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Important developments in the grand jury system in Virginia during the seventeenth and eighteenth centuries

Melvin Dean Snead

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IMPORTANT DEVELOPMENTS IN THE GRAND JURY SYSTEM IN VIRGINIA DURING THE SEVENTEENTH AND EIGHTEENTH CENTURIES

A Thesis
Presented to
the Faculty of the Department of History
University of Richmond

In Partial Fulfillment
of the Requirements for the Degree Master of Arts

by
Melvin Dean Snead
June 1962
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CHAPTER I

INTRODUCTION OF THE GRAND JURY SYSTEM IN VIRGINIA

I. ENGLAND—ORIGIN OF THE GRAND JURY

Although the history of the grand jury system has not been traced all the way back to its origin, historians in this field generally feel that it was begun in England during the Middle Ages or perhaps even earlier. Some historians have traced it to the reigns of Ethelred and Richard the First. Others say that trials progressed from trial by ordeal to trial by battle, and then to jurors before the time of Edward III. But since records are so insufficient, and often nonexistent for this period, it is impossible to state with conviction the exact date of the origin of the system.

However, it is known that justices in England during the Middle Ages could not pay regular and frequent visits to all parts of the districts under their jurisdiction. A more or less sparsely populated area did not justify the added expense of a permanent justice for the area. In addition to undue expense, good manpower would have been wasted.

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2 Daniel Davis, Precedents of Indictments, to which is prefixed a Concise Treatise upon the Office and Duty of Grand Jurors (Boston: Carter, Hendee, and Babcock, 1831), pp. 1-2.

Since the justices were not necessarily warranted, some sort of system had to be devised to meet the somewhat limited needs of the counties and smaller areas. The grand jury system was found to be the answer.

Justices traveled about paying periodic visits to each area under their jurisdiction, and in order to ward off excessive lawlessness during their absences, they began appointing knights to serve as a sort of public watchdog. Twelve of the most upstanding knights in each county was to become the usual number selected. These knights were charged to inquire about crimes committed within their hundreds, and to present offenders of all laws to the justices at a later date. This is probably where the origin of the grand jury system took place.

These early grand juries served in two capacities. They could conduct their own investigations, an obvious police function; and they could also decide whether or not to present a suspect for a later trial, an obvious judicial function. Evidence gained through grand jury investigations was carefully considered by the grand jury. If enough evidence was shown to convince the grand jury of a suspect's probable guilt, its duty was to present all such suspects to the local justice when he made his appearance at the local court date. The grand jury served the very important role of public accuser, a position not to be held lightly.

From its inception the grand jury system held a somewhat curious combination of powers. There were powers similar to those of a policeman

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\[text{Forsyth, op. cit., pp. 178-186.}\]
or sheriff, but at the same time no power to make arrests. In addition to acting the role of a policeman in investigating a suspect, the grand jury also served as a preliminary judge, able to set free or hold a suspect for future trial. Indeed this must have been considered an important position.

No pay was authorized for those serving on grand juries. However, this is not odd since the system was begun due to the lack of funds to operate in small areas. This in itself would be a limiting factor in the selection of grand jurors, for only the more wealthy members of a community could serve. Since they were also the most powerful in a majority of the cases, this probably worked to the advantage of the system. Perhaps this is why the system worked so well. It proved itself worthwhile, and even found its way into modern times. It must have been a worthy system, otherwise it would have been done away with.

II. EARLY VIRGINIA ACTS CONCERNING GRAND JURIES

First use in Virginia. It seems to be quite apparent that this method of bringing lawbreakers to justice was approved by the King's subjects, for the system was brought to America and used extensively. Many changes were wrought, but the system was pretty much the same in both England and the New World. Perhaps a little more informality was exhibited in the Virginia system, but it worked just the same. The system was adjusted to the different situation confronting it in a wilderness, or at least a less civilized environment. In many cases it was found wanting, but it was fated to survive because of the need for it,
if not its merit.

