Unequal Justice:

African Americans in the Virginia Criminal Justice System

Virginia Advisory Committee to
the United States Commission on Civil Rights

April 2000

A report of the Virginia Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commissioners. Statements and observations in the report should only be attributed to individual presenters at the factfinding meetings or the Advisory Committee, not to the Commission.

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Letter of Transmittal

Virginia Advisory Committee to the
U.S. Commission on Civil Rights

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The Virginia Advisory Committee is pleased to present for your consideration, *Unequal Justice: African Americans in the Virginia Criminal Justice System*. The Committee adopted this report by a unanimous vote, 15 to 0.

During 2 days of factfinding meetings and community comment sessions over March 6–7, 1997, in Hampton and Newport News, Virginia, the Committee heard statements from civil rights activists and interested area residents, law professors and students, local law enforcement and elected officials, and Virginia criminal justice agencies. This report summarizes their statements.

The Committee heard allegations that African Americans do not receive equal treatment in the Virginia criminal justice system. Charging that the administration of justice is affected by racial discrimination, critics of the system pointed to statistics that show heavy concentrations of African Americans in prisons as one result of police and prosecutors pursuing African Americans more aggressively than whites. The Committee investigated these serious allegations and found several unresolved problems that our recommendations address.

Restoring public confidence that equal treatment under law is a reality in Virginia's administration of justice is essential to maintaining respect for the State's justice system. We urge Commonwealth of Virginia and Federal Government officials to rededicate their commitments to equal justice and civil rights protection in the State.

Sincerely,

Roger A. Gavin, *Chairperson*
Virginia Advisory Committee

Virginia Advisory Committee to the U.S. Commission on Civil Rights

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Acknowledgments

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Introduction

The Virginia Advisory Committee to the U.S. Commission on Civil Rights began receiving allegations that African American males are more likely than others to face arrest because police target them as a group and that they receive harsher prison sentences because of racial bias by prosecutors and judges. The infamous "Hampton 4" episode of 1993 brought a highly publicized trial to the forefront that became a dividing line for community opinion about whether African Americans were mistreated in the justice system.

On Valentine's Day in 1993, a verbal altercation among patrons became a brawl at a popular bowling alley in Hampton, Virginia.[1] There were three injuries resulting from the quarrel: a white male's arm was broken, a white female's thumb was broken, and another white female suffered a head laceration.[2] Responding to the complaints by the injured whites, Hampton police arrested only four African American youths,[3] who later asserted that they were provoked by a racial epithet or fighting words.[4] Supporters of the arrested youth referred to them as "The Hampton 4."[5] Among the group was Allen Iverson, then a 16-year-old high school basketball star.[6] Later that year, Allen Iverson was tried as an adult, convicted of maiming by mob, and sentenced to 20 years in prison (15 years suspended).[7] A group called SWIS, an acronym for Michael Simmons, Samuel Wynn, Allen Iverson, and Melvin Stephens (Hampton 4), was largely responsible for turning the case into a cause célèbre.[8] National media, including *Sports Illustrated* magazine, the *Washington Post* and *USA Today* newspapers, and network television news anchor Tom Brokaw, covered the promising athletic career of Allen Iverson that appeared to be derailed by prison.[9] African Americans seemed to believe that Iverson was railroaded to jail because his accusers were white, a vestige of Old South racism.[10]

Amid the Hampton 4 controversy, the Virginia branch of the Southern Christian Leadership Conference (SCLC) asked the Commission to look into allegations that justice was miscar-

[1] Iverson v. Virginia, No. 1825-93-1, 1995 Va. App. LEXIS 526 (Va. Ct. App. June 20, 1995).

[2] Hampton Circuit Court's trial records in the Iverson case have been expunged as a result of a 1995 Virginia Court of Appeals decision to reverse the conviction and remand the case to the lower court where it was not retried. Hampton Police Department files in the case are confidential. The Committee relies on primary sources for verification of certain facts, using interviews it conducted in 1993. For example, Pat G. Minetti, chief of Hampton Police, and J.D. Spencer, investigator, Hampton Police, provided information about the complaints filed against the four black youths by the injured victims of the incident, which triggered the Hampton police's investigation and arrests of the black youth. U.S. Commission on Civil Rights, memorandum "Status of the Hampton Four (a.k.a. Allen Iverson Report)," Jan. 12, 1994, from Ki-Taek Chun, deputy director, Eastern Regional Office to Stuart J. Ishimaru, acting staff director, p. 5 (hereafter cited as Iverson Memo).

[3] Ibid.

[4] Mark J. Moore, "The Allen Iverson verdict: Was justice really served?" *New Journal & Guide* (Hampton, VA), July 16, 1993.

[5] Bryan Smith and Matt Murray, "200 rally in Hampton to show support for Iverson," *Daily Press* (Hampton, VA), Sept. 26, 1993.

[6] Ned Zeman, "Southern Discomfort," *Sports Illustrated*, Oct. 12, 1993, p. 46. For opposing viewpoint, *see* Ken Armstrong, "Errors fill magazine story on Iverson," *Daily Press*, Oct. 26, 1993, p. 1. *Sports Illustrated* published corrections to Zeman's article on Feb, 21, 1994, citing errors in courtroom testimony as the source of mistaken facts.

[7] Iverson Memo.

[8] Using leaflets to announce weekly meetings and protest marches in support of the Hampton 4, SWIS successfully brought public attention and sympathy for the defendants.

[9] Ned Zeman, "Courted and Convicted," *Sports Illustrated*, July 26, 1993, p. 26.

[10] Zeman, "Southern Discomfort," pp. 46–47.

ried in the case.[11] A team of three staff persons was dispatched to monitor and investigate the allegations.[12] The resulting staff memorandum summarized allegations made by community representatives and described unsettling issues in need of further investigation.[13] After various legal developments, the Hampton 4 were released and carried on with their lives.[14] Iverson was freed from jail in December 1993, after an extraordinary grant of conditional clemency by Governor Douglas Wilder, who became convinced that Iverson was treated unfairly.[15] Iverson's legal battle ended in 1995 when the appellate court overturned the conviction, returned the case to local prosecutors, and prosecutors declared *nol pros*[16] or discontinuance of prosecution.[17]

The Committee continued to receive complaints from African Americans about the justice system although the Hampton 4 controversy subsided. In response to complaints, the Committee held factfinding meetings in Hampton on March 6, and Newport News on March 7, 1997. The 2-day meeting included 22 invited speakers who addressed issues of African Americans in the justice system.

In addition to the invited panelists, the Committee also set aside 2 evening hours each day for community comment on civil rights concerns. Because of an unexpectedly large number of persons wanting to participate in the community comment session, the Committee used nearly twice the 4 hours allotted for community input. A total of 37 persons spoke or lodged complaints about the justice system, equal opportunity in education and employment, environmental justice, free speech, land use and property tax, pay raises for elected city officials, voting rights, and credit discrimination against African American farmers. About half of the community speakers prepared written statements supported by copies of court filings, complaint letters to government agencies or civil rights organizations, and news clippings. Although the span of topics that citizens presented covered important issues, this report treats only those that apply to the administration of justice.

Based on the information gathered at the public meetings and supplemented by followup research, the report is organized into three chapters and concludes with findings and recommendations. The first chapter, Citizen Complaints, summarizes problems that the Committee heard under four topical subheadings and remarks by special invited guests, such as U.S. Representative Robert C. "Bobby" Scott, Jr. (D-Va., 3rd Dist.). Chapter two, Racial Overrepresentation, covers the treatment of African Americans in arrests and sentencing, while chapter three, Law Enforcement Treatment of African Americans, covers responses by prosecutors and police officers to citizen complaints.

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[11] Iverson Memo.

[12] Shaun Brown, coordinator of the legal team, public and press relations of SWIS, recalled the circumstances surrounding the Hampton 4 controversy and the reaction caused by the Commission's investigation. She believed that the involvement of Federal officials looking into SWIS's allegations affected the way Allen Iverson was treated while in police custody. For example, Iverson expected to be transferred to a prison following conviction, but that was delayed while his appeal continued, allowing him to remain at a minimum security farm where he had been held during trial. SWIS was certain that prison confinement would expose Iverson to dangerous criminals and was grateful to the Commission for helping create a climate in which he could remain at a less threatening facility. Shaun Brown, telephone interview, Feb. 19, 1997.

[13] These issues included: (a) Why were only African Americans arrested and tried? (b) Why were the minors tried as adults? (c) Why were complaints of bias by the prosecutor and judge not investigated?

[14] Virginia Governor Douglas Wilder granted clemency in the form of furloughs to Allen Iverson in December 1993. Similar clemency was granted when applied for by Michael Simmons and Samuel Wynn in the next month. The fourth man in the case, Melvin Stevens, who was convicted of misdemeanor charges, had already been released and was attending school. Frank Green, "2 Iverson co-defendants also get partial clemency," *Richmond Times-Dispatch*, Jan. 16, 1994, p. C7.

[15] Ken Armstrong and Bob Kemper, "Wilder frees Iverson, grants conditional clemency to athlete," *Daily Press*, Dec. 31, 1993, p. 1.

[16] Common term for *nolle prosequi*. Lat. A formal entry upon the record by the plaintiff in a civil suit or, more commonly, by the prosecuting attorney in a criminal action, by which he declares that he "will not further prosecute" the case, either as to some of the defendants or all together. Henry Campbell Black, *Black's Law Dictionary*, sixth ed. (West Publishing Co., 1990), p. 1048.

[17] Bob Evans, "Hampton will not prosecute Iverson," *Daily Press*, July 27, 1995.

Chapter 1

Citizen Complaints

Many citizens believed that bias in the justice system was responsible for the unfair, harsher treatment African Americans receive. Their complaints and concerns are discussed under four headings: racial profiling, marginal fees paid to court-appointed attorneys, racial bias in sentencing, and restoration of civil rights for ex-felons.

