

A Brief History of the House Committee for Courts of Justice

That the House Committee for Courts of Justice is the second oldest standing committee in the Virginia General Assembly is easily established. The appointment of the first committee for Courts of Justice on February 10, 1727, can clearly be traced to Governor William Gooch's plea that session that the General Assembly agree "upon some methods to prevent delays in the Courts of Justice."

However, the actual origins of the committee date back much farther and are intrinsically tied an era before there were three branches of government or a clearly delineated separation of powers. To understand the committee's origins one must look at the very origins of the Virginia judicial system to a time when the General Assembly sat as both a legislative body and a court of law; and to a time when the Attorney General simultaneously served in both an executive and legislative capacity.

English Origins

In the 16th century, particularly in the reign of Queen Elizabeth, the development of the House of Commons, because of the exigencies of circumstances, caused it to take on in some measure the appearance and even the functions of a court. The term "court" even crept into the records of the proceedings.

At first the House of Commons was the grand inquest of the realm, and occupied a position relative to the High Court of Parliament similar to that held by a grand jury in relation to a court of a more ordinary type.

The house had a bar and people appeared before it with counsel or witnesses or both; and employed a serjeant, who was a special officer of the house, with the power to arrest persons and keep them in his own custody, or send them to the Tower (of London), or some other prison. Early instances of imprisonment are found in 1543 and 1549, but during the reign of Queen Elizabeth they were frequent. It was not common for parliament to impose corporal punishments, but such penalties were not unheard of either. In 1621, for the first time in the history of Parliament, the House of Commons claimed a direct criminal jurisdiction over men at large and the right to exercise without the help of the House of Lords. They summoned to the Bar a man called Edward Floyd and accused him on a criminal charge of seditious speeches. James I's strong and historically justified objections to these actions led to the Commons abandoning the case to the Lords – though losing it for themselves, they preserved it for Parliament.

On January 25, 1606, a young man who was called before the House of Commons for misconduct was "judged to be whipped" and in 1625, another man was ordered to be whipped. In the 17th and 18th centuries a vast number of people were arrested by the serjeant, came and knelt at the bar and confessed their faults in terms of abject submission to the house, and were fined, imprisoned or otherwise punished.

As abuses increased, the Parliament of 1621 instituted a committee of courts of justice, “to question all courts of justice, ecclesiastical or temporal.” (This was a grand committee or committees of the whole.) For the next 200 years, the usage of committees by Parliament ebbed and flowed. While the committees were appointed, they really existed in name only up to that date. For instance, Fox’s great speech on the libel laws in 1791 was made upon the formal motion “that the Grand Committee for Courts of Justice do sit on Tuesday next.” In reality however the committees had long since fallen into disuse. The ancient grand committees of religion, grievances, trade and courts of justice have been entirely discontinued since 1832

The Virginia General Assembly as a Court of Law

Under the Charter of 1606 the Council of State was granted not only executive and legislative functions, but the ability to try all but the most serious criminal cases.

Beginning in 1619, when the General Assembly was established it assumed virtually unlimited jurisdiction in judicial matters. During the first session the Assembly exercised its judicial functions in a number of matters:

- One case involved allegations of treason against Henry Spelman, one of the colony’s interpreters. In the end, the burgesses found insufficient evidence to convict and Spelman was spared execution.
- Another case involved the alleged theft of corn from a group of Indian boys (this was deemed a civil rather than criminal matter) by agents of a member of the House of Burgesses (Captain Martin). The agents, at first attempted to purchase the corn, but when the Indians refused to sell, it was taken by force. The Indian chief Opechancano appealed directly to the Governor for justice.
- In another instance, Captain Powell proffered charges against one of his servants for an attempt on the captain’s life as well as defiance of his authority. The servant was ordered to stand four days with his ears nailed to the pillory and to be whipped on each of those days.

In 1624 the General Assembly created monthly courts. The Ancient Planters in 1624/25 state “*Monethly courtes were held in every precinct to doe justice in redressing of all small and petty matters, others of more consequence being referred to the Governour, Counsell and Generall Assemblie.*”

Two years later, in 1626, during the final year of Governor Francis Wyatt’s tenure as royal governor, Assembly approved legislation establishing county courts “to dispense with petty civil and criminal matters” and another providing for regularly quarterly meetings of the Council to sit as a court of law.¹

Disposal of petty offenses were handled by the monthly courts and subsequently the county courts.