The grand jury system had proven to be one of the most venerable institutions of the English law. Although King James' instructions of 1608 make no specific mention of it, and though there is no definite indication that a grand jury was called in Virginia during the Company period, or for a number of years thereafter, it appears naturally and almost as a matter of course by 1641.5

1645—Provided for by law. However, the grand jury system was not provided for by law until November, 1645. At this time a law was passed by the Virginia Assembly which officially recognized and brought into being the Virginia grand jury system. With the passing of this act grand jurors took their places alongside church wardens in acting the role of public accuser. The 1645 act provided for empanelling a grand jury in the county courts at midsummer and March courts. They were "to attend the said courts, to receive all presentments and information, and to inquire of the breach of all penal laws and other crimes and misdemeanors not touching life or member, and to present the same to the courts."6

1657. By an act passed in March, 1657, a grand jury was to be


6William Waller Hening, The Statutes at Large; Being a Collection of all the Laws of Virginia From the First Session of the Legislature in the Year 1619 (Richmond: Franklin Press, 1819-1823), I, 304.
empanelled by all county courts, and not just March and midsummer courts. The need for additional grand juries was being felt. 7

1658—Repeal of grand jury acts. However, these early grand juries apparently failed to function as well as their advocates hoped they would, for by an act of March, 1658, the above acts were repealed. This act stated in part, "Whereas the acts for juries of inquiry . . . have not produced such success as was expected for detection of offenses . . . It is enacted, That both the said acts be repealed." 8

By 1658 the system had failed. Before discussing why this failure occurred and why the system was begun again, it seems appropriate to discuss some of the features of this early system as provided by law and custom.

III. IMPORTANT FEATURES OF EARLY SYSTEM

Custom. Since the early laws concerning grand juries, which were just mentioned, only provided for the grand jury and in doing so placed practically no formal regulations upon this body, we must seek to clarify its authority and purpose. The purpose seems clear, simply to present lawbreakers who were going undetected; but where were the regulations concerning qualifications, how the individual grand juror was to be selected, how the grand jury was to conduct its business? These and

7 Ibid., p. 463.
8 Ibid., p. 521.
many similar questions come to mind. The laws failed to mention these questions which seem to be very important, and indeed are quite important. How was a county court to go about selecting its grand jury?

To answer this question, an important assumption must be made. At the same time another question can be answered: why did the Assembly fail to provide these rules and regulations which seem necessary to insure an honest, impartial grand jury? At first the lack of these rules seems to be a glaring oversight on the part of the Assembly. This might well be true, but perhaps it seemed less important to set them down into the law at that time than it seems today. After all most of these Assemblymen were new at this lawmaking business. Perhaps it seemed less important to them to set down rules and regulations that were concerned with what was more or less common knowledge. Since most of these settlers had come from England, it would seem natural to assume that they would be familiar with the grand jury system and therefore, would not need these formal rules. Hence, the simple laws concerning these bodies were probably quite sufficient for contemporary Virginians.

The first question, how was a county court to go about selecting its grand jury, can also be answered in similar fashion. The early Virginia justices were probably quite familiar with the system and therefore, needed no rules and regulations. They were quite capable of seeing that the laws were carried out, and that the grand juries operated as they were intended. However, this brings up another question, why did they not do this? This question will be answered later. However, it might be well to mention at this point that the justices were
the most likely cause of the early failure, for they failed to insure that the system was run properly. As a result, it failed.

**Duties of grand jury.** At this point it might serve well to summarize the most important duties of these early grand juries. They were by no means trying juries, but inquiring juries. At this early date their duties greatly resembled that of a peace officer in that they were charged to investigate crimes and present offenders to the court. This has remained until the present day.

An individual grand juror could not make an arrest, nor could he enter a person's house or step upon his land without a warrant. No specific crime had to be directed to his attention, for any crime which came to his knowledge could be investigated. A proclamation issued by Governor Nicholson of Virginia, although issued at the turn of the century, reflects the view taken of the duty of grand jurors at this early period. In a proclamation issued on December 19, 1699, he charged that a long list of laws be enforced and then listed those he expected to enforce them, "Commanders in Chief of the Militia, Justices of the Peace Shirsiffs Constables and other officers and all Church Wardens and Grand Jury men ..." From this it seems evident that grand jurors were considered to be a sort of policeman.

