	19%	1,490
Emporia	19%	2%	14%	28%	0%	0%	12%	15%	1,237
NNews	32%	2%	1%	50%	0%	1%	2%	11%	1,904
Hampton	28%	1%	0%	1%	27%	0%	15%	28%	1,939
JCC/York	26%	1%	10%	23%	1%	1%	14%	24%	2,590
HR Average	32%	2%	22%	8%	12%	1%	10%	12%	3,195
VA	30%	2%	20%	17%	5%	1%	9%	15%	100,620

Source: Virginia Circuit Court Caseload Reporting System, 2004

CIVIL CASES

There are at least seven different actions that can be taken in order to resolve a civil case after a complaint has been filed. First, significant percentages of civil cases are settled by the parties to the case and do not result in a trial in court. In recent years, increased emphasis has been placed on mediation and arbitration as ways to settle disputes. The cities of Portsmouth, Suffolk and Norfolk exhibit the largest case dismissal rates.

Second, there is also the possibility of a default judgment, which can occur when a party does not take a required or timely step in a lawsuit, such as filing the proper paperwork on time. This seldom occurs in Hampton Roads (less than 2 percent of the time in most Circuit Courts).

Third, another outcome of a civil case is a decree on deposition. This could involve an equity issue where money is not an immediate point of contention. For example, a decree could finalize a marital divorce, impose an injunction on a party to a lawsuit or deal with a social services case. Decrees are used much more frequently in Newport News than any other city or county and are virtually never used on the urban Southside. This appears to reflect local custom and preference rather than efficiency concerns.

Instead, a fourth possibility is often utilized in cities such as Hampton, Virginia Beach and Chesapeake – a report by commissioner. This refers to a document written by a commissioner appointed by the judge. The commissioner files a report, often with recommendations, and the judge then may choose to make a decision based on that report. Hampton easily pursues this approach most often, while Norfolk, Suffolk and Newport News seldom utilize it.

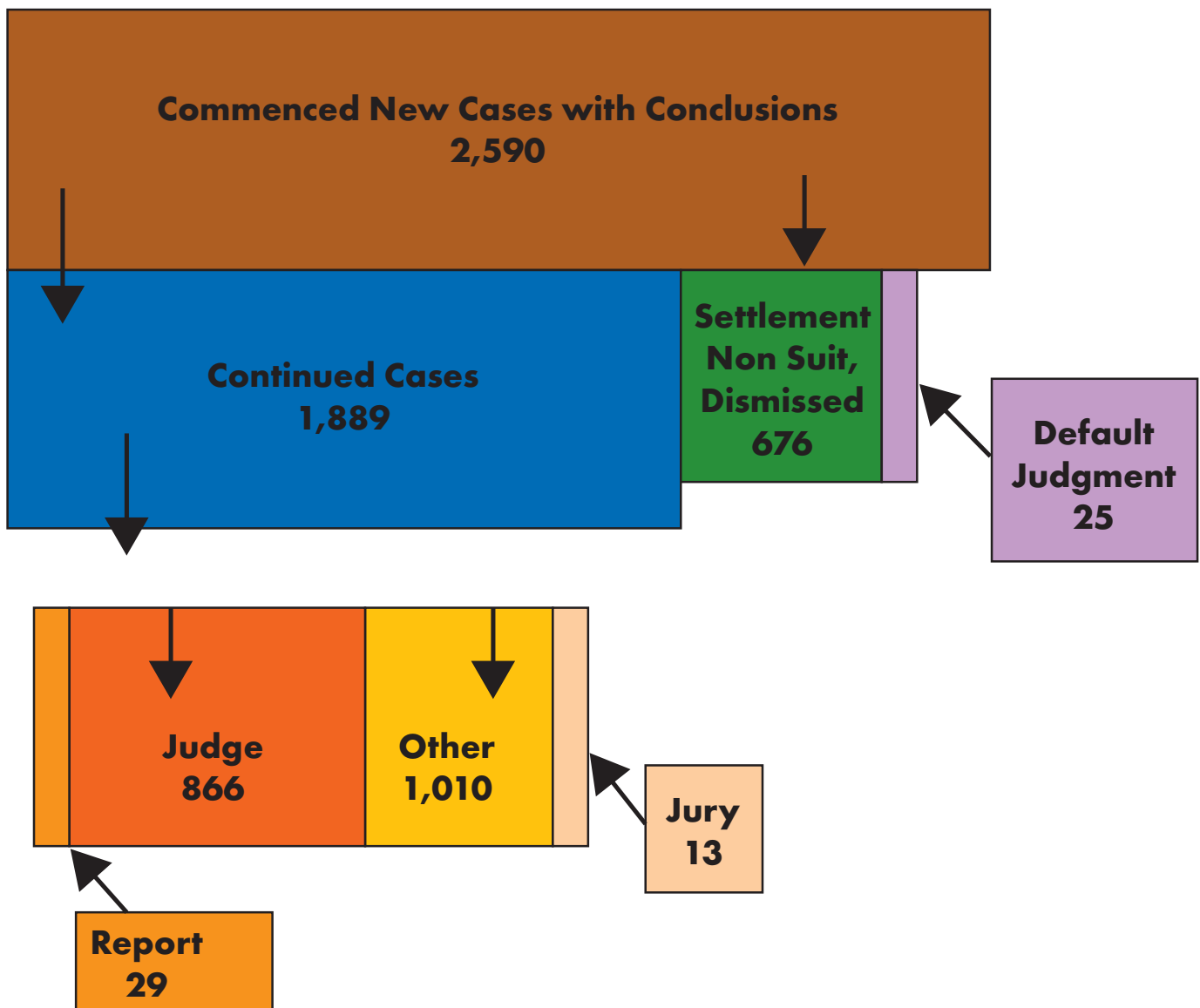
Fifth, a case could result in a trial by jury; however, these instances are surprisingly rare in civil cases within Hampton Roads. Newport News had the largest percentage of civil jury trials, but this still accounted for only 1 percent of its civil cases.