Trials for felony offenses, crimes for which the punishment was either death or loss of limb became the exclusive jurisdiction of the Quarter Courts. The Council of State tried all felonies and

¹ Billings, A Little Parliament, pg. 15.

heard civil appeals from the county courts, though their judgments in civil matters were subject to review by the General Assembly.

By 1632, the Governor and Council were meeting quarterly, on the first day of September, December, March and June, to consider judicial matters.

For its part the General Assembly appears to have exercised appellate jurisdiction as a court of last resort, hearing appeals in civil matters, primarily, from both the Quarter Court and the county courts.

In 1661 the General Assembly limited the number of county court judges to eight per county court. It was the first time since 1634, that the number of magistrates had been limited but the act was deemed necessary because “the great number” of judges “hath rendered the place contemptible and raised factions among themselves rather than preserving the peace.”²

While the General Assembly lost much of its appellate jurisdiction in 1682 following Bacon’s Rebellion, the Assembly continued to hear civil and criminal cases up until the American Revolution.

By the middle of the 17th century the House, the Committee on Private Causes and was the recognized means of dealing with judicial problems. The function of the Committee for Private Causes was to assist in determining which civil appeals merited consideration by the full General.” In the modern sense, the committee for private causes is unique in the committee structure of the House for served primarily a judicial rather than a legislative function. Some of the cases dealt with were appellate in nature as is demonstrated unmistakably by the laws of the period dealing with court procedure. In these laws the assembly regularly figures as a court of appeals.

- Up to 1659 there was no minimum limit on the value of causes that might be appealed to the assembly; and this led to an irritating inflow of small cases. To remedy this, an act was passed in that year arranging a limit of 2,500 pounds of tobacco. This may have gone too far in the other direction. In any event, it was reversed after a trial of one year by an act permitting appeals to the assembly of any amount.
- In 1661-1662 another law was passed making further modifications to the system, but kept a provision that appeals should lie from the county court to the general district court, and from the general district court to the assembly. The primary purpose of this act was to lower the number of suits carried to the capital and thus relieve many citizens of the expense involved in a journey thither. Still, many cases were still reserved for the assembly’s ultimate decision.
- In 1662, the House of Burgesses asked a local court to rehear a case.

In 1680, the Committee on Private Causes’ judicial work was taken away. That year the governor induced the assembly to make a break in the custom of appointing councilors (members of counsel) to the judicial committee, and thus struck a blow at the assembly’s appellate jurisdiction because the lower house had no power to administer an oath and was therefore not inclined to

² Billings, A Little Parliament, pg 43

hear cases with the assistance of the councilors. Nonetheless the General Assembly continued to investigate claims laid before the legislature as the Committee on Public Claims.

In 1682 when the burgesses tried to return to what they called the “constant practice”, Lt Governor Chicheley, who as acting during the absence of Governor Culpeper, refused to make any change until the king’s will could be known. Culpeper, who was in England at the time, was even then taking up the subject with the crown in order to obtain a final determination. In the meantime, Chicheley promised that the former precedent would be restored if the king did not order otherwise. The royal decision was in favor of the governor and the announcement of this fact to the burgesses on April 19, 1684, brought an end to the appellate jurisdiction of the General Assembly.

Two explanations exist for this change. The first volume of assembly journals contains a suggestion that this struggle arose out of the prosecution of Phillip Ludwell, a member of council, who, in 1678, was tried before the general court on a charge of “scandalizing” the governor and abusing the royal authority. Having been found guilty, he appealed to the general assembly, whereupon the governor and council decided the appeal must go to the king in council. Howison adds a further explanation³, claiming Culpeper was opposed to Beverly and feared the influence of the assembly against his claim to the Northern Neck. He, therefore, deliberately encouraged a quarrel about Ludwell, and by a reference of the subject to the king, succeeded in obtaining annulment of the assembly’s appellate power.

Committee for Courts of Justice During the Colonial Period

Governor Gooch opened the 1727 Session of the General Assembly with a plea to the members that they agree “upon some methods to prevent delays in the Courts of Justice, so very obvious and inconvenient to the people in general.” Based on his request, on February 10, 1727, the House of Burgesses appointed the first committee for Courts of Justice. The resolution appointing the committee states, “they are to sit in the Clerk’s Office, and to inquire into the methods of proceedings in the Courts of Justice and the occasions of the delays therein, and to prepare a bill for amending the defects of the laws now in force relating to several courts of the colony, and for expediting of business.”