A verdict of guilty or not guilty was not expected of them nor

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was it their duty. They were not authorized to issue such a verdict. Instead, the grand jury simply decided whether or not there was enough evidence to convict a suspect of the offense for which he stood accused. Ordinarily the grand jury heard witnesses in support of the indictment, but not as a rule any witnesses for the prisoner. After a hearing they might indorse the bill "ignoramus" or "not a true bill," thus declaring the evidence to be lacking; or they might indorse it "billa vera" or "a true bill,"\(^\text{10}\) thus declaring that there was enough evidence on the side of the prosecution to suggest guilt. If the grand jury found that the evidence was strong enough to suggest guilt, then the suspect was held for a trial before a petit jury at a later date. This jury was the real "trying jury," the one that could decide guilt or innocence. Of course, if there was a lack of substantial evidence "no true bill" was found and the suspect was declared free to go. However, as we shall see later, this did not necessarily mean that a suspect could not be reexamined at a later date for the same crime. The grand jury's findings were in no way the final step for being exonerated of all charges. In most instances though, the action of the grand jury served to protect the average citizen from a trial unless, of course, more evidence was found to exist.

This function of the grand jury served an important purpose. It saved the county court time on court days. Since the grand jury had already weeded out the cases most likely to be inconclusive, the court

\(^{10}\) Scott, op. cit., p. 67.
could spend more time on other matters. This observation plus the expense that was defrayed probably points out the most noteworthy virtues of the entire system.

**Presentments and indictments.** It will be of some value to discuss the differences between presentments and indictments, since these terms will be used throughout the remainder of this paper. Presentments and indictments were the grand jury's instruments of bringing a person to trial.

A presentment was an accusation made by members of the grand jury, or in some cases other officers such as church wardens appointed by law. Primarily then, this was based upon the personal knowledge of at least one of the members of the grand jury. This was later changed to admit only evidence of at least two members. However, this change was not made law until 1705. ¹¹ If presentments were made by the grand jury on the information of others, the names of these persons were to be written under the presentment to secure more effectual prosecution. Therefore, a presentment was based upon personal knowledge. ¹² If a presentment were made, it meant that a suspect was to be presented to the county court for trial.

An indictment was "a written accusation of one or more persons of a crime or misdemeanor, preferred to, and presented upon oath by a grand

It was at the suit of the King for a public offense only. Usually an indictment was made only in cases concerned with more serious offenses. In minor offenses this form did not have to be used. The presentment could simply be sent to the court.

English law required great precision in naming the person accused, in specifying the time and place of the crime, and in describing the offense itself, in order that there might be no doubt as to the particular law broken. This preciseness was needed to insure that guilty parties would not be declared innocent on technical questions. At first the Virginia law tended to be less precise. Most writers of this period agree that judges were less likely to release a lawbreaker on a technicality or a loophole, feeling that this hampered justice. However, as we move further into the eighteenth century we find that increasing attention was paid to the refinements found in English law.

As time went on, the task of putting indictments in the proper form for submission to the grand jury fell more and more to the attorney general, or to the King's attorneys in the counties. Form was quite important since an improper indictment might be quashed. This would enable the accused to go free on a mere technicality. Therefore, the courts and the Assembly sought to do everything within reason to ensure that an indictment was properly written and executed.

14 Scott, op. cit., p. 66.
IV. SUMMARY

By March of 1658 the grand jury system in Virginia was found to be sadly lacking. It had scarcely lasted ten years. Probably the reason for this failure was that the county justices failed to carry out the details of establishing grand juries. Because of Virginia's rural setting, this system would surely have been a worthwhile one. It seems to be quite evident that here we had a powerful instrument for aiding in criminal detection, and at the same time an instrument for protecting the innocent. However, it was not used to its best advantage and as a result it was done away with, a mistake soon to be corrected.
CHAPTER II

MAJOR ACTS CONCERNING GRAND JURIES PRIOR TO THE PERIOD OF THE REVOLUTION

I. REINSTATEMENT OF THE GRAND JURY

After the Restoration in England there was a rather extensive reorganization of the laws in Virginia. The grand jury was not excluded from this turn of events. The repeal of the grand jury system had been a mistake for it left many rural counties and localities without an adequate means for the detection of offenses. In a short while it became evident that many laws were being broken and others not properly respected. As a result of this state of affairs the Assembly searched for a method whereby the detection of offenses could more easily become a reality. They settled upon the grand jury system as a likely answer.