Sixth, guidelines issued by the Virginia Supreme Court recommend how quickly cases should be dealt with by the courts. If the cases are not handled within the specified time frames, they may be “purged,” that is, dismissed. Portsmouth, at 25 percent, has

had the highest purge rate, while Norfolk had a zero purge rate. While a variety of factors could influence a Circuit Court's purge rate, a low rate clearly is preferred to a high rate and many regard a low purge rate as an indicator of judicial efficiency, though other factors could be at work.

Seventh, the "Other" category refers to disposition methods not elsewhere classified. An example is a change in venue. This is the dominant disposition result in Hampton and is often used about 20 percent of the time in the more rural districts.

FIGURE 1
CITIES OF WILLIAMSBURG AND POQUOSON, PLUS CHARLES CITY, GLOUCESTER, JAMES CITY, KING AND QUEEN, KING WILLIAM, MATHEWS, MIDDLESEX, NEW KENT AND YORK COUNTIES
DISPOSITION OF CIVIL CASES: 2004



Sources: Virginia Circuit Court Caseload Reporting System, 2004, and Circuit Court Caseload Report Quick Guide to the Reports, 2004

It is instructive to understand the processes that eventually produce cases that reach our regional Circuit Courts. Figure 1 illustrates how civil cases were disposed of in the Williamsburg/James City County/York County judicial district (Number 9) in 2004. Only about .5 percent of all cases initiated resulted in a jury trial and only about a third of these cases resulted in a bench trial.

CRIMINAL CASES

Table 4 reports on the disposition of criminal cases. Note, however, that the table discloses only those cases that have proceeded beyond a preliminary hearing. A case against a prospective defendant might be dismissed by a judge in a District Court at a preliminary hearing. But, assuming a case is certified for indictment in a Circuit Court, it is generally handled in one of three ways: *Nolle prosequi*/dismissal, guilty pleas or a trial in front of a judge. *Nolle prosequi* occurs when the prosecutor decides not to proceed with a case and dismissed cases are those that are dismissed by a judge. Hampton had the largest percentage of cases not prosecuted in the region (36 percent), while the Circuit Court in Virginia Beach had the lowest percentage (15 percent). In three of the other Circuit Courts, Chesapeake, Portsmouth and Emporia, the percentages of cases not prosecuted were also relatively high. High rates of non-prosecution could reflect inadequate police work, lazy or incompetent prosecutors, overly high workloads, newly available information or still other factors.