The makeup of the first committee for Courts of Justice is interesting. John Clayton of Williamsburg, who also served as the colony’s attorney general, was named chairman and six other members were appointed with him. It is noteworthy that all seven were also members of the Committee on Propositions and Grievances, arguably the most important of the standing committees of the time.

The principal bill reported by this committee was the one which on its passage was entitled “An act for preventing delays in courts of justice; for expediting and better settling the proceedings in General Court; and for the more speedy and easy recovery of small debts; and for repealing an act for obligating attorneys, prosecuting suits in behalf of persons out of the country, to give security hereafter therein,’ and was an exceptionally able measure, a fact recognized by the House in the

³ Robert Howison, *History of Virginia*, pg 385

passage by the House of a resolution – later agreed to by the Council – that awarded the chairman twenty pounds for his services.

But by 1732, the work of the Courts Committee had grown such that its membership had entirely changed, only its chairman, the eighth named member of the old group remained on the committee.

“Ordered That the Committee for Courts of Justice be Revived, to consist of the following Persons: ...And they are to meet and adjourn from Day to Day; and to take into their consideration all Matters relating to Courts of Justice, and their Proceedings; and to inspect the Journals of the last Session, and to prepare and draw up a State of the Matter then depending and undetermined, and the Progress that was made therein; and to report the same to the House: And they are also to examine what Laws have expired since the last Session, and to inspect such Temporary Laws as will expire with the End of this Session; and report the same to the House, with their Opinions which of them are fit to be Revived or Continued: And the Committee are to have Power to send for Persons, Papers, and Records, for their Information.”

Formed initially to consider all matters relating to the courts, the House soon found that as a rule few such questions came before the Assembly each session. Unlike other colonies, “In Virginia, however, the committees were not ornaments, and if there was not enough work in its particular line to keep a committee busy, duties of another kind would be turned over to it.”⁴ Before 1727 the committee on Propositions and Grievances had been called upon to go through the Journal of the preceding session and to make up and lay before the House a list of all unfinished business. At the same time it also made out a list of temporary laws that had expired and were in need of renewal. This work was finally transferred to the committee on courts of justice because its regular duties were light.

The Committee for Courts of Justice came to be utilized as an aid to the overworked Propositions and Grievances and was assigned to examine laws that had expired or were about to expire and needed re-enacting, or to the vexed problem of duties on imported liquors, slaves, servants, and skins. By 1734, the size of the committee had doubled to twelve members and the committee’s charge expanded to include reviewing “such temporary laws as may be nearing expiring after the end of this session of assembly; and report their opinion to the House, which of them are fit to be continued.” It was a function that had sometimes been the work of a special committee on the revival of laws and on other occasions one performed by either the committee of public claims or the committee of propositions and grievances, but beginning in 1734, one that would regularly fall to the Committee for Courts of Justice.

On August 30, 1734, the committee received an additional charge, also wholly unrelated to the colony’s judicial system. In this instance, the committee was charged with reviewing the treasurer’s accounts and report to the House the balance on hand. First appointed in 1660 as an audit committee, between 1702 and 1764, there was periodically appointed a special, recurring committee to review the treasurer’s accounts, and from 1817-1866 a standing committee on the

⁴ Harlow, pg 16

treasurer's accounts was regularly appointed as part of the system of standing committees of the House.

During the Session of 1736-1740 the membership increased to 17 members.

In the 1748-1749 Session the committee for courts of justice fell a large amount of the extra work connected with the consideration and adoption of the report of the committee on revisal of the laws. This report was in three parts: first, it advised the repeal of 21 acts that had become obsolete, useless or were otherwise provided for, citing the acts in a list following the resolution recommending their repeal; second it recommended that certain other laws be allowed to remain in force without amendment, naming 36 acts to be so treated; and third, it presented in the shape of bills for the action of the House the other laws then in force, these bills being either a law amended or several laws on the same subject consolidated into one bill. The first and second recommendations of the committee for revisal were at once agreed to, the committee for courts of justice being ordered to bring in a bill for the repeal of the acts listed in the first section of the report, while the acts listed in the second section continued in force ipso facto, as their time had not expired. Later in the session the House determined to transfer to class one a law put by the committee on revisal into class two, and ordered the committee for courts of justice to include it in the bill for the repeal of the laws that had become useless. As only permanent and public acts had been considered by the committee for revisal of the laws, the committee for courts of justice had at this session to review all the temporary and private laws to see which were about to expire and to recommend the continuance of those it deemed necessary. The committee for courts of justice was a very busy committee when this special function was added to its usual duties.