Since some offenders of the early laws of Virginia were so evidently not being apprehended through lack of court or justice zeal, or the law did not provide for the appointment of "some particular officers to look narrowly after the offenders, to make presentment thereof to the ... county courts," the grand jury system was reinstated in March, 1661. The Virginia Assembly itself felt that the laws of Virginia were "slipted and contemned and become wholly uselesse and ineffectuall ..." By this act, county courts were charged to empanel grand juries and to charge them to "enquire of the breach of all penall laws made in their severall countyes, and that they make presentment thereof to the
several county courts, twice yearly, in April Court and in December Court... The county court was "to take for evidence the presentment of the jury if made upon the certaine knowledge of any of them..." Therefore, as mentioned above, one member of a grand jury could present evidence against an offender upon his own knowledge and expect to encourage and almost be assured of a true bill finding.

It can be seen quite readily that a single member of a grand jury might be sorely tempted to use his position as a grand juror to his own advantage. Dishonesty was almost certain to arise sooner or later as long as a provision such as this existed in the law. Dishonesty among the more unscrupulous members of a grand jury would be more likely to occur, since one member of a panel of jurors might not hesitate about presenting false evidence to further his own ends. He could also find himself faced with blackmail or intimidated by force, or other temptations designed to impair his efficiency as a grand juror. The Assembly took a long time to become aware of this fact, for this provision remained in effect until the turn of the century and later law revisions. However, when the change was made, only the evidence of two or more grand jurors was to be accepted on presentments. At times even this provision could cause difficulty for in many cases it was probably impossible for two or more grand jurors to discover the same crime or evidence. Thus in some cases this provision would be a handicap upon the functioning of an individual grand jury. But even though proving

15 Hening, op. cit., II, 74.
faulty, and in some instances producing a limiting factor in the grand jury's operations, it was probably needed to insure honesty within the grand jury and a greater confidence from without in its findings. After all, one of the most important responsibilities of the system was to protect the innocent even if a few guilty parties escaped punishment.

Even with the revisions, there was still no mention made concerning the qualifications of the grand jurors, nor how the county court was to govern itself in selecting panels of jurors. At this time it was left to the discretion of the county courts as to who would or would not serve on grand juries. Therefore, it is plain that each county court could determine whether or not its grand jury system was to be a good or a bad one. If a good grand jury was to be had, trustworthy citizens would have to be selected to serve. They would then have to be directed, at least until they learned what was expected of them.

The fate of the whole county court grand jury system rested in the hands of the county courts themselves. They alone could make sure that the system was being properly administered. Without their guidance the system was doomed to failure. Since no fines were provided for failure to follow the dictates of this act, it is not surprising to learn that the county courts did not carry it out. As a result the system was still sadly lacking in some areas and serving well in isolated instances. The grand jury did little to aid in the cause of justice, for which the Assembly was striving.

The county courts were limited in the offenses they could try. Another act, passed in March, 1661, set aside the first day of every
Assembly for hearing presentments of serious cases made by the grand juries of the county courts. All crimes whose punishment endangered the life or member of the accused could not be tried by the county courts. Therefore, since the General Court had not been formed at this early date, the Assembly heard and was responsible for sentencing those convicted of crimes of a more serious nature.  

II. FINES

During the seventeenth century there was a great deal of reluctance to obey the statutes passed by the Virginia Assembly. One particular act which was completely disregarded in some areas was the one concerned with empanelling grand juries by the county courts. Within fifteen years after its passage the act which reinstated the grand jury system had almost become a "dead letter." The reason for this failure was that the law had not provided for any penalty for non-compliance with its provisions. Therefore, in October, 1677, a much needed act concerning grand juries was passed. As stated above in the act of 1658, the grand jury system had not produced the desired effects of presenting offenders to the bar. For this reason it has been shown that the Assembly chose to discontinue the system. Perhaps the most important reason

16 Ibid., p. 108.

for this discontinuance lies in the domain of the local justices and sheriffs who did not appoint grand jurors and arrange for hearing their presentments. Because of this lapse in administering the laws passed by the Assembly, the system was greatly weakened. The October, 1677 act shows that this weakness had been spotted and that the Virginia Assembly was seeking to overcome it.