The statement of Warthell Brown Isles illustrates the point that often issues and concerns are not neatly separable; they are intertwined. Starting with the observation, "I never thought I would get to bring my case before anyone except my close friends and colleagues,"[1] she offered the following summary:

Since 1984, Isles has had a criminal record that she believes was not deserved. She was arrested for forgery and expected to defend her innocence in court. Instead, she said, her attorney acted without informing her and arranged restitution payments as exchange for a plea bargain motion by prosecutors, which effectively closed the case. She fulfilled the court-ordered agreement, which stood as a conviction for petit larceny. She was surprised to be arrested and jailed, and she noted that the bank which processed the forged checks did not accuse her of criminal action. Prosecutors had applied a stereotype of African Americans as criminals and characterized her predicament without full investigation, she believed. Her attorney had represented her interests poorly and did not defend her innocence against prosecutors. She became a convicted felon in Virginia losing the right to register and vote, sit on a jury, serve as a notary public, or own a firearm.

Although she suffered deep embarrassment privately, Isles' career as a health administrator progressed despite her criminal record. She owned a luxury automobile, and in 1990 a white male driver passed her suddenly at the driveway of a Hampton bank. She spoke to him about reckless driving and that led to her second brush with the law, which was brought about, she believed, because police harass African Americans in luxury cars. The aggressive driver was actually a plainclothes police officer, who checked her license plate and learned of her prior conviction. Later that day three police cars followed her closely, and she became fearful of the police. She approached them for an explanation and saw the driver she had encountered earlier. He charged her with abusive language in connection with the morning's incident. Unsuccessful in court, in part due to her prior conviction she said, she acquired a second conviction.

In 1991, Isles applied to the Governor for pardon and restoration of civil rights. Her request remains unanswered.[2]

Racial Profiling

The drug courier profile includes a stereotype of African American or Hispanic drivers in late model luxury cars, causing serious problems for law-abiding African Americans or Hispanics when they drive luxury cars such as Jaguar or Mercedes Benz. Of the four stories of traffic stops due to profiling presented to the Committee, three of the drivers owned the same brand of British-made luxury automobile. These drivers believed that their cars contributed to police noticing them, placing them under suspicion, and treating them aggressively.

Here is the story of Navy Lt. Commander Robert Lee Cobb, a Vietnam veteran and engineer trained in radar calibration. Cobb said that he had been profiled on several occasions in his British luxury car.[3] On one occasion, when he received a speeding citation from a Norfolk police officer, he decided to challenge it because,

[1] Warthell Brown Isles, statement before the Virginia Advisory Committee to the U.S. Commission on Civil Rights, factfinding meeting, Mar. 7, 1997, Newport News, VA, pp. 202–12. (hereafter cited as Transcript, vol. II).

[2] Ibid.

[3] Robert L. Cobb, statement, Transcript, vol. II, pp. 190–201.

this time, his knowledge of radar made him especially dubious of the charges.[4] He followed the established complaint process and sent copies to the mayor of Norfolk.[5] As a complainant, he was unsuccessful in his protest. He believed that despite flaws in the police statement, the judge in traffic court decided in favor of the police officer in order to maintain some sense of integrity for the police in the eye of the general public.

The Norfolk Police Department's commanding officer in response to Cobb's complaint against the officer replied:

There is insufficient evidence to support an allegation of misconduct by any member of this department at this time. Therefore, no further action will be taken.[6]

He added that because police seemed intent on using racial profiling, he and his wife were fearful that they could be the next victims of police beating or drug planting. His encounters with police were disconcerting, on one hand, because he felt a need to avoid entrapment and troubling, on the other hand, because racial profiling was an assault on his dignity. He said:

I have had police to run up along side me, look over at me, hoping that I would speed away or give them some reason to stop me. I was targeted because of the complexion of my skin. And it's not right.[7]

Joyce Hobson, activist, schoolteacher, and former president of the SWIS Legal Defense Fund, told the Committee that the community comment session created a rare opportunity for public venting of sentiments about police practices.[8] She discussed two incidents of police misconduct she experienced. In a retrospective account of the Hampton 4 case, she said:

As for my personal harassment [by police] as spokesperson of SWIS Legal Defense Fund, it came in the following forms: verbal, written, wiretapping of my home telephone, searching of my school records, being followed by police officers, a death threat. Mind you, that these tactics have not stopped: just last week I was followed by a policeman.[9]

For several days prior to the Hampton meeting, she was followed by police patrols.[10] She believes the harassment was an attempt by the police to intimidate her.[11]

Profiling complaints were given to the Committee as examples of the justice system allowing police officers to act upon prejudicial stereotypes about African Americans. The seriousness of a traffic stop is in its potential for escalation.

Marginal Fees Paid to Court-appointed Attorneys

As in other parts of the Nation, many low-income defendants in Virginia are African Americans. They must bear the financial costs of litigation with few available resources and, when unable to afford legal counsel, are asked by the court to accept a court-appointed attorney to represent them.

According to Virginia law, the State provides caps on fees paid to court-appointed attorneys regardless of the time spent by the attorney.[12] The general district court that tries misdemeanor charges provides $100 for attorney fees in defense of an indigent in a criminal case.[13] The circuit court tries misdemeanor and felony charges that may lead to confinement in jail or

[4] Ibid.

[5] Capt. B.R. Hierstein, commanding officer, Special Enforcement Division, Norfolk Police Department, letter to Robert Lee Cobb, May 10, 1996, Eastern Regional Office files.

[6] Ibid.

[7] Robert L. Cobb, statement, Transcript, vol. II, p. 192.

[8] *See* Intro., note 8.

[9] Joyce Hobson, statement before the Virginia Advisory Committee to the U.S. Commission on Civil Rights, factfinding meeting, Mar. 6, 1997, Hampton, VA, pp. 255–58 (hereafter cited as Transcript, vol. I).

[10] Ibid.

[11] Ibid.

[12] Compensation to counsel appointed to represent an indigent accused in a criminal case may not exceed $100 for defense of a single charge against the indigent through its conclusion; thereafter, compensation for additional charges against the same accused also conducted by the same counsel is allowed in circuit court as follows: (i) to defend a felony charge that may be punishable by death in an amount deemed reasonable by the court; (ii) to defend a felony charge that may be punishable by confinement in the State correctional facility for a period of more than 20 years, or a charge of violation of probation for such offense, a sum not to exceed $882; (iii) to defend any other felony charge, or a charge of violation of probation for such offense, a sum not to exceed $318; and (iv) to defend any misdemeanor charge punishable by confinement in jail of a charge of violation of probation for such offense, a sum not to exceed $132. Va. Code Ann. § 19.2-163, accessed at <http://leg1.state.va.us/cgi-bin/legp504.exe?000+19.2-163>, Nov. 1, 1999.

[13] Ibid.

prison. Court-appointed attorney fee caps for such charges are $882 if conviction may be punishable by confinement in prison for more than 20 years, $318 for other felony charges, and $132 for misdemeanor charges punishable by confinement in jail.[14] This schedule of fees places Virginia the lowest in rank among the jurisdictions which have caps. Although Mississippi is the next lowest in rank, its $1,000 cap for court-appointed attorney fees is 10 times that for Virginia's district court and Mississippi also allows for the payment of expenses beyond the cap at the discretion of the court, not to exceed $25 per hour.[15]

Virginia attorneys affected by the caps would like changes, including proposed 20–40 percent increases supported by the Judicial Council of Virginia as well as the Virginia State Bar, the Virginia Bar Association, the Virginia Trial Lawyers Association, and additional interested organizations.[16] At a time when competent legal counsel can command $235 per hour, the $100, $132, $318, and $882 caps for court-appointed attorney compensation fall far too short by comparison.[17]

Although defense attorneys often enter into these cases for reasons of public service, the financial pressure of the State's fee caps on their livelihood makes it difficult for them to provide energetic, competent counsel for poor clients, of whom African Americans are the vast majority.[18] According to an informal survey of lawyers conducted by the Virginia College of Criminal Defense Lawyers in 1999, many court-appointed attorneys acknowledged that the time and attention they devote to various cases often relate to the amount of payment they expect, leaving indigent clients underserved.[19] Estimating the cost of business overhead at an average $35–50 per hour, the survey respondents pointed out that within 2 or 3 hours their overhead costs exceed the compensation allowed for misdemeanor charges.[20] The higher caps for attorney fees associated with felony charges also cover only a small fraction of a court-appointed attorney's costs for what are often complex lengthy trials on such charges. The potential out-of-pocket cost is a financial disincentive for court-appointed attorneys.[21] Dennis W. Dohnal, chair of the Ad Hoc Committee on Court-Appointed Counsel Fees of the Virginia State Bar, said:

> The criminal justice system in the Commonwealth of Virginia is designed to fail poor people.[22]

Most of the attorneys surveyed seldom visited the crime scene or interviewed witnesses who had not come to their offices, or used computer-assisted legal research, although they are typical steps in cases for retained clients.[23] The attorneys were so affected by the potential financial loss associated with appointed cases that they seldom took time to examine information about prospective jurors prior to jury selection, although this could be readily done in a visit to the clerk of the court, and could be beneficial for their indigent client.[24]

The public attitude about this issue was expressed by Frederick Carter, who was in the audience during the community comment session of the Committee's factfinding meeting:

> Unless you are charged with a capital offense, $100 is what the [court-appointed] attorney is forced to work with . . . they do not even give money for investigation. And often, hiring an investigator is critical to get the facts. That could be an innocent man whose whole life gets put on hold for a year.[25]

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[14] Ibid.

[15] Dennis W. Dohnal, chair, Ad Hoc Committee on Court-Appointed Counsel Fees, Virginia State Bar, letter to Edward Darden, Oct. 29, 1999, attachment, "Summary Re: Court-Appointed Fees Issue" (hereafter cited as Dohnal letter).