During the remainder of the colonial period, the size of the committee remained fluid.

1752-1758 – 21 members

1757 – 14 members

1762 – 10 members, Edmund Pendleton, chairman

1764 – 19 members

1766 – 23 members, Richard Henry Lee, chairman

1772 – 16 members, John Woodson, chairman

1775 – 25 members, Joseph Jones, chairman

Among the past chairmen of this committee are such notable Virginians as Richard Henry Lee (1766-1771, 1774), John Tyler (1781), Patrick Henry (1787-1789), and John Marshall (1790).

Election of Judges

The Constitution of 1776 provided that the General Assembly elected judges to the Supreme Court of Appeals, the General Courts and judges of chancery and admiralty by joint ballot.

Under the Constitution of 1830 judges of the Supreme Court of Appeals and of the superior courts continued to be elected jointly.

The Constitution of 1851 transferred the election of judges from the general assembly to the electorate, but the general assembly retained the power to remove judges. The purely judicial functions of granting divorce, changing the names of persons, and directing the sale of estates belonging to infants were taken from the legislature and conferred on the courts.

The Constitution of 1867 restored to the general assembly the election of judges of all the courts.

In the Constitution of 1901 the General Assembly lost the power to elect county judges, indeed the county courts were abolished. Selection of the county judges by the general assembly had proved to be a poor plan, because by the rule of legislative courtesy the representatives were allowed to name the judges of their respective counties.

There were many members of the convention who strongly advocated the election of the higher judges by the people. It was pointed out that election by the general assembly was inherently bad because it violated the principle of the separation of powers. What was more to the point was that it brought into play all the devices of log-rolling. As a member said, "Men could swap a guardsman here in capitol square for a judge of the Court of Appeals."

Another pertinent point in favor taking away the power from the general assembly was the fact that corporate influence was brought to bear on the legislature. It is at least significant that all the corporate attorneys in the convention of 1901 favored election by the general assembly.

The power of the General Assembly to elect judges to the Supreme Court and other courts of record was retained.

Past Chairman

1727 -1731	John Clayton (Williamsburg)
1732 -1733	Thomas Lee (Westmoreland)
1734 -1735	John Robinson (King & Queen)
1736 - 1739	Gawin Corbin (King & Queen)
1740 -1743	Edward Barradall (College of W&M)
1744	Charles Carter (King George)
1745 - 1754	Beverley Whiting (Gloucester)
1755 -1756	Peyton Randolph (Williamsburg)
1757 - 1762	Landon Carter (Richmond County)
1762 -1765	Edmund Pendleton (Caroline)
1766 -1771	Richard Henry Lee (Westmoreland)
1772 -1773	John Woodson (Goochland)
1774	Richard Henry Lee (Westmoreland)
1775 - 1776	Joseph Jones (King George)
1777	Wm Fleming (Powhatan)
1778	Robert Lawson (Prince Edward)
1778	Wm Fleming (Powhatan)
1779	Robert Lawson (Prince Edward)
1779	Geo. Lyne (King & Queen)
1780	Wm Fleming (Chesterfield)
1780	Joseph Jones (Dinwiddie)
1781	John Tyler (Charles City)
OCT 1781	Geo. Nicholas (Hanover)
1782	Arthur Lee (Prince Wm)
1783	Stevens Thomson Mason (Loudoun)
1784	Joseph Jones (King George)
1784 - 1785	James Madison Jr (Orange)

1786	James Innes (Williamsburg) ⁵
1787 - 1789	Patrick Henry (Prince Edward)
1790	John Marshall (Richmond City)
1791 - 1799	Robert Andrews (Williamsburg)
1799 - 1800	John Taylor (Caroline)
1800 - 1802	Abraham B. Venable (Prince Edward)
1802 - 1803	John Mercer (Spotsylvania)
1803 - 1804	Abraham B. Venable (Prince Edward)
1804 - 1806	Peter Johnston (Prince Edward)
1806 - 1808	Alexander Smyth (Wythe)
1808 - 1809	James Semple (Williamsburg)
1809 - 1810	Joseph C Cabell (Nelson)
1810 - 1811	Peter Johnston (Prince Edward)
1811 - 1816	Robert Stanard (Spotsylvania)
1816 - 1817	Littleton W. Tazewell (Norfolk Borough)
1817 - 1821	Archibald Magill (Frederick)
1821 - 1822	Samuel Blackburn (Bath)
1822 - 1823	John S. Barbour (Culpeper)
1823 - 1824	Samuel Blackburn (Bath)
1824 - 1829	Wm F. Gordon (Albemarle)
1829 - 1830	James M. Mason (Frederick)
1830 - 1831	Benjamin Leigh (Henrico)
1831 - 1833	Wm Brodnax (Dinwiddie)
1833 - 1834	John S. Barbour (Culpeper)
1834 - 1835	Chapman Johnson (Richmond City)
1835 - 1837	Robert Stanard (Richmond City)
1838 - 1841	John F. May (Petersburg)