This time the grand jury system was not discontinued. Instead, each county court which failed to appoint and swear in a grand jury once every year, before or on the last day of April, was to be fined for every such omission two thousand pounds of tobacco. One half of the fine was to go to the informer of the omission and the other half to the county, thus encouraging each citizen to help see that the law was carried out by offering a reward. After being appointed and sworn in, each grand juror who missed the court session or failed to make presentments according to the true intent of the law could be fined two hundred pounds of tobacco, one half going to the informer and one half to the county.\(^1\)

It seems clear then that the Assembly was seeking a way to make the system work. Fines for both justices of the county court, and also for those appointed to serve on grand juries were in order, unless both parties performed their respective duties as directed by law. This was the first time that a fine was imposed for such an infraction of the law. The Assembly was surely determined to make the system work.

\(^1\) Hening, op. cit., II, 407.
From this time until the end of the colonial period the grand jury was a permanent functioning body in the Virginia court system. Its inclusion by the Assembly after the Revolution serves to illustrate the approval of the people of the state. By the end of the seventeenth century most of the fundamental developments had been provided for by law. There was a great deal of refining to do, however, since many of the rules and regulations concerning grand juries were obeyed by custom rather than by law. For instance, prior to 1705 no definite number had been specified as to how many grand jurors would compose a panel. Therefore, the number was left to custom and the ideas of the county courts. During the seventeenth century, many instances indicate that it was customary to summon twelve men to compose a county court grand jury.\(^{19}\)

In spite of admonishment, fines, and everything else the Assembly could think of, the county court records indicate that years sometimes elapsed without the summoning of a grand jury. Not uncommon was an experience such as that of Henrico County in April, 1695, when "the takeing of the Grand Juryes presentments is Referred untill the next Court, some of the Grand jury being Sick; and others out a Tradeing with the Indians." It was then ordered that a new grand jury be summoned by the sheriff at the June court, to replace the old grand jury. No fines were levied since the court seemed to consider "Trading with the Indians"

\(^{19}\)Elizabeth City County Records, 1681-1699, pp. 4, 93; York County Records, 1671-1694, p. 125; Henrico County Records 1677-1692, pp. 32, 33; all in Virginia State Library.
a legitimate excuse. If a grand juror could show that he was ignorant of his summons or show due cause for his absence, he was usually fined by the court in the amount of "all officers fees" and allowed to go. However, in many cases excuses served to forestall a fine. The records show that there were many grand jurors who were not present during the seventeenth century and the early part of the eighteenth century. Repeated fines were levied in these cases.

In Warwick County as late as the eighteenth century the justices ordered a grand jury to be summoned, but in a great number of cases this was never done. Perhaps this was a method used by the county court to evade paying a fine.

In some instances such a state of affairs was reached that the Governor and Council sent rather sharp letters to the counties commanding the enforcement of the laws concerning grand juries. The seventeenth century was indeed a low point in the history of the grand jury, but brighter days were destined to be found in the eighteenth century. During this period a much greater degree of regularity was obtained in the county courts. Grand juries were summoned and sworn in with ever increasing regularity. Fines were used to stimulate those who proved to be uncooperative, and this probably helped a great deal. It is in the

20 Henrico County Records, 1694-1699, April 2, 1695.
21 Ibid., 1678-1693, pp. 83-84.
eighteenth century that the system was really placed upon a firm and solid footing. 23

There seems to be no obvious reason in evidence for the failure of the county courts to appoint a grand jury in so many instances. Perhaps it was the character of the land and its people. Perhaps the system was really not needed. We might suppose that the county courts refused to appoint grand jurors and administer the laws concerning them because they saw in the system a threat to their power. In many cases the county courts probably wished to retain as much power as possible in their own hands. A grand jury might be viewed as an agent which would tend to drain away some of this power. This would not be a sign of evil intentions in all cases. Some county courts probably were quite capable of containing lawlessness through their own resources. So just because a retention of power was desired, we cannot necessarily conclude that justice was hampered.