Among the other factors that change dismissal rates are differences in custom and practice in various jurisdictions. One city might tend to dismiss many cases already at a preliminary hearing in a District Court, whereas another city might push those cases on to a Circuit Court, where they will be dismissed. It's also possible that a jurisdiction might choose not to prosecute a charge now, but later choose to do so. In addition, in some jurisdictions (Chesapeake provides an example), Circuit Court judges seldom grant continuances to prosecutors if that continuance will push the case beyond 120 days from arrest. As a consequence, in Chesapeake many cases are not prosecuted, but the accused is then re-indicted and the clock starts over. This scenario might occur for legitimate reasons, such as a delay in receiving evidence from a forensic laboratory. All of these examples demonstrate that one must be careful in drawing strong evaluative conclusions on the basis of the data presented in Table 4.

TABLE 4
DISPOSITION OF CIRCUIT COURT CRIMINAL CASES HAMPTON ROADS, 2004

Circuit	Withdrawn Prior to Trial	Nolle Pros. /Dismissed	Guilty Plea Prior to Trial	Judge Trial	Jury Trial	Other	Total Concluded Cases
Chesapeake	3%	31%	33%	31%	1%	1%	6,039
Virginia Beach	2%	15%	56%	22%	1%	4%	10,781
Portsmouth	1%	30%	37%	28%	2%	2%	5,529
Norfolk	4%	22%	42%	29%	1%	2%	10,283
Suffolk	1%	27%	30%	38%	1%	4%	4,032
Emporia	3%	30%	40%	24%	1%	2%	2,701
Newport News	0%	23%	22%	41%	1%	13%	4,946
Hampton	1%	36%	29%	31%	2%	1%	3,280
JCC/York	3%	23%	31%	36%	1%	6%	4,661
HR Average	2%	24%	38%	30%	1%	4%	5,806
Virginia	2%	24%	36%	31%	1%	4%	172,090

Source: Virginia Circuit Court Caseload Reporting System, 2004

Defendants in criminal cases may plead guilty prior to trial and may do so if they surmise they might fare worse if their case actually were to go to trial. Guilty pleas were taken fully 56 percent of the time in Virginia Beach. This appears to reflect the tendency of the Virginia Beach commonwealth's attorney to place nearly all alleged drug offenses in front of a jury unless they are settled beforehand. Defense attorneys, perhaps fearful of what a jury might do to their clients, often recommend a guilty plea. Thus, a plea agreement results and the case does not go to trial. Norfolk and Emporia had the only two other Circuit Courts that were above the Virginia average in this regard.