[16] Ibid.

[17] *1998 Survey of Law Firm Economics* (Newtown Square, PA: Altman Weil Publications, Inc.). The highest earning partners/shareholders (ninth decile of compensation rates) of 83 law firms in nine Southern States earned $235 per hour, associates earned $165 per hour, and paralegal assistants earned $85 per hour. Even higher for all States, partners/shareholders earned $290 per hour, associates earned $210 per hour, and paralegal assistants earned $100 per hour.

[18] Frederick Carter, statement, Transcript, vol. II, pp. 165–78.

[19] John Zwerling, vice chair, Indigent Defense Counsel Committee of the National Association of Criminal Defense Lawyers, telephone interview, Oct. 27, 1999 (hereafter cited as Zwerling telephone interview).

[20] Ibid.

[21] Ibid.

[22] Dohnal letter.

[23] Ibid.

[24] Zwerling telephone interview.

[25] Frederick Carter, statement, Transcript, vol. II, pp. 166–68.

Supporting the principle of court-appointed counsel, however, Carter stated that society has a moral duty to protect innocent persons from imprisonment.[26] Not only are current fee caps woefully inadequate for a fully developed defense in court, but indigent African Americans are going to jail at a cost to taxpayers of $20,000 per year who might have been acquitted if they had enough to pay private counsel.[27]

Judicial Bias

Four speakers complained of racial discrimination by judges. A Hampton Jail inmate, Hubert James, who participated in the community comment session by mail, asserted that the judge in his trial was:

> prejudiced against blacks and long-hairdo hippie types and minorities that appear before him. . . . He is quicker to sentence blacks and minorities with stiffer and more severe sentences . . . when dealing with whites, he suspends and reinstates or places them in drug programs, returning them back to society.[28]

Similarly, Troussant D. Lett wrote from his cell in the Williamsburg-James City Jail that he had encountered two circuit court judges who delivered racially biased treatment and harassment from the bench.[29] He charged that his formal complaints against the sitting judges were dismissed by the Judicial Inquiry and Review Commission (JIRC) without an investigation.[30]

Murray L. Steinberg of Richmond, president of the Family Resolution Council, also complained about judicial bias, claiming not racial prejudice but bias against the cause of fathers' rights.[31] He was not an inmate although he had been jailed three times.[32] The jail stays lasted up to 60 days as punishment for tardiness under the terms of a child visitation schedule that a divorce court ordered him to follow as the noncustodial parent.[33] This fathers' rights advocate had filed two complaints with the JIRC, alleging judicial bias.[34] Reporting that both complaints were dismissed, he said about the process:

> The Judicial Inquiry and Review Commission (JIRC) . . . has recommended a judge be removed only three times in 26 years. Only five times has the JIRC recommended a judge be censured. Either we have had the best judges in the country or the worst system of review.[35]

Mr. Steinberg, though not a lawyer by training, became familiar with legal forms through reading the law and filed actions in district and Federal courts in his causes.[36] In response to one such action, an opposing attorney complained to the Virginia Bar Association (VBA).[37] This complaint led to legal action by the VBA and the Virginia Attorney General, which brought Steinberg a conviction on charges of unauthorized practice of law.[38] He summed his view saying, "We have a system of foxes guarding the fox house."[39]

Working mother Patricia Smith of Newport News made a plea for her jailed son Gregory Smith, claiming judicial bias. Gregory Smith was a first-time offender, when despite his denial of wrongdoing was convicted of three felonies in connection with a series of armed robberies.[40] His sentences for the crimes amounted to a lifetime, and he was not eligible for parole as a thrice-convicted felon.[41] As an example of the unequal treatment African Americans receive, Ms. Smith described the case of a John Doe, a 23-year-old white man about the same age as her son, whose father was then the Chesterfield County supervisor (Midlothian district in suburban Richmond).[42] John Doe too was charged with

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[26] Ibid.

[27] Ibid.

[28] Hubert James to Jessie Rattley, Mar. 10, 1997, Eastern Regional Office files.

[29] Troussant D. Lett to Jessie Rattley, Mar. 17, 1997, Eastern Regional Office files.

[30] Ibid.

[31] Murray L. Steinberg, statement, Transcript, vol. I, pp. 258–64.

[32] Ibid.

[33] Ibid.

[34] Ibid.

[35] Murray L. Steinberg, affidavit, Mar. 6, 1997, p. 4, Eastern Regional Office files.

[36] Ibid.

[37] Ibid., pp. 2–3.

[38] Ibid.

[39] Ibid., p. 4.

[40] Patricia Smith, letter to Virginia Division of Probation and Parole, Mar. 20, 1997, Eastern Regional Office files (hereafter cited as Smith letter).

[41] Ibid.

[42] Alan Cooper, "Chesterfield supervisor's son gets 23-year term for robberies," *News Leader* (Richmond, VA), Dec. 15,

multiple felonies in connection with armed robberies.[43] The judge, with no opposition by prosecutors, decided that the ends of justice would be served by convicting John Doe of a lesser crime than a third serious felony that would have dissolved any eligibility for parole.[44] According to Ms. Smith, the prosecutor and judge justified the unusual leniency for the supervisor's son on grounds that the Virginia General Assembly's intent in passing the three-time loser law was not clear.[45] They also concluded that legislative changes needed to be made to accommodate cases where multiple charges arise from closely timed events.[46] She saw a high degree of similarity in the two crimes, but radically contrasting punishments.[47] She was pointing out this uneven application of the law that African Americans like her son received, she said, in hopes that the ends of justice might reach her son too.[48]

Restoration of Civil Rights for Ex-felons

Changes in law enforcement policy, drug markets, and violent crime increased the pressure for incarcerations in the mid-1980s and 1990s.[49] Accordingly, the composition of prison populations also shifted during the period to become heavily composed of minorities, and disproportionately African American.[50] The Sentencing Project, a Washington, D.C., based research group, reported that 51 percent of State and Federal prison populations is African American and 15 percent Hispanic (of any race), with 90 percent of the total prison population being confined in State institutions.[51] In 12 States and the District of Columbia, African Americans were incarcerated at a rate more than 10 times that of whites.[52] Virginia is one of 38 States and the District of Columbia in which racial disparity in the rate of incarceration has worsened since 1988.[53] For example, the black-white ratio nationwide was 6.88 in 1988, increasing to 7.66 in 1994, whereas this ratio in Virginia was 6.38 in 1988, lower than the national average, but increased to 8.16 in 1994, far exceeding the national average of 7.66.[54]

Unlike in most other States, Virginia does not restore voting and other civil rights to ex-felons upon their return to society.[55] Whenever convicts are released from prison custody, they receive a pamphlet from the Secretary of the Commonwealth (SOC) advising them of their status:

> If you have ever been convicted of a felony in Virginia or elsewhere, you may not vote, hold public office, or serve on a jury in Virginia. Likewise, you have lost the right to serve as a Notary Public. There is usually only one way to have your voting and other civil rights restored and that is by an act of the Governor of Virginia.[56]

There were 11 former felons at the community comment sessions of the factfinding meeting who had applied and were waiting to hear from the Governor about regaining their rights denied to them under State law.[57] One petitioner was still waiting after 10 years of no response from the Governor's office, another for 8. They had no choice but to interpret the unanswered applications as tantamount to denial. Without feedback, these petitioners had no way of knowing the strength or weakness of their pleas. They felt

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1990, Metro, p. 13 (ceased publishing in 1992). *Also* Mitch Zernel, "Man convicted of larceny instead of armed robbery," *Richmond News Leader*, Jan. 16, 1991, Metro, p. 16.

[43] Cooper, "Chesterfield supervisor's son," p. 13.

[44] Ibid.

[45] Zernel, "Man convicted of larceny," p. 16.

[46] Ibid.

[47] Smith letter.

[48] Ibid.

[49] Jerome G. Miller, "African American Males in the Criminal Justice System," *Phi Delta Kappan*, vol. 78, no. 10 (1997), pp. K1–12.

[50] Ibid.

[51] The Sentencing Project is a national nonprofit organization that promotes sentencing reform and conducts research on criminal justice issues. The Sentencing Project's information is based on 1994 data from the U.S. Bureau of Justice Statistics. Although data for 1996 have been released, neither the Sentencing Project nor other sources have calculated the information into rates of incarceration. Because the rates vary only slightly year to year, it is likely that 1996 rates will be similar to those for 1994. Marc Mauer, assistant director, The Sentencing Project, telephone interview, July 7, 1999.

[52] Marc Mauer, *Intended and Unintended Consequences: State Racial Disparities in Imprisonment* (Washington, DC: The Sentencing Project, 1997), p. 3 (hereafter cited as Mauer report).

[53] Ibid.

[54] Ibid.

[55] Virginia Division of Probation and Parole, "Secretary of the Commonwealth to All Persons Formerly Convicted of Felonies," letter to ex-felons, Eastern Regional Office files.

[56] Ibid.

[57] Ibid.

strongly that they were owed a response or an explanation from the Governor's office or its designee.