Also, the courts held a rather dim view of the men from whom their choice of grand jurors had to come. In England the justices at least could choose knights and so forth who, worthy or unworthy, were powerful and influential. This was certainly not the case in Virginia during this period. Many men were capable of serving, but in a large number of cases the courts were unwilling to give power to a group of individuals who might or might not be capable of exercising it. Surely they were quite limited in their selection, for in many areas few

23 Scott, op. cit., p. 68.
candidates seemed to qualify. Among farmers, backwoodsmen, adventurers, and others, where was the county court supposed to find a qualified group of individuals to act in this capacity? Simply being honest and trustworthy was certainly not enough to qualify a man. It is certain that most of the citizens of the counties had little or no educational background. Where law is concerned, right or wrong is not clearly evident in many cases to an uneducated mind, and this may have made many county courts unwilling to appoint a grand jury. Instead they elected to bear the burden themselves.

Since there was no punishment or penalty for failing to appoint a grand jury prior to 1677, many county courts were probably unwilling to spend the extra time and effort to insure that this law was carried out. However, as has already been intimated, there are no solid facts to back these assumptions up. The apparent lack of concern in this matter must go without a conclusive answer.

At any rate the act of October, 1677 was about all the Virginia Assembly could do in this matter at that time. Improvements had to be left to time and a gradual awakening of interest in the system. This act served to stimulate the county courts somewhat, but it still remained almost a local option as to whether or not an effective grand jury system was brought into being and developed.

III. AN ACT CONCERNING JURIES—1705

In October, 1705, an important act in the development of the grand jury system was passed by the Virginia Assembly. Its title was
"An Act Concerning Juries" and it was by far the most comprehensive act passed concerning grand juries up to this time. Prior to this act, no definite number had been placed upon the membership of an individual grand jury, nor how the members were to be qualified for selection. This act provided that the county court order the sheriff of the county to summon at least twenty-four freeholders to appear at May and November courts every year, out of which the court was to swear in at least fifteen to compose a grand jury.

The charge to be made to the grand juries was no different from earlier charges, simply being "to make inquiry into the breach of the laws, and to make presentment of the offenders." However, more specific instructions were included for their dismissal than had been exhibited previously in any act. The grand jury "having made presentment of all such matters as come to their knowledge, shall be discharged at the adjournment of the same court, but if they cannot agree upon all their presentments before such adjournment, then they shall have liberty to finish their presentments, and to appear, and present them at the next court."

When making presentments upon the evidence or knowledge of someone other than a grand jury member, the witnesses' names were ordered to be put on the foot of the presentment papers. To insure that this act was taken seriously the Assembly showed its confidence in the system of fines which had been begun in 1677. Here the fine of two hundred pounds of tobacco for each grand juror who failed to attend for duty, after being summoned, was restated. This was to be enforced, however, only in
case there were not enough of the twenty-four summoned present to make up the necessary fifteen.

A further stipulation was made at this time in regard to qualifications. It required that only freeholders be allowed to serve on grand juries. This is the first evidence of any qualification required by law for a prospective member of a grand jury. The Assembly at this time was awakening to the need to set these items down into the law, but it was still slow in doing so.

Again, no age qualification was stated. Also no citizenship qualifications were necessary. Only a freeholder could serve, with the remainder of the qualifications resting in the hands of the individual county courts, and custom.

The act continued with another fine, this time aimed at the county court itself, but entailing a reduction from the fine set by the previous act. If any county court failed to give the order for summoning twenty-four freeholders or upon the appearance of any fifteen failed to swear them in, every member of such a court was to pay a fine of four hundred pounds of tobacco. Any sheriff who failed to carry out the orders of the court in summoning a grand jury was to be fined one thousand pounds of tobacco. Fines were producing the desired results, and so the Assembly decided to stick with them.

One final provision was contained in this act. It was by far the most important of the provisions in the whole act. No grand jury was to make any presentment "as of their own knowledge, upon the information of
less than two persons of their own number."\textsuperscript{24} The implications of this important clause have already been discussed. It probably served to guarantee a higher degree of honesty within grand juries.