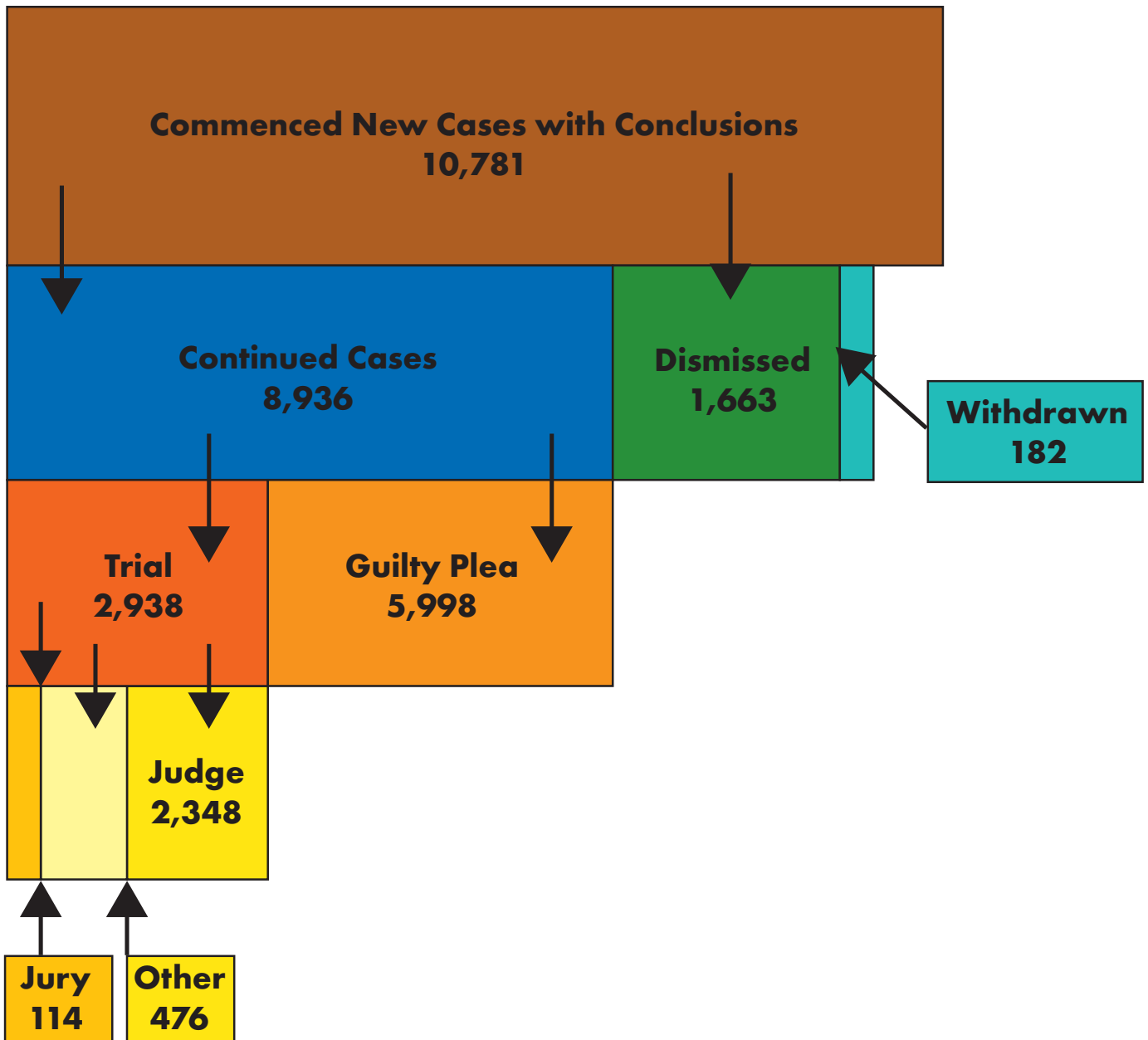
Does a high percentage of guilty pleas represent good police work, or is it the result of police declining to bring charges against alleged perpetrators unless the police are extremely confident of a conviction? We cannot make that judgment, but this question is one that bedevils the evaluation of police work throughout the country. Police have considerable control over the character of the incidents that wend their way in the form of a case to a prosecutor or to a Circuit Court. Prosecutors similarly possess immense discretion to prosecute or dismiss cases. **Hence, it is not easy to evaluate the performance of the police, or a prosecutor's office or a Circuit Court because the work of each depends so significantly on the work of the others.**

The second most common way to dispose of a criminal case is via a bench trial in front of a judge (without a jury). Bench trials are relatively more common in Newport News and Suffolk, but are used less frequently than the state average in Virginia Beach, Emporia, Portsmouth and Norfolk. In general, there has been a decline in the proportion of jury trials in Virginia and such trials do not occur more than 2 percent of the time in criminal cases in any of the region's Circuit Courts.

Note that many criminal cases in Hampton Roads' Circuit Courts involve alleged probation violations ("reinstatements"). The accused have no right to a jury trial in such instances and there is no preliminary arraignment or plea entered by the accused. If a Circuit Court judge tends to ask the accused if he/she pleads guilty, and the accused does so (a frequent occurrence), then there will be no bench trial. Once again, local custom may skew what otherwise might seem to be straightforward criminal case data.