⁵ Resigned from the House of Delegates in December 1786 after being elected Attorney General.

1841 - 1842	Briscoe G. Baldwin (Augusta) ⁶
1842 - 1843	Henry L. Hopkins (Powhatan)
1843 - 1844	David McComas (Wythe/Pulaski)
1844 - 1847	William B. Preston (Montgomery/Pulaski)
1847 - 1848	Robert E. Scott (Fauquier)
1848 - 1849	R.C.L. Moncure (Stafford)
1849 - 1851	James H. Ferguson (Logan/Boone)
1852 - 1853	Fleming B. Miller (Botetourt)
1853 - 1854	Thomas Wallace (Petersburg)
1855 - 1856	Albert G. Pendleton (Giles)
1857 - 1865	John C. Rutherford (Goochland)
1864 - 1865 @ ALEXANDRIA	Reuben Johnston (Alexandria)
1865 - 1866	W.T. Joynes (Dinwiddie/Petersburg)
1866 - 1868	John T. Seawell (Gloucester/Mathews)
1869 - 1871	S.V. Southall (Albemarle)
1871 - 1873	James V. Brooke (Fauquier)
1874 - 1879	Robert A. Coghill (Amherst/Nelson)
1879 - 1880	David F. Bailey (Washington)
1881 - 1882	James C. Taylor (Montgomery)
1883 - 1884	Robert T. Barton (Frederick/Winchester)
1885 - 1887	B.B. Munford (Pittsylvania/Danville)
1887 - 1890	James Hay (Greene/Madison)
1891 - 1898	Edward W. Saunders (Franklin)
1899 - 1900	William P. McRae (Petersburg)
1901 - 1904	Robert G. Southall (Nottoway/Amelia)
1904 - 1905	William R. Duke (Albemarle/Charlottesville)
1906 - 1907	Richard E. Byrd (Frederick/Winchester)

⁶ Resigned from the House of Delegates when he was elected judge of the Supreme Court of Appeals on January 28, 1841.

1908 - 1909	Eugene C. Massie (Richmond City)
1910 - 1911	Rosewell Page (Hampton)
1912 - 1913	Alden Bell (Culpeper)
1914 - 1915	Walter Tansill Oliver (Fairfax)
1916 - 1921	John W. Stephenson (Bath/Highland/Rockbridge/Buena Vista)
1922 - 1929	James Hubert Price (Richmond City)
1930 - 1935	Vivian L Page (Norfolk City)
1936 - 1939	Charles W. Crowder (Richmond City)
1940 - 1941	Maitland H. Bustard (Danville)
1942 - 1949	Edward O. McCue Jr (Albemarle/Greene/Charlottesville)
1950 - 1961	Joseph J. Williams Jr (Henrico)
1962 - 1963	Delamater Davis (Norfolk City)
1964 - 1965	George M. Cochran (Augusta/Highland/Staunton/Waynesboro)
1966 - 1970	Garnett S. Moore (Bland/Craig/Giles/Pulaski/Wythe)
1971 - 1972	Russell M. Carneal (James City/York/Williamsburg)
1974 - 1981	George E. Allen Jr (Richmond City)
1982 - 1991	C. Hardaway Marks(Hopewell)
1992 - 1997	James F. Almand (Arlington)
1998 -1999	James F. Almand (Arlington) Thomas G. Baker Jr. (Pulaski)
2000 -2001	William J. Howell (Stafford) James F. Almand (Arlington)
2002	Wm. J. Howell (Stafford)
2003 - 2004	Robert F. McDonnell (Va. Beach)
2006 - 2017	David B. Albo (Fairfax)
2018 - present	Robert B. Bell (Albemarle)