Eldora G. James believed she had strong reasons for the Governor to grant clemency to her son, Delano Graves, then an inmate at the Nottoway Prison and a former Norfolk State football player.[58] She was seeking pardon for medical reasons.[59] Her son, who was serving a 101-year sentence, had been beaten and harassed from the first days of his incarceration, she said.[60] After a squabble began on the prison basketball court, a gang of inmates descended on Graves with a baseball bat, and he sustained a brutal beating.[61] His injuries were so severe and medical attention so limited that he now has the mental capacity of a 5-year-old.[62] Prison medical staff predicted that another blow to the head would kill her son.[63] Ms. James is fearful and desperately pleaded to the Governor for her son's removal from prison, but received no response. Although the treatment she received is hardly different from that of others seeking clemency, she wondered nonetheless why government officials displayed such insensitivity.[64]

Regarding the process of applications for civil rights restoration, the Committee learned that applicants' pleas for pardon are first screened by the Governor's office, and then investigated by the SOC, who upon investigation refers them to the Governor.[65] Once with the Governor, there are no procedures or time restraints that the Governor must follow.[66] Applications that the Governor approves go back to the SOC for further processing.[67] That office notifies the applicants and maintains permanent records of all restorations that serve as the official source for status inquiries.[68] For example, voter registrars contact the SOC before allowing anyone with a criminal record to register.[69]

Disenfranchisement of former felons is widespread in Virginia. The prison population was 30,380 inmates in 1998.[70] In the previous year 10,072 inmates left prison and returned to society.[71] The SOC began keeping computerized files in 1985, and a total of 32,500 requests for pardon have been received since then.[72] This represented an average 2,500 applications per year. Only 7.5 percent of all the applications for pardon (4,741 restorations out of 62,500 over the past 25 years) have been granted.[73]

Once lost, the right to vote is difficult to regain through a restoration process that is time consuming and rarely successful. Concerned about this extensive disenfranchisement and its political consequences, Virginia State Senator W. Henry Maxwell, who represented Hampton and Newport News, estimated that 245,000 Virginians cannot vote because of criminal convictions and 60 percent of them (145,000) are African American males.[74] He pointed out that the justice system has a profound impact on African American political rights.[75] With a large portion of its community unable to vote because of criminal records, the political strength of African Americans, he believed, was being sapped to a degree which was once the result of racist poll taxes and Jim Crow laws. He observed:

> One in three African American males between the ages of 20 and 29 is in prison or under court supervi-

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[58] Eldora G. James, letter to Virginia Advisory Committee, Mar. 6, 1997, Eastern Regional Office files (hereafter cited as James letter).

[59] Ibid.

[60] Ibid.

[61] Ibid.

[62] Ibid.

[63] James letter, attachment A, Leonard E. Colvin, "Mother pleads for release of son after beating in prison," *New Journal & Guide*, July 15, 1997, p. 1.

[64] Ibid.

[65] Troy Porter, Office of the Secretary of the Commonwealth of Virginia, telephone interview, Oct. 27, 1998 (hereafter cited as Porter interview).

[66] Ibid.

[67] Ibid.

[68] Ibid.

[69] Ibid.

[70] Shirley Hughes, Virginia Department of Corrections, telephone interview, Oct. 27, 1998.

[71] Ibid.

[72] Porter interview.

[73] Ibid.

[74] W. Henry Maxwell, statement, Transcript, vol. I, pp. 155–64, supplemental material supplied by Brenda H. Edwards, senior research associate, Commonwealth of Virginia, Division of Legislative Services, letter to Edward Darden, civil rights analyst, U.S. Commission on Civil Rights, Apr. 20, 1999 (hereafter cited as Edwards letter). Edwards letter, attachment A, "Status Report: Joint Subcommittee Studying the Status and Needs of African-American Males in Virginia," S.J. Res. 189 (1998), p. 5.

[75] W. Henry Maxwell, statement, Transcript, vol. 1, pp. 155–64.

sion [in Virginia] . . . and such overrepresentation increases at each stage in the criminal justice system.[76]

Reflecting on the high rate of incarceration of African Americans, which had devastating effects on the jailed individuals and their communities, Virginia State Senator Maxwell restated the conclusion of the Sentencing Project:

[As] prison becomes a common experience for young males, its stigmatizing effect is diminished and current crime control policies may actually be increasing the severity of the problem.[77]

Dismayed that so many young African Americans will spend prime years of their lives in prison, Virginia State Senator Maxwell believes the challenge before society is to understand the socioeconomic dynamic involved in the current crisis, its political component, and defend the next generation against an intergenerational cycle of criminal influences and political disconnection.[78]

Carrying this concern into the Virginia General Assembly, Virginia State Senator Maxwell cosponsored legislation creating the Joint Subcommittee Studying the Status and Needs of African-American Males in Virginia (Joint Subcommittee).[79] The Joint Subcommittee was established by the 1996 General Assembly and was continued each year to the present.[80] Its wide-ranging mandate includes review and assessment of historical, cultural, socioeconomic, familial, psychological, and political dynamics, as well as the effects of stereotyping on the African American community and society's image of African American males in the media.[81] Through a series of studies, the Joint Subcommittee intends to examine health problems, high school graduation rates, advanced instruction in secondary schools and higher education, standardized educational testing, employment opportunity, economic independence, and family violence as these affect African American males in Virginia.[82] Regarding the justice system, the Joint Subcommittee's goal is to:

establish a demographic profile of African American males in Virginia, including their representation in state and Federal correctional facilities. . . . Compare the status of African American males in Virginia to white, Asian, and Hispanic males; and provide a comprehensive evaluation of the status and needs of African American males in Virginia, and recommend appropriate and feasible alternatives [to assist them].[83]

On November 10, 1998, the Joint Subcommittee convened a statewide symposium on criminal justice, "Justice Without Race: Building a New Consensus."[84] Among a spate of proposed legislation resulting from the Joint Subcommittee's briefings and meetings is H.J.R. 605, a proposal to study the voting rights of felons.[85] The bill was supported by the subcommittee during the 1999 session.[86] While most legislative proposals arising from the Joint Subcommittee's effort have not been enacted, a recent bill geared to curbing racial profiling by police passed out of the subcommittee in 1999.[87] The measure established a joint committee to study traffic stops of minority drivers and certain other police practices.[88]

Remarks by U.S. Representative Robert C. "Bobby" Scott, Jr.

Representative Robert C. "Bobby" Scott, Jr., whose congressional district covers much of the Peninsula, talked about economic justice, the "war on drugs," its racial aspect and heavy societal costs.[89]

Representative Scott said that there was too little relief for underemployed and unemployed persons, ill-housed and homeless families, and

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[76] Ibid., p. 158.

[77] Marc Mauer and Tracy Huling, *Young Black Americans and the Criminal Justice System: Five Years Later* (Washington, DC: The Sentencing Project, October 1995), p. 17.

[78] W. Henry Maxwell, statement, Transcript. vol. I, pp. 155–64.

[79] Ibid.

[80] Edwards letter.

[81] Edwards letter, attachment A, "Status Report: Joint Subcommittee Studying the Status and Needs of African-American Males in Virginia," S.J. Res. 189 (1998).

[82] Ibid.

[83] Ibid.

[84] Ibid.

[85] Edwards letter, attachment B, H.J. Res. No. 605, 1999 Session.

[86] Ibid.

[87] Edwards letter, attachment D, Virginia General Assembly, H.J. Res. No. 736, 1999 Session.

[88] Ibid.

[89] Robert C. Scott, statement, Transcript, vol. II, pp. 7–56.

undereducated and unschooled youth.[90] Regarding the administration of justice, he was critical of the Virginia General Assembly for passing legislation that required convicted felons to serve at least 85 percent of their sentences before release, abolished parole, and imposed mandatory life sentences for third-time felons.[91] This so-called truth in sentencing policy, he believed, is swelling prisons with low-income people and diverts resources needed to address difficult social problems.[92] He urged Virginians to reorder their priorities and direct resources to economic issues that would alleviate some of the financial pressures on poor and moderate-income families.[93] Helping persons at the bottom of the economic ladder will bring them greater access to a living wage, especially for African Americans, and lessen the temptation to engage in criminal behavior to alleviate poverty.[94]

Representative Scott recalled that in 1986 and 1988, as a result of congressional legislation, the Federal criminal code provides inordinate penalties for first-offense cocaine trafficking, penalizing offenders for possession of 5 grams of crack cocaine the same as possession of 500 grams of the powder form:[95] (a) 5-year mandatory minimum penalty for possession of 5 grams or more of crack cocaine or 500 grams or more of powder cocaine; (b) 10-year mandatory minimum penalty for possession of 50 grams or more of crack cocaine or 5,000 grams of powder cocaine.[96] An overcriminalization of crack cocaine in the war on drugs has been an unmitigated disaster for young African Americans. This group is almost exclusively among the prisoners rounded up in police sweeps of open-air crack cocaine markets.[97] These captives in the war on drugs seldom include whites, who tend to conduct their illicit trade behind closed doors, inconspicuous to police and passersby.[98]

According to Representative Scott, a ranking member of the House Judiciary Committee, the Congress was aware that the crack-powder sentencing disparity would overburden low-income African Americans, but was unmoved by all arguments against the measures. Nor was it ready to take advice from the congressionally established U.S. Sentencing Commission, which concluded:

> While some aspects of crack cocaine use and distribution suggest that a higher penalty for crack offenses compared to powder cocaine offenses is appropriate, the present 100-to-1 quantity ratio is too great. . . .[99]

Representative Scott observed that increasing numbers of African Americans come under criminal justice supervision as a result of drug offenses.[100] There was, however, little understanding of the drug distribution process into which these individuals become involved.[101] A recent study of young men who were involved in the Washington, D.C., drug trade provided an insight into the allure of drug trafficking.[102] Researchers found, somewhat surprisingly, that two-thirds of the offenders had been employed at the time of arrest, primarily at low-wage jobs with a median income of $800 a month.[103] Drug dealing became a type of moonlighting for some of these young men, with the daily sellers achieving median earnings of $2,000 a month in drug sales.[104] A lack of viable options to escape poverty leads vulnerable and desperate persons to high risk taking and disastrous misjudgment of the effects of illegal activity and jail on their lives.

[90] Ibid.

[91] *See* discussion of sentencing, pp. 13–14, Ibid.

[92] Ibid.

[93] Ibid.

[94] Ibid.

[95] U.S. Sentencing Commission, *Special Report to the Congress: Cocaine and Federal Sentencing Policy (as directed by section 280006 of Public Law 103-322)*, February 1995, p. iii (hereafter cited as *Special Report*).

[96] Ibid.

[97] Carl J. Wyche, statement, Transcript, vol. II, pp. 61–138.