This act was most noteworthy because of its mention of qualifications for grand jurors. After it was put into effect a more uniform system could be established with practices becoming more equal in all counties. It also lay the foundation for future qualifications, and stressed the fact that the Assembly was striving to improve the system.

IV. LIMITATIONS ON PRESENTMENTS

1727—Fines. Prior to February, 1727, a county court could try all cases within its jurisdiction regardless of the fine to be imposed. The only limitation governing a county court's right to try a case was in regard to capital punishment. No county court could try a person for a crime whose punishment involved the loss of life or limb. No monetary limitation had been placed upon these courts. By 1727 the Assembly felt that there should be some limit placed upon them with the more important cases being tried before the General Court which sat in Williamsburg. Therefore, it was decided and passed that county courts and grand juries could lawfully try and make presentments only in cases not involving more than twenty shillings sterling or two hundred pounds of tobacco in fines. It was further enacted that from and after April 15, 1728, the county grand jury could make presentments only in cases involving less

\textsuperscript{24}Hening, \textit{op. cit.}, II, pp. 367-71.
than five pounds or one thousand pounds of tobacco. All cases involving more than this amount would be sent before the General Court. 25

1711—Time element. Before September, 1711, a grand jury could present offenders for offenses committed at any time in the past. Originally the grand jurors were appointed some six months in advance, and they were supposed to be on the lookout for all breaches of the law until their meeting. 26 However, they were not limited by law as to the time element involved. Therefore, a grand jury appointed in 1740 could lawfully present an offender for a crime committed in 1730, or even earlier. Since this seemed unfair and perhaps would induce dishonesty among grand jurors, an act was passed in September, 1711, which stipulated that grand jurors could only present offenders for offenses committed within the twelve month period immediately preceding their appointment. 27

V. MOST COMPREHENSIVE ACT—1748

In October, 1748, an act was passed entitled "For the more regular inquiry into breaches of penal laws, and trials of matter of fact, in the several courts of justice within this dominion by grand juries and petit juries." This act made previous acts concerning grand juries

25Ibid., IV, 232.
26Scott, op. cit., pp. 68-69.
27Fening, op. cit., V, 226.
obsolete. Many of the provisions found in former acts were included, if they had been found to be worthwhile. It stated that "Every county court shall cause twenty-four freeholders of their county, not being ordinary keepers, constables, surveyors of highways, or owners or occupiers of a mill, to be summoned to appear in May and November courts, annually out of which shall be empanelled a grand jury of fifteen at least. . ." This grand jury was to present offenders for crimes which had taken place during the preceding twelve months only, unless otherwise specified by law. Any freeholder summoned for duty on a grand jury whose failure to appear caused the grand jury to be short of the required fifteen was to be fined up to four hundred pounds of tobacco. If any county court failed to empanel a grand jury, each member of such a court was to be fined up to four hundred pounds of tobacco. Any sheriff who failed to summon twenty-four freeholders, and return a panel of names to the May and November courts annually could be fined up to one thousand pounds of tobacco.

It further stated that no grand jury was to make presentments upon the evidence of less than two of its members. Evidence produced by someone other than a member of the grand jury was to have the name of the witness or witnesses placed upon the root of the presentment papers. The limitation concerning fines or penalties to be inflicted by the county court was raised to twenty-five shillings or two hundred pounds of tobacco, therefore still leaving more important cases to the General Court.

The grand juries of both county and General courts were to be
discharged after all known presentments were made. This act was to go into effect on January 10, 1751.28

Essentially, this act was quite evidently simply a collection of all those previous acts concerning juries which had proven to be worthy of continuance. This was done for the sake of convenience and reemphasis. From it can be gathered the idea that the system was worth hanging on to.

VI. EXPENSES TO BE PAID BY ACCUSER--1752

It can quite readily be seen that with a system such as this, certain abuses were almost certain to take place. Sooner or later many faults would be found. Among the most perplexing of these problems was the one concerned with presentments brought before grand juries upon insufficient evidence or simply upon suspicion. This proved to be both expensive and time consuming with witnesses and grand jurors using valuable time on cases that should never have been tried unless more substantial evidence were found. Although this was one of the duties which the grand jury performed, that of eliminating cases based upon poor evidence, it still presented a problem. The system was being overworked, and used in matters for which it was not intended.