Again, it is helpful to see how cases eventually reach a Circuit Court. Figure 2 illustrates how Circuit Court District 2 (primarily the city of Virginia Beach) disposed of 10,781 criminal cases in 2004. Note that more than half of these cases (56 percent) resulted in a guilty plea by the defendant and that 17 percent of the cases resulted in the dismissal or withdrawal of the case by a prosecutor.

FIGURE 2
CITY OF VIRGINIA BEACH PLUS ACCOMACK AND NORTHAMPTON COUNTIES
DISPOSITION OF CIVIL CASES: 2004



Sources: Virginia Circuit Court Caseload Reporting System, 2004, and Circuit Court Caseload Report Quick Guide to the Reports, 2004

Evaluating the Courts

Evaluating the end product of our regional judicial system and, more particularly, the Circuit Court system, is not an easy task. First, there is no agreement how to define the end product of the Circuit Courts. For example, is the end product of the judicial system arrests, prosecutions, convictions, some combination of these actions or something else?

If we expect the system to arrest criminals and prosecute them, then it is apparent that there is a lot of this going on – more than 81,000 cases in 2003 among our nine regional Circuit Courts. Of course, we have no way to know what proportion of the total number of offenses committed that these 81,000 cases represent. Remember that many charges are dismissed in a District Court before they reach a Circuit Court. Such instances are not included in the Circuit Court data presented here. We can note, however, that the rates of reported crimes have been falling throughout Hampton Roads and most parts of the United States in recent years.

On the other hand, if we expect prosecutors to attempt to convict each of these 81,000 defendants, then we will emerge disappointed, for about 30 percent of all civil cases are dismissed or not prosecuted in Hampton Roads, while approximately 26 percent of criminal cases similarly are dropped.

Or, if our notion of justice served involves an actual trial, then we will be similarly disappointed, because only 23 percent of civil cases and only 31 percent of criminal cases actually go to trial locally. More than one of every three regional criminal defendants pleads guilty prior to a trial and that classic American institution, the jury trial, takes place in only about one of every 100 cases. The Virginia Supreme Court recently has placed increased emphasis on mediation and arbitration as means to settle disputes and lighten the load of the Commonwealth's courts. Hence, the relatively low proportion of cases that actually goes to trial reflects this desire.

Defining the "output" of our three-pronged judicial system (the police, the prosecutors, the judges in their courts) is rather like attempting to nail Jell-O to a wall. In fact, what we desire is a system that detects and arrests many, though certainly not all, of those who violate the law or commit crimes. We expect both the police and the prosecutors to overlook numerous *de minimis* violations of the law (for example, small-scale automobile speeding) and to focus their limited resources on those violations that society deems most critical and important. Further, we expect judges to deal wisely with the cases brought to them, though one need peruse the media only briefly to ascertain that there are just about as many perceptions of wisdom as there are citizens.

Despite some notions to the contrary, there is no set of rules that clearly defines all of the value judgments that police, prosecutors and judges must make on a daily basis. True, legislators and citizens sometimes attempt to provide specificity to the process. With increasing frequency, we see laws that prescribe how police must behave, or the sentences that judges must dispense. **Nevertheless, the justice system abounds with discretion, albeit bounded, and most citizens, upon learning about the situation, would not have it any other way.** A mechanistic judicial system would not suit us well and would inspire legions of complaints.

Hence, while we have made several stabs above at assessing how law enforcement officials, prosecutors and the Circuit Courts triage the cases that come to them, **it is a treacherous undertaking to impose one's own judgment on the decision of law enforcement officials of when to make an arrest, or a commonwealth's attorney's subsequent decision to prosecute or drop a case, or a subsequent Circuit Court judge's decision, say, to dismiss a case.**

Those closest to police departments and the courts necessarily formulate opinions over time about the comparative wisdom and energy of the individuals who operate the justice system. When these assessments are adverse, they sometimes boil over into the media and we observe one member of the triad (police, prosecutor or judge) being attacked for lack of wisdom, bad work habits or some other alleged inadequacy.