[98] Ibid.

[99] *Special Report.*

[100] Robert C. Scott, statement, Transcript, vol. II, pp. 7–56.

[101] Ibid.

[102] Miller, "African American Males," p. K2.

[103] Ibid.

[104] Mauer report, p. 15.

Chapter 2

Racial Overrepresentation

Arrests

Arrests are commonplace in most of the Nation's urban minority areas. Writing about African American males, Jerome E. Miller found that in 1992 on any given day in the District of Columbia, 42 percent of nonwhite adult males ages 18 to 35, were in jail, in prison, on probation/parole, out on bond, or being sought on arrest warrants.[1] A similar survey in Baltimore showed that 56 percent were under justice supervision.[2] Miller observed:

> Very little of this pandemic jailing had to do with serious or violent crime. It was mostly directed at those accused of offenses against "public order" and other lesser offenses . . . Absent some unusual condition, in very few of these cases would a white person of moderate means, with adequate legal representation, expect to be jailed.[3]

Virginia arrests were also disproportional by race, according to information from the Virginia State Police.[4] Table 1, based on information from State police statistics for 1997, shows arrests divided into the most serious crimes, called part I felonies, and the remaining crime categories, called part II felonies. African Americans were 51 percent for part I and 40 percent for part II arrests, although African Americans were just 20 percent of Virginia's population.[5]

Arrest is the first of three stages of the administration of justice system, followed by prosecution, and sentencing, if found guilty. In each of the three stages of the administration of justice system, the involvement of African Americans tends toward overrepresentation. This tendency toward African American overrepresentation in the justice system needs to be understood at each stage of the administration of justice system because government officials use discretion at each stage that may affect the treatment of individuals.

Racial bias may enter inadvertently into (1) police decisions to arrest or release individuals, (2) Commonwealth's attorneys' judgments on what charges to prosecute or drop, and (3) judicial sentencing and prison terms. Discretionary decisions influenced by subtle inadvertent racial discrimination are barriers to fairness in the administration of justice as pernicious as overt actions of racial prejudice.

Nationwide 43 of every 100 individuals arrested for felonies either did not have to face prosecution because charges against them were not pressed or their cases were dismissed outright at the first court appearance.[6] Virginia officials would like to have similar statistics, but were unable to generate such data.[7] According to James McDonough, who directs the Criminal Justice Research Center of the Virginia Depart-

[1] Jerome G. Miller, "African American Males in the Criminal Justice System," *Phi Delta Kappan*, vol. 78, no. 10 (1997), p. K2.

[2] Ibid.

[3] Ibid., p. K4.

[4] Virginia Department of State Police, Uniform Crime Reporting Section, *1997 Crime in Virginia*, accessed at <http://www.vsp.state.va.us/zucr46.html>, Apr. 8, 1999, pp. 1–2.

[5] U.S. Department of Commerce, Economic and Statistics Administration, Bureau of the Census, *Statistical Abstract of the United States 1998*, 118th ed., October 1998, p. 34.

[6] Miller, "African American Males," p. K1.

[7] McDonough explained that organizing the separate data sets of the justice system into a single database is conceivable but would require case-by-case information gathering. Virginia averages 250,000 felony arrests per year, and each of these for as many years as needed would have to be handled individually for information. The enormous staff and fiscal resources that would be consumed makes the option impossible. James McDonough, director, Criminal Justice Research Center of the Department of Criminal Justice Services, Commonwealth of Virginia, telephone interview, July 29, 1999 (hereafter cited as McDonough interview).

ment of Criminal Justice Services, Virginia police departments, Commonwealth's attorneys, courts, and correctional institutions use incompatible recordkeeping systems for tracking cases.[8] The recordkeeping systems vary in the type of information that they produce.[9] Not only is the information different for each agency, the information they collect is difficult to retrieve because agency archives are often stored in paper documents and incomplete.[10] The records of the Virginia criminal justice system are fragmented, and analysis of racial disparity across the agencies' cases will require an extraordinary amount of time spent locating, compiling, and analyzing data from files across the Commonwealth.[11] This information gap means that Virginia State officials cannot generate the type of data that will foster public confidence in law enforcement by providing objective analysis of racial disparity statistics in the justice system. Deprived of critical data, the Virginia public is left to wonder about the meaning of unexplained disparity statistics. For example, in 1997, 57 percent of all arrests were whites compared with 42 percent African Americans, but whites were only 32 percent of the prison population while African Americans were 67 percent.[12]

McDonough believed that it might be necessary for some State-level office to promulgate uniform standards for recordkeeping. The standards would aim to achieve statewide standardization of criminal justice records. Standardized records could be used to address civil rights questions such as whether race is a factor in patterns of practice involving prosecutor discretion.[13] According to him, there is no Virginia agency with powers to superintend Commonwealth's attorneys, who are locally elected officials.[14] Since the Commonwealth's Attorneys' Services Council (CASC) prepares newly elected Commonwealth's attorneys to run their offices with short-term courses on administrative procedures, he suggested the CASC may be in the best position to develop administrative standards for Commonwealth's attorneys, if Commonwealth's attorneys choose to develop such standards.[15] Commonwealth's attorneys have not developed a system for statewide cooperation, tending to focus on their local jurisdiction.[16]

Juvenile Crime

Donald Faggiani, senior researcher of the Criminal Justice Research Center of the Virginia Department of Criminal Justice Services (CJRC), highlighted juvenile crime, notably murder, as an alarming aspect of racial disparity in the justice system.[17] In addition, more juveniles are arrested for serious crimes at younger ages and for firearms use.[18] The peak age of juveniles arrested for murder decreased from 22 in 1984 to 19 in 1994, and juveniles were 12 percent of arrests for violent crimes in 1986 but 16 percent in 1994.[19]

Between 1986 and 1994, 439 juveniles were arrested for murder in Virginia.[20] Approximately 80 percent of the juveniles arrested were African American, 19 percent were white or Mexican American, and 1 percent Asian or Pacific Islander.[21] CJRC determined that almost 54 percent of the juveniles arrested for murder were arrested for killing an acquaintance, and firearms were used by almost 82 percent of those juveniles arrested.[22]

Of these juveniles convicted in circuit court in Virginia from 1986 through 1994, 240 were convicted of murder and 2,791 were convicted for offenses other than murder, totaling 3,031 juve-

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[8] Ibid.

[9] Ibid.

[10] James McDonough letter to Edward Darden, Nov. 17, 1999 (hereafter cited as McDonough letter).

[11] McDonough interview.

[12] Donald Faggiani, statement before the Virginia Advisory Committee to the U.S. Commission on Civil Rights, factfinding meeting, Mar. 6, 1997, Hampton, VA, pp. 37–91 (hereafter cited as Transcript, vol. I), exhibit A, "Violent Crime and Drug Arrest Trends in Virginia," fig. 20.

[13] McDonough interview.

[14] Ibid.

[15] McDonough notes that it is not clear whether the CASC could develop standards for Commonwealth's attorneys under current law. McDonough letter.

[16] McDonough interview.

[17] Donald Faggiani, statement, Transcript, vol. I, pp. 37–92, exhibit B, Commonwealth of Virginia, Department of Criminal Justice Services, Criminal Justice Research Center, *Juvenile Murder in Virginia: A Study of Arrests and Convictions*, by Donald Faggiani and Thomas J. Dover (Richmond, VA: July 1996), p. 2 (hereafter cited as *Juvenile Murder*).

[18] Ibid., p. 26.

[19] Ibid.

[20] Arrests for murder were over 11 times more likely to produce a male suspect than female. *Juvenile Murder*, p. 10.

[21] Ibid.

[22] Ibid., p. 11.

niles tried in circuit court and convicted.[23] Of murder convictions, 76.3 percent were African American males and 17.9 percent were whites.[24] Among the other convictions, 68.1 percent were African American and 29.7 percent were white.[25]

Sentencing

In 1982 the Governor of Virginia appointed the Special Task Force on Sentencing in anticipation of reform that was then under study in Virginia and also a focus of debate across the Nation.[26] When the Special Task Force on Sentencing issued its final report in December 1983, it concluded that wide variations on the use of incarceration and length of prison terms for similar offenses and offenders existed across Virginia.[27] It also concluded that these variations were partially attributable to factors like the race and socioeconomic circumstances of the offender and the location of the court.[28] In 1985 the Judicial Conference of Virginia reviewed the task force's findings and decided to pursue the development of voluntary sentencing guidelines as a device to correct for unwarranted sentencing disparity.[29]

By 1989 a pilot project of the Judicial Conference produced the Virginia Sentencing Guidelines.[30] Development of the guidelines was based on analysis of the largest and most comprehensive database of its kind in the country: 33,573 felony sentences were analyzed.[31] Richard P. Kern, study director of the guidelines pilot project for the Judicial Conference, reported that voluntary compliance of sentencing guidelines significantly decreased racial disparity in sentencing.[32] More than 75 percent of sentencing in the pilot project conformed to the Virginia Sentencing Guidelines and were race neutral.[33] In 1991 the Virginia Supreme Court approved the sentencing guidelines for judicial practice everywhere in the State.[34]

Three years later, in 1994, the Virginia General Assembly passed sweeping "truth-in-sentencing" legislation that transformed the system by which felons are sentenced and serve prison time in the Commonwealth.[35] This legislation created a new system of sentencing guidelines and the Virginia Criminal Sentencing Commission (VCSC) to oversee it. The newly approved sentencing guidelines are still voluntary to the extent that judges must state in writing any departure reasons.[36]

Two years after the legislative action, VCSC reported that "the VCSC has successfully ushered in a new era of felony sentencing in the Commonwealth."[37] These changes accomplished the aim of keeping convicted felons in prison for longer periods.