The Assembly finally became aware of this, and in February, 1752, passed an act stating that if a true bill were not found by the grand jury, the accuser was to pay the expenses of the witnesses and others

28Ibid., pp. 523-25.
involved in the case. Since, if found guilty the accused paid these expenses, witnesses would now be paid expense money in either case after the passage of this act.\footnote{Ibid., VI, 276.}

This act probably hurt the system as much as it helped it, as far as the detection of offenses goes, but if we consider the protection of the innocent it grows in stature. Most people would hesitate in accusing a person of something that they were not relatively certain that he was guilty of. This would greatly insure that the innocent would be protected. In some cases there may have been hesitation before presenting a guilty party; but if a few guilty parties went unpunished, it was worthwhile in order to protect the innocent.

VII. SUMMARY

Before the period of the Revolution the grand jury had become firmly established in the Virginia court system. It had proved to be worthwhile, and continued legislation served to improve its effectiveness. The system was also growing in popularity, public esteem, and influence. Primarily this period was devoted to providing the basic fundamentals of the system. Although failing to provide the necessary qualification requirements, the system was not doing too badly, for the county records show many presentments. Therefore, the system could now begin to develop internally.
CHAPTER III

SPECIAL CHARGES

No further important legislation was passed concerning the county grand jury system until the Revolution. Therefore, its further development will be discussed in Chapter II. However, prior to 1760 the Virginia General Assembly passed many acts which issued special charges to the grand juries. These charges for the most part were concerned with the enforcement of certain laws which were commonly being broken. Most of these special charges had to do with religion and strong moralistic overtones, economics with agricultural leanings, and a variety of other subjects such as taxes. A sampling of the most important of these acts follows.

I. TOBACCO

With John Rolfe's improvement of the quality of tobacco, England accepted Virginia tobacco much more readily than she had previously done. Since "Spanish tobacco" was of a better quality than the Virginia variety, thus causing stiff competition, almost from the beginning leaf quality was a prime objective of the Virginians. In order to improve Virginia's economy through the sale of tobacco, its quality had to be greatly improved. John Rolfe's improvement helped a great deal.

During the early years of the tobacco trade tobacco commanded its weight in silver. Much swindling and adulteration took place and seems
to characterize the early period.\textsuperscript{30} Hogsheads of tobacco were sometimes partly filled with something other than tobacco causing a great deal of dissatisfaction among the buyers.

Despite this, by 1616 tobacco was considered to be the chief commodity of Virginia. By 1618 imports from Virginia into England exceeded those from foreign countries, but the expansion of production soon brought about overstocked markets, low prices, and resulted in a slump in the Virginia economy.\textsuperscript{31} However, the fact that tobacco could be grown and sold profitably guaranteed that the Jamestown experiment would not fail.\textsuperscript{32} It might sputter and falter, but better days were sure to come.

"Perhaps the lawmakers of Colonial Virginia gave to no other single topic the attention which they bestowed on tobacco." To improve the quality of exported tobacco and to keep down some of the crop surplus, different statutes in seventeenth century Virginia forbade the cultivation of second-growth tobacco and the marketing of suckers, ground leaves, and trashy weed. As early as 1619 the lowest grade of tobacco was burned.\textsuperscript{33}

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\textsuperscript{33} Robert, \textit{The Tobacco Kingdom}, pp. 7-8.
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Since many planters shipped poor quality tobacco as well as tobacco mixed with debris and foreign matter, English purchasers became more guarded in their buying. Often they depended solely upon a planter's reputation as to whether or not to deal with him. Since this became a great blow to the economy, the Virginia House of burgesses, in 1619, banned second growth tobacco, ordered the trashy grades destroyed, and initiated an inspection system.  

However, the inspection system did not materialize as expected, for in March, 1661, a special charge was issued to the grand jury of each county court throughout Virginia. Each county court grand jury was charged to present offenders of an act concerned with the improvement of the quality of Virginia's tobacco. No person was to pack, save, sell, or send away any ground leaves under penalty of forfeiture of every hogshead of tobacco containing five pounds