It is well beyond the scope of this chapter to assess individual actors in the judicial process, exciting as that might be. It suffices for us to point out that Circuit Court judges deal only with those cases that come to them and hence they have little ability in the long-run to determine the mix and quality of cases that come to their courtrooms. Indeed, in a typical Circuit, the parties to a

case do not know to which judge their case will be assigned. Hence, they cannot “shop” judges and specific courtrooms. As a consequence, the Circuit Courts are somewhat like professors who encounter the students who register for their classes. They must accept, however grudgingly, whichever students enter their classroom.

In theory, however, it is possible for the plaintiffs to shop Circuits within the Commonwealth. Over time, some Circuit Courts become known for handling certain kinds of cases, for example, alleged personal injuries resulting from a railroad accident, and plaintiffs and defendants may do their best to see that their cases are heard (or not heard) in that Circuit. Still, inside a Circuit, the possibilities for “judge shopping” are very small.

SPEED OF HANDLING CASES

Our previous statements notwithstanding, the speed with which cases are handled is one obvious criterion for evaluating our judicial system. The Circuit Courts, of course, are only one part of this system. In Table 5, we consider both civil and criminal cases from their date of inception (which is not necessarily the same as the date of arrest, which might provide a more relevant view of the speed with which cases are handled).

A typical Circuit Court in Hampton Roads will dispose of 30 percent to 40 percent of its civil cases within three months and 70 percent to 90 percent of its cases within one year. While the typical civil case is disposed of in Portsmouth much more rapidly than the regional and state averages, the disposition of cases by all of the other Circuit Courts approximately matches the Virginia three-year average in terms of speed of disposition.

With regard to criminal cases, 33 percent of all cases are disposed of within two months, statewide. Within Hampton Roads, the disposition rates range from only 19 percent in Emporia to a high of 48 percent in Portsmouth. Most of the region’s Circuit Courts are at or above the Virginia average in this regard, and this relationship holds true after four months and six months as well. Hence, the region’s Circuit Courts must receive high marks for the speed with which they handle criminal cases.

**TABLE 5
AGE OF CONCLUDED CASES, CIVIL AND CRIMINAL IN THE CIRCUIT COURTS,
HAMPTON ROADS, 2004**

Circuit	Age of Civil Cases from First Filing				Age of Criminal Cases from First Filing			
	Total Cases	3 Months	1 Year	3 Years	Total Cases	2 Months	4 Months	6 Months
Chesapeake	2,520	31%	64%	82%	6,039	40%	71%	85%
Virginia Beach	7,223	36%	71%	88%	10,781	35%	67%	82%
Portsmouth	4,180	55%	66%	75%	5,529	48%	63%	82%
Norfolk	5,671	39%	84%	99%	10,283	29%	68%	82%
Suffolk	1,490	34%	68%	95%	4,032	28%	60%	77%
Emporia	1,237	37%	64%	79%	2,701	19%	47%	69%
Newport News	1,904	42%	73%	93%	4,946	26%	50%	67%
Hampton	1,939	24%	61%	79%	3,280	26%	51%	64%
JCC/York	2,590	37%	65%	85%	4,661	30%	46%	63%
HR Average	3,195	39%	71%	87%	5,806	32%	61%	77%
Virginia	100,620	39%	71%	89%	172,090	33%	59%	75%

Source: Virginia Circuit Court Caseload Reporting System, 2004

These data, however, cannot be taken without qualification. Suppose an individual is arrested and indicted for possession of cocaine. But the forensic laboratory faces a work backup and does not produce the necessary report quickly. The prosecutor then may drop the charge with leave to reinstate, or request a continuance, which may well be denied by a Circuit Court judge. Subsequently, the charge may be reinstated after forensic results have been obtained. In such a scenario, it will appear as if the case was handled quite rapidly, but this might be deceptive.