According to Richard P. Kern, who is director of the VCSC, the new sentencing guidelines system, as was the old, is designed to ensure fair and consistent punishment for felons without regard to nonlegal factors such as race, gender, and socioeconomic status.[38] The consequences of Virginia's new truth-in-sentencing system caused many African Americans to have a differing view

[23] Ibid., p. 26.

[24] Ibid.

[25] Ibid.

[26] Richard P. Kern, statement, Transcript, vol. I, pp. 92–127, exhibit A, Commonwealth of Virginia, Department of Criminal Justice Services, Criminal Justice Research Center, *Voluntary Sentencing Guidelines, Pilot Program Evaluation* (Richmond, VA: September 1989), p. 4.

[27] Ibid., p. 6.

[28] Ibid., p. 4.

[29] Ibid.

[30] Ibid.

[31] Ibid.

[32] Ibid., pp. 36–37.

[33] Virginia's sentencing guidelines were organized into eight offense groups: assault, burglary, drug offenses, fraud, homicide (other than capital), larceny, robbery, and sexual assault. Study of felony sentences revealed a two-step process of judicial decisionmaking. The first step was for the judge to decide whether or not the offender should go to prison. The second took one of two forms, depending on the results of the judge's first decision. If the judge decided that the offender should not go to prison, then his second step is to decide whether the offender should get a jail sentence or probation. On the other hand, if the judge has decided that the offender should go to prison, then his second step is to decide how long the prison sentence should be. Worksheets guided judges in considering only those factors that proved historically important for the decision covered by a particular worksheet and in weighing these factors according to historical practice. Ibid., pp. 6–9.

[34] Richard P. Kern, statement, Transcript, vol. I, pp. 92–93.

[35] Virginia Criminal Sentencing Commission, *Virginia's New Criminal Sentencing System—Violent Criminals Will Serve Significantly Longer Time in Prison* (1995), p. 1.

[36] Richard P. Kern letter to Edward Darden, Nov. 22, 1999, Eastern Regional Office files (hereafter cited as Kern Letter).

[37] Virginia Criminal Sentencing Commission, *1996 Progress Report*, p. 1.

[38] Kern letter, p. 4.

than VCSC's. They watched with concern as increasing numbers of African American men were taken from their communities for long periods of incarceration imposed under the new guidelines.

In 1997 the Virginia General Assembly added a new sentencing guideline to the system. This legislative action was a response to high recidivism among convicted cocaine traffickers, many of whom were cocaine addicts involved in trafficking to supply their drug habit. Under the provision, persons convicted of trafficking 1 gram or less of cocaine and who have no prior felony conviction may be sentenced to placement in the newly established Detention Center Program that has mandatory 6-month substance abuse treatment.[39] Although the newly added guideline is race neutral and, as such, is not particular to the crisis of drug incarceration among African American males, its alternative to incarceration and drug addiction treatment provisions will benefit African Americans significantly. According to Kern:

> Presuming that judges comply with this recommendation at the rate that they've shown in our other guidelines . . . we will see a significant core of black defendants who otherwise would have gone to prison, now going into this treatment program under our new guidelines.[40]

The vast majority of persons likely to be affected by this new guideline will be African American because they make up 85 percent of persons in this target group in Virginia.[41]

[39] Kern explained that previously none of these drug offenders was getting treatment, so as a result the recidivism rate was high for this group. Mandatory drug abstinence and treatment for 6 months was put into the sentencing requirement for these offenders to have an impact on recidivism. Richard P. Kern, statement, Transcript, vol. I, pp. 124–27.

[40] Ibid.

[41] Kern letter.

Table 1 1997 Crime in Virginia, Total Arrests by Race

Offense	Total	White	African American	American Indian or Alaska Native	Asian or Pacific Islander
Murder	429	119	306	0	4
Manslaughter	30	22	8	0	0
Forcible rape	820	370	447	0	3
Robbery	2,520	601	1,908	2	9
Aggravated assault	7,576	3,269	4,250	3	54
Burglary	6,258	3,647	2,563	3	45
Larceny	35,334	17,496	17,423	62	353
Motor vehicle theft	3,110	1,148	1,946	0	16
Arson	484	330	148	1	5
Subtotal for part I offenses	56,561	27,002	28,999	71	489
Other assaults	50,818	26,443	24,021	40	314
Forgery and counterfeiting	5,433	2,854	2,560	0	19
Fraud	10,806	6,305	4,445	6	50
Embezzlement	1,327	760	553	2	12
Stolen property: buy, receiving, possession	1,973	791	1,167	1	14
Vandalism	6,850	4,329	2,460	9	52
Weapons: possessing, etc.	7,303	3,439	3,793	9	62
Prostitution and commercialized vice	1,532	733	786	2	11
Sex offenses (except rape, prostitution)	2,404	1,637	741	5	21
Narcotic drug laws: sale or manufacture	7,282	2,859	4,409	2	12
Narcotic drug laws: possession	22,020	12,186	9,735	18	81
Gambling	112	55	55	0	2
Offenses against the family, children	2,734	1,457	1,248	6	23
Driving under the influence	30,475	23,706	6,533	18	218
Liquor laws	14,013	9,940	3,832	12	229
Public drunkenness	44,808	32,174	12,245	124	265
Disorderly conduct	9,271	4,525	4,668	5	73
All other (except traffic)	122,507	68,015	53,803	104	585
Curfew and loitering	4,136	2,057	2,033	9	37
Runaways, juveniles apprehended	5,675	3,174	2,427	1	73
Subtotal for part II offenses	351,479	207,439	141,514	373	2,153
TOTAL	408,040	234,441	170,513	444	2,642

SOURCE: Virginia State Police Report, pp. 1–2.

Chapter 3

Law Enforcement Treatment of African Americans

The law enforcement officials who participated in the factfinding meeting were Linda A. Curtis, Commonwealth's attorney for Hampton; Howard E. Gwynn, Commonwealth's attorney for Newport News; and Major Carl J. Wyche of the Hampton Police Department.[1] Curtis and Gwynn answered questions about prosecutors' accountability, their discretion in the charging process, and their role in the transfer of juveniles into adult status for the purpose of trial and sentencing in district court. Wyche addressed issues covering community policing, the number and kinds of civilian complaints against police, the perspective on race, and the racial impact of drug law enforcement.

Prosecutors

Virginia's prosecutors, called Commonwealth's attorneys, are empowered under State law to bring indictments to court and in some cases initiate initial charges in criminal proceedings on behalf of local government and the people. As constitutional officers, Commonwealth's attorneys are elected to 4-year terms and are not subordinate to the State attorney general.[2] They are essentially without supervisors in the justice system. Curtis said that the election process is the avenue for evaluating Commonwealth's attorneys and holding them accountable.[3]

Reflecting a community view that the local justice system lacked accountability, community organizer Shaun Brown stated:

> The legal system here reflects the authority, control, and interest of those holding political power . . . As a result of this, extralegal variables, such as your level of poverty, the color of your skin, your age, your sex, your education, and your ability to find a lawyer that will not be threatened, increases the severity of sentencing directly or indirectly here on the Peninsula.[4]

Brown's comments were a sign of frustration that accountability systems seemed not to work for citizens who have grievances against justice officials. Elected Commonwealth's attorneys, like the defense attorneys, are subject to the Code of Professional Responsibility, primarily administered by the Virginia State Bar (VBA), a mandatory bar organization that regulates conduct of all attorneys licensed to practice law in Virginia.[5] The VBA frequently receives allegations of misconduct from aggrieved persons about the actions of judges, defense attorneys, and Commonwealth's attorneys.[6] These allegations, however, result in few investigations of Commonwealth's attorneys because the VBA typically takes no action on allegations of misconduct in areas that fall within a prosecutor's discretion.[7] Although the investigations into other types of complaints have been about one per year,[8] the pace of VBA investigations quickened dramatically in 1999 with three investiga-

[1] The Virginia Supreme Court was represented by its executive secretary, William Baldwin, whose scheduled appearance was interrupted by unexpected court business. Baldwin letter to Edward Darden, Mar. 6, 1996. Hampton Chief of Police Pat Minetti was not available but was represented by Maj. Carl J. Wyche.

[2] Linda D. Curtis, statement before the Virginia Advisory Committee to the U.S. Commission on Civil Rights, factfinding meeting, Mar. 6, 1997, Hampton, VA, pp. 281–345 (hereafter cited as Transcript, vol. I).

[3] Ibid.

[4] Shaun Brown, statement, Transcript, vol. I, pp. 229–49.

[5] Sang Kuen Park, member, Virginia Advisory Committee to the U.S. Commission on Civil Rights, letter to Edward Darden, Nov. 16, 1998 (hereafter cited as Park letter).

[6] Patricia J. Rios, clerk of the disciplinary system, Virginia State Bar, telephone interview, Dec. 7, 1999, Eastern Regional Office files (hereafter cited as Rios interview).

[7] Ibid.

[8] Ibid.

tions in 6 months' time.[9] Notably, in July 1999, VBA settled in a case that involved Giles County's Commonwealth's attorney,[10] whose court-ordered public reprimand and assessment for court costs was the first such sanction in memory of a sitting Commonwealth's attorney.[11] Entrusted to uphold high standards among licensed practitioners, the VBA will investigate and disbar lawyers who fail to fulfill their ethical and professional obligations.[12] For Commonwealth's attorneys, however, grievance procedures leave them to conduct their offices without review of their discretionary decisions.

According to the prosecutors, the vast majority of criminal charges come from police investigations and only a small number of charges through citizen warrants.[13] Curtis noted that her first knowledge of charges usually comes when a defendant makes an initial appearance in district court.[14] At that point, she continued:

> We generally know only the defendant's name and what the charges are, and it's probably a week or 10 days later that a police report comes over that gives us substantive information about the events as to how the offenses came about, what the investigation revealed, witness statements, and all that sort of thing. So the charging decision in Hampton largely is made at the police department level.[15]

Curtis and Gwynn said that their offices use less than 5 percent of their time for charges developed without police involvement and these come through a grand jury.[16] An example of this is prosecution of public officials. Their offices do not have powers to investigate and develop evidence of criminal actions.[17] "I don't have an investigative staff. I simply have lawyers who go to court," Curtis said.[18] Commonwealth's attorneys get calls from citizens who are unhappy about something, but have no ability to prosecute or to act without an investigative report, which comes through a police agency, according to Curtis.[19]

Curtis does not see the Commonwealth's attorney as the victim's advocate.[20] She said that Commonwealth's attorneys must make an independent assessment of evidence in every case brought to their attention.[21] As prosecuting attorneys, however, they do advise victims about the dropping of charges or inappropriate penalties in cases when asked about such factors, Curtis explained.[22]

According to Curtis and Gwynn, the police department occasionally asks about possible charges before making it a formal action.[23] Usually these inquiries are by telephone call, without the Commonwealth's attorney's having a document about the suspect. The telephone conversations with police cover facts in the case, assessment of possible charges, and agreement on charges.[24] In homicide cases, police officers move to make arrests based on the prosecutor's interpretation of police information, although this happens in a very small percentage of cases.[25]

Regarding juvenile transfer to adult court, the prosecutors have unilateral power under State law to decide whether juvenile defendants should be bound over to stand trial as adults.[26] Curtis explained that the request to transfer juveniles to adult court is based on whether the person is going to be amenable to treatment within the criminal justice system and/or the severity of the offense.[27] She added age as a possible factor for consideration.[28] Mr. Gwynn was concerned about the transfer system that permits trials of 14-year-olds as adults.[29] He said:

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[9] Ibid.

[10] Patricia J. Rios, clerk of the disciplinary system, Virginia State Bar, letter to Edward Darden, Dec. 7, 1999, Eastern Regional Office files.

[11] Rios interview.

[12] Linda D. Curtis, statement, Transcript, vol. I, pp. 333–35.

[13] Ibid., pp. 285–86.

[14] Ibid.

[15] Ibid., p. 287.

[16] Ibid., p. 286.

[17] Ibid., p. 308.

[18] Ibid., p. 309.

[19] Ibid.

[20] Ibid., pp. 315–16.

[21] Ibid.

[22] Ibid.

[23] Ibid., pp. 313–15.

[24] Ibid.

[25] Ibid.

[26] Ibid., pp. 305–08.

[27] Ibid.

[28] Ibid.

[29] Howard E. Gwynn, statement before the Virginia Advisory Committee to the U.S. Commission on Civil Rights, factfinding meeting, Mar. 7, 1997, Newport News, VA, pp. 57–104 (hereafter cited as Transcript, vol. II).

You have a system where the majority of [Commonwealth's attorneys] offices don't have African Americans in those offices, where the decisions could be unconsciously based on race just because a person making the decision has not had a full-based cultural background but does not understand, for example, that not every person who commits a crime is a criminal and should not be subjected to the full range of punishments and sanctions that the system has to offer.

I am fully aware of what the consequences are of sending juveniles to the adult system. Not only are they forever tried as adults, but we know putting a 15- or 16-year-old in the penitentiary is going to make a worse criminal than when he went in.[30]

The transfer provisions were used more frequently over the past 10 years because more juveniles were accused of serious crimes.[31] The sharpest escalation in transfers took place in 1996, after new statutes giving prosecutors more authority took effect.[32] In tracing the history of transfers and race in Virginia, University of Virginia, T.C. Williams Law School professor Robert E. Shepherd, Jr., said:

Children of color are dealt with more severely within the juvenile justice system than majority youth are. And there has been a perception that that severe treatment tends to increase as the youth penetrates more deeply into the system. . . .

By 1991, arrests of children of color represented 46 percent of all juvenile arrests, 53 percent of the part I offenses. . . . and transfers to adult courts increased to 75 percent. Three-quarters of all youth across the Commonwealth that were transferred to be tried as adults were minority youths. . . . We started talking about why is this occurring. We discovered that it was a mix of things, and I don't think there's any question but that racism plays a part, whether its unconscious or conscious . . .[33]

Currently, transfer is automatic for murder charges that may lead to the death penalty or for aggravated malicious wounding.[34] In cases of violent felonies, transfer is at the discretion of the prosecutor.[35] In nonviolent felonies the judge has discretion over whether to transfer a juvenile to adult court.[36]

Curtis reported that her office is not transferring juveniles to adult status at any higher rate after the new law enhanced the power of prosecutors, except in cases of murder that may lead to the death penalty and vicious physical assaults resulting in serious bodily injuries.[37] Referring to the large numbers of African American males caught up in the justice system, she denied that factors such as race enter into her decisionmaking process.[38] And, she denied that race played a part in decisions concerning juvenile transfers to circuit court.[39] Acknowledging the racial climate in Hampton, she recalled:

[Hampton] City Council appointed a unity commission 2 years ago . . . to look at the issues of dealing with race relations in the city. . . . The justice system came out in that study very poorly, and that, I'm sure doesn't surprise any of you; but what might have surprised you, was that the opinions were similar across racial lines. Clearly, if the public doesn't have confidence in our justice system, or feel that they will get a fair shake, then crimes go unreported, witnesses refuse to come to court and participate in that process, and the whole system doesn't work.[40]

Police

Several speakers complained that police officers manipulated the charging process, which put law-abiding persons into legal jeopardy and stretched evidence to inflate indictments, thereby worsening the predicament for defendants. Allegations of improper police tactics ranged from arousing fear by intrusive surveillance to violent beatings.[41] For example, Joyce Tucker of Portsmouth said that Hampton and Newport News have racist cops who have been assaulting, calling young African American males racial slurs, and concocting charges

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[30] Ibid., pp. 100–02.

[31] Robert E. Shepherd, Jr., statement, Transcript, vol. I, pp. 177–217.

[32] Ibid.

[33] Ibid., pp. 179–85.

[34] Linda D. Curtis, statement, Transcript, vol. I, pp. 281–345.

[35] Ibid.

[36] Linda D. Curtis letter to Edward Darden, Nov. 22, 1999, Eastern Regional Office files.

[37] Linda D. Curtis, statement, Transcript, vol. I, pp. 281–345.

[38] Ibid.

[39] Ibid., p. 307.

[40] Ibid., pp. 282–83.

[41] Joyce Hobson, statement, Transcript, vol. I, pp. 255–58.

against African American males for years.[42] Citizens were virtually helpless against police misconduct, these speakers alleged.

Despite police policy against abuse, the enforcement of such standards produced few disciplinary actions. For example, of the 554 allegations of misconduct filed between 1993 and 1998 by civilians or in connection with internal police investigations against Hampton police officers, two-thirds (374 complaints) were disposed of as exonerated, unfounded, or not sustained by the police department after its internal review. In the remaining one-third of the complaints (180 allegations), substantiation of police misconduct lead to 147 disciplinary actions by the police department. Over half of the disciplinary actions taken by the police department (74 cases) referred the officer to counseling, while termination was imposed 22 times, although in 7 cases the imposed termination was reduced due to Hampton personnel policies. Of the 554 allegations of misconduct filed between 1993 and 1998, only one-third of these complaints were sustained, resulting in disciplinary actions. Of the 147 disciplinary cases, a total of 15 officers were terminated, while over half of them (74 cases) were referred to counseling (see table 2). (The Hampton City Police Division takes the position that these statistics do not warrant an inference that, while the division has adopted policies regarding the proper use of force, those policies are not enforced.)[43]

Many speakers were skeptical of the policy against police abuse because their complaints about police misconduct seemed to have little effect on police personnel. Wyche acknowledged that police do not communicate any information about internal investigations of complaints or actions taken by the department to enforce its policies.[44] According to him, this is a source of frustration for police as well because favorable information would foster community trust.[45] He said:

> See, that is one of the problems in the community at large. In other words, we send a documented letter that we did find or agree it was excessive use of force used; however, we cannot discuss what happened in terms of discipline as a result of that sustained complaint, neither can I discuss it openly to the community at large because it would be jeopardizing the suit.
>
> So what happens is we do not have the opportunity to go to the community and say, this is what happened and this is how we resolved those particular issues, other than quoting some statistics, basically how many complaints come in, how many sustained, and what were the dispositions of those type of complaints, if asked.[46]

With regard to community policing, Wyche, who was then guiding the community policing program, said Hampton police started a community policing approach around 1988, after realizing:

> Strict enforcement, or just massive arrest, does nothing unless we also treat the community. That commitment spearheaded the kind of partnerships we formed within the community.[47]

According to Wyche, community policing involves a variety of police practices that partner with community groups, civic leaders, residents, businesses, and others to come together in terms of problem resolution.[48]

> We come to an agreement through a consensus with that neighborhood, we will use informants to help identify those people who are trafficking drugs into the neighborhoods. Together we decide upon what services will be needed and what type of strategies will be enacted. That becomes our strategic [plan].[49]

Wyche stated, without citing specific numbers, that the vast majority of drug arrests in Hampton involve African American males.[50] However, he believed that racial bias by police

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[42] Joyce Tucker, letter to Jessie Rattley, Apr. 15, 1997, Eastern Regional Office files.

[43] Maj. Carl J. Wyche, Hampton City Police Division, claimed: "The report implies that, while the Hampton Police Division has adopted policies regarding the proper use of force, those policies are not enforced. I do not agree that the information provided to you supports that implication. Such a conclusion could only be based on a finding that any complaint that did not result in a sustained disposition involved a failure to enforce Division policy." Maj. Carl J. Wyche, commander professional standards, Division of Police, City of Hampton, letter to Edward Darden, Nov. 23, 1999, Eastern Regional Office files.

[44] Carl J. Wyche, statement, Transcript, vol. II, p. 135.

[45] Ibid., pp. 132–35.

[46] Ibid., pp. 132–33.

[47] Ibid., p. 62.

[48] Ibid., pp. 61–62.