FOLLOWING THE SENTENCING GUIDELINES

Table 6 provides information on the degree to which the different courts follow the sentencing guidelines suggested by the “Virginia Sentencing Guidelines and Manual” (the 7th edition appeared in 2004). If requested, a probation officer typically completes a presentencing investigation report on each convicted defendant and the judge then utilizes this information when he/she issues a sentence. Sentences may be in line with the state’s sentencing guidelines, or be less harsh (a “mitigation”) or more harsh (an “aggravation”). Sentences also may be served concurrently, which alters the situation. Concurrent sentencing is more common in Virginia Beach and less common in Norfolk, where one charge might well be dropped if it would result in concurrent sentences. If a judge does not follow the recommended sentencing guidelines, then he or she must explain why. Across all the court districts within Virginia, the state average compliance rate was 79 percent in 2003. Six Circuit Courts within Hampton Roads were above that rate: Newport News, Chesapeake, Suffolk, Virginia Beach, Hampton and Norfolk.

Mitigation occurs 9 percent of the time in Virginia. There are numerous reasons why mitigation might occur – for example, a judge’s evaluation of the possibility of rehabilitation and/or a lack of intention by the perpetrator to do the victim harm. Mitigation might occur more often if a judge decides to utilize programs such as the Drug Court, the Mental Health Court, jail-based drug programs, and detention and diversion programs. If so, the sentence will reflect a downward departure from the Commonwealth’s guidelines. Three of the region’s Circuit Courts appear to invoke more downward departures from the sentencing guidelines on average: Norfolk, Emporia and Hampton. Aggravation in sentencing occurs 9 percent of the time in Virginia. Reasons for aggravation include a judge’s assessment of the flagrant or violent nature of the offense and a predicted lack of rehabilitation of the criminal. Three of the region’s Circuit Courts exceed the statewide aggravation rate: Emporia, James City/York County and Portsmouth.

TABLE 6
RESULTS OF CIRCUIT COURT ACTION, HAMPTON ROADS,
2003 and 2004

Circuit	Sentencing Compliance Rates		
	Compliance Percent	Mitigation Percent	Aggravation Percent
Chesapeake	89%	5%	6%
Virginia Beach	82%	9%	9%
Portsmouth	78%	10%	12%
Norfolk	80%	16%	4%
Suffolk	84%	8%	8%
Emporia	73%	12%	15%
Newport News	90%	5%	5%
Hampton	81%	11%	8%
JCC/York	79%	7%	13%
HR Average	81.8%	9.2%	8.9%

Sources: Virginia Sentencing Commission Annual Report, 2003, and Virginia Sentencing Commission Annual Report, 2004

THE CLEARANCE RATE

Another evaluative criterion is the clearance rate, which is the ratio of cases concluded in a court to the cases commenced in that court. This ratio may be greater than 100 percent if a court clears old cases from its docket held over from past years. While clearance rates can be manipulated, most authorities agree that higher clearance rates are preferable to lower clearance rates. Thus, they are viewed by some as a measure of the overall efficiency of a judicial system.

Table 7 provides information on clearance rates for both 1994 and 2004, and we compute the change between the years. It is readily evident that clearance rates fluctuate substantially, both among cities and between civil and criminal cases. Clearance rates typically are lower for civil cases. The Newport News Circuit Court exhibits much lower civil case clearance rates than other courts, but this is not true for its criminal cases. It would be difficult to draw strong conclusions on the basis of the clearance rate data provided in Table 7. Hence, despite the popularity of clearance ratios among some as a measure of the joint efficiency of the police, prosecutors and judges, they do not provide us with definitive information. In any event, it does appear that all of the Circuit Courts display adequate clearance rates.