[49] Ibid., p. 80.

[50] Ibid., p. 64.

officers was not the principal contributing factor.[51] He explained that community residents make more complaints about African Americans than whites, especially for drug crimes, although drug use between the two groups is nearly equal.[52] An underidentification of white drug users and dealers, he suggested, is the result of police responding to citizen complaints.[53] Although whites may be just as active in drug crimes, African Americans are almost exclusively among the lowest level of trafficking, the open-air drug market.[54] In most cases, these obvious drug traffickers set up shop in predominantly African American, economically disadvantaged areas of the city where they are familiar with the community and comfortable operating.[55] Uniformed police officers closer to the minority community's residents respond to tips and complaints that often involve African American drug dealers and users on the streets.[56]

Referring to the overwhelming proportion of African American males among drug arrests, Wyche cautioned that such arrest data leads to a mistaken view that drug crime and addiction are principally African American problems.[57] Crack cocaine affects whites as much as African Americans, and whites are more frequent marijuana users.[58]

A problem far more serious than police practice, Wyche pointed out, is unequal opportunity for drug addiction therapy for African Americans. African Americans seek drug treatment, but become discouraged by long waiting lists for residential services, while few whites must wait for therapy.[59] White addicts, he said, are also more likely than African American addicts to have health insurance coverage or other means of payment.[60] Newport News' Commonwealth's Attorney Howard E. Gwynn concluded that the drug problem would persist despite the high human cost of drug trafficking.[61] He blamed the persistence of drug supply on two factors.[62] First, police have difficulty stopping cocaine traffic because nearly all supplies come from outside the United States.[63] The money that is available through drug trafficking makes involvement in this trade a tempting proposition. Although lower level trafficking commands a small fraction of drug profits, young African Americans risk jail because the sums of money are larger than any they might acquire otherwise.[64]

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[51] Ibid., p. 68.

[52] Ibid.

[53] Ibid., p. 77.

[54] Ibid., p. 66.

[55] Ibid., p. 67.

[56] Ibid.

[57] Ibid., p. 68.

[58] Ibid.

[59] Ibid., p. 74.

[60] Ibid.

[61] Howard E. Gwynn, statement, Transcript, vol. II, p. 83.

[62] Ibid., pp. 82–83.

[63] Ibid.

[64] Ibid.

Table 2 Civilian Complaints Against Hampton Police, 1993–98

Allegation	1993	1994	1995	1996	1997	1998	6-year average
Exonerated, unfounded, withdrawn, or not-sustained (374 allegations)	43	49	70	86	68	58	62
Misconduct is substantiated (180 allegations)	14	18	32	28	55	33	30
Total (554 allegations)	57	67	102	114	123	91	92
Sustained allegations by year	25%	27%	31%	25%	45%	36%	33%
Sustained allegations by disciplinary action							
• Counseling (74 actions)	43%	47%	32%	52%	54%	70%	50%
• Reprimand (21 actions, 2 reduced)	19%	11%	25%	12%	13%	7%	14%
• Suspension, range 1–30 days (30 actions, 1 reduced)	19%	16%	29%	28%	20%	10%	21%
• Termination (22 actions, 7 reduced*)	19%	26%	14%	8%	13%	13%	15%
Total (147 sustained allegations)	100%	100%	100%	100%	100%	100%	100%

* Seven termination actions were reduced in accordance with the City of Hampton personnel policies manual.

SOURCE: Office of Professional Standards, Division of Police, City of Hampton, Virginia, Mar. 12, 1997 and May 27, 1999.

Findings and Recommendations

Fair and prudent conduct by police officers, Commonwealth's attorneys, and judges is the lynchpin that secures public trust in our justice system. Yet, the Committee finds that there is a serious breach of trust between African Americans on the Peninsula and the justice system; a majority of respondents believe that everyone is not treated equally. The promise of equal protection under law dims gradually from sight as the cumulative effect of police strategies in connection with a war on drugs, the zeal of elected prosecutors (Commonwealth's attorneys), and lifetime voting rights deprivation, weighs heavily on African American aspirations. These are the unresolved problems that the Committee's recommendations address. The difficulties involved in resolving these problems require the utmost dedication and work. Although these recommendations lead to improvements, they are measured steps toward the larger goal of systemic change.

Finding 1 The Committee received numerous complaints from Virginia citizens. Just over half complained about the justice system while others covered a variety of topics, including equal opportunity in education and employment, environmental justice, free speech, land use and property tax, pay raises for elected city officials, voting rights for persons other than formerly convicted felons, and exploitation of African American farmers. Based on such an outpouring of citizen interest and complaints, the Committee finds that civil rights grievances in the Hampton and Newport News peninsula generally go unresolved or are not aired. Of the complaints, four areas merit special attention: (1) racial profiling of African Americans for traffic stops and suspect surveillance; (2) marginal fees paid to court-appointed attorneys; (3) creditability of disciplinary system against judges and prosecutors; and (4) restoration of civil rights, especially voting rights, for convicted felons.[1]

Recommendation 1.1 The Governor of Virginia should order the Public Safety Secretariat and its State Police Department to issue policy statements to all police departments in Virginia against race-based traffic stops or surveillance, provide training to all police officers in the implementation of that policy, collect statistics on all traffic stops and arrests to monitor whether and to what extent the policy has been implemented, and investigate any officer whose record indicates a racial bias. All records generated under the policy should be readily available to the public, with the Virginia State Police acting as repository for the information.

Recommendation 1.2 The Virginia General Assembly together with the Governor of Virginia should determine what compensation levels for court-appointed defense attorneys are sufficient to mount adequate trial defenses in Virginia and, if increased compensation is necessary, take legislative and executive action to provide funds for the increases.

Recommendation 1.3 The Virginia General Assembly together with the Governor of Virginia should take appropriate action to restore the voting and other civil rights to convicted felons upon their return to society, making among other measures the restoration application an administrative process.

Recommendation 1.4 The Virginia General Assembly together with the Supreme Court of Virginia should order monitoring of judicial sentencing in Virginia to determine whether or to what extent racial disparity exists or is increasing.

[1] Intro., p. 2; chap. 1, pp. 3–10.

Finding 2 Federal penalties under the provisions for first-offense cocaine trafficking impose 5-year terms for 5 grams of crack or 500 grams of powder and 10-year terms for 50 grams of crack or 5,000 grams of powder. The Committee finds that arrests and sentencing for drug and related offenses contribute greatly to increasing justice control of African Americans under 30 years old. Racial concentration of African Americans in State-controlled institutions also echoes the drug-related pattern of crack cocaine offenses, with the additional aspect of African American juveniles arrested for more violent crimes and tried as adults.[2]

Recommendation 2.1 Heeding the conclusion of the U.S. Sentencing Commission that a 100-to-1 weight disparity for crack versus powder cocaine is too great, the U.S. Congress together with the President and the Department of Justice should review implementation of the Federal criminal code and take all necessary steps to alleviate unequal treatment under the laws on the basis of race or ethnicity.

Recommendation 2.2 The Supreme Court of Virginia should direct its Virginia Criminal Sentencing Commission to conduct a full-scale assessment of sentencing disparities by race and gender to determine any unwarranted factors or prejudicial patterns in prosecutions and arrests.

Finding 3 Formal allegations of misconduct by Hampton police officers rose to a 6-year average of 92 per year, which the police department investigated through its internal review process. Disciplinary actions even for the most serious violations, those that led to termination in 22 cases, were reduced in 7 of the cases. This pattern coupled with police policy against disclosing disciplinary consequences of sustained charges against police do little to deflect suspicions that police whitewash or neglect civilian complaints. The Committee finds that there is a perception widely spread in the African American community that the internal review of police misconduct is biased and unreliable as an avenue of grievances, further eroding trust in the law enforcement system.[3]

Recommendation 3.1 The Virginia Public Safety Secretariat should order its State Police Department to team with the Hampton Police Department to review State and local complaint intake procedures and make necessary changes to ensure that citizen concerns and sensitivity are properly addressed and that the results of complaint investigations are made available to the public. The review should also produce recommendations for effective alternative means of disposing civilian complaints of police misconduct, such as neutral party mediation or civilian review boards with power to settle cases.

Finding 4 Overwhelmingly disproportionate numbers of African Americans are under criminal supervision, overloading the criminal justice system in Virginia to a crisis level. Antecedents to this crisis are in the devastating consequences of educational, economic, and social disadvantages. The Committee finds that State and local governments pay little attention to the societal treatment of African Americans in general and consequences of drug law enforcement tactics in particular.[4]

Recommendation 4.1 The Virginia General Assembly should place high priority on the work of its Joint Subcommittee Studying the Status and Needs of African American Males in Virginia, providing it with resources and staff support sufficient to fulfill its mandate to study the issues. Upon completion of the mandated study, it should take immediate action to pass corrective and ameliorative legislation.

Finding 5 Transfer of juveniles to face charges and stand trial in adult courts exposes children as young as 14 years old to life-crippling jail terms if convicted. Although these children may have committed heinous crimes, punishing youthful offenders by the same harsh measures as adults is a questionable response that does little to rehabilitate or restore a youthful offender to future usefulness in society.[5]

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[2] Chap. 1, pp. 7–10; chap. 2, pp. 11–15; chap. 3, pp. 16–21.

[3] Intro., p. 1; chap. 1, pp. 3–4; chap. 3, pp. 16–21.

[4] Chap. 1, pp. 3–10; chap. 2, pp. 11–12, 14–15.

[5] Intro., pp. 1–2; chap. 1, pp. 5, 7–10; chap. 2, pp. 12–15; chap. 3, pp. 17–18.

Recommendation 5.1 The Virginia General Assembly and the Supreme Court of Virginia should order reviews of the Virginia criminal code provisions for juvenile transfer to adult status in criminal proceedings to determine the benefit of these transfers as compared with the tangible and intangible costs for the youth and civil society.

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