TABLE 7
CLEARANCE RATIOS FOR CIRCUIT COURT CASES, HAMPTON ROADS, 1994 and 2004

	Civil Cases			Criminal Cases		
	1994	2004	Change	1994	2004	Change
Chesapeake	82.3%	95.4%	13.1%	100.5%	99.8%	-0.7%
Virginia Beach	88.9%	97.2%	8.3%	96.6%	99.3%	2.7%
Portsmouth	77.3%	118.6%	41.3%	128.4%	95.5%	-32.9%
Norfolk	106.1%	94.8%	-11.3%	106.6%	93.7%	-12.9%
Suffolk	86.3%	103.4%	17.1%	101.6%	101.1%	-0.5%
Emporia	86.1%	98.1%	12.0%	97.7%	94.5%	-3.2%
Newport News	74.9%	67.6%	-7.3%	103.6%	93.4%	-10.2%
Hampton	81.2%	91.0%	9.8%	100.7%	88.9%	-11.8%
JCC/York	91.1%	94.6%	3.5%	104.8%	100.0%	-4.8%
HR Average	86.0%	95.6%	9.6%	104.5%	96.2%	-8.3%
Virginia	94.1%	94.7%	0.6%	99.9%	97.3%	-2.6%

Source: Virginia Circuit Court Caseload Reporting System for the Years 1994-95 and 2004

Conclusions

When it was originally suggested that the State of the Region report focus on Hampton Roads' judicial system, and specifically upon the Circuit Courts, the presumption of those proposing this topic was that vast differences exist among the nine Circuit Courts that deal with portions of our region. The assertions were that some Circuit Courts were far more efficient than others and that some were far more lenient (or harsh) than other courts.

We have not found significant evidence to support these notions. **While it may well be true that individual judges are more or less efficient, more or less skilled, and more or less lenient in their sentencing, we have not found disturbing aggregate differences in behavior among the nine Circuits.** It's true that some courts (for example, Newport News) prefer decrees on deposition, while others prefer reports by commissioner (which constitute a favorite approach in Chesapeake, Hampton and Virginia Beach). **It's also true that Norfolk tends to send the majority of its civil cases to trial before a judge (55 percent in 2004) rather than pursuing other modes of disposition. This may at first glance seem inefficient, particularly when Newport News sent only 1 percent of its civil cases to trial before a judge, but it isn't possible to render a judgment on this without having available court dockets, cost data and other measures that could lead to a benefit/cost analysis. It doesn't seem likely that two very different approaches to disposing of cases are equally efficacious. Even so, we would be hard pressed to explain the superiority of one over the other.**

What we have found are apparent differences in the comparative efficiency of the various prosecutors' offices within the region. In Portsmouth, for example, 57 percent of all civil cases are settled or dismissed prior to trial. One wag suggested that this represented "real efficiency!" However, Portsmouth's settlement/dismissal rate was 20 percent higher than any other jurisdiction in 2004 and, if media reports and the opinions of attorneys are accurate, this stemmed substantially from inefficiencies in the prosecutor's office (which apparently have since been addressed) rather than bad police work. Further, this apparent lack of efficiency did not spill over in the Portsmouth Circuit Court, which boasted admirably high rates of disposition of the cases in front of it.

We also uncovered some interesting differences in the proportion of criminal cases that results in guilty pleas prior to trial. **Virginia Beach obtained guilty pleas in 56 percent of its criminal cases in 2004, 14 percent higher than the next highest jurisdiction. It's difficult to know what to make of this — great police and prosecutor work, reluctance to charge individuals without an open-and-shut case, a different mixture of cases, etc.** It does appear, however, that Virginia Beach treats drug-related cases differently from other jurisdictions and this leads to more guilty pleas. Jurisdictions such as Hampton and York County obtain guilty pleas only slightly more than half as often as Virginia Beach. Once again, more detailed information and analysis would be necessary before we could reach conclusions about these data.

The bottom line is that our nine regional Circuits handle a myriad of cases annually — more than 81,000 in 2004. Some 270 civil-case juries were impaneled in the Circuit Courts, along with 282 criminal-case juries. Together, these constitute almost three juries impaneled per available court day. Still, only 45 authorized judgeships handle all of these cases. If, as some argue, the bringing of these cases constitutes one of the major bulwarks of society against social upheaval and dissolution, **then a reasonable overall conclusion is that our judicial system has been functioning reasonably well and that the time of our Circuit Court judges is well spent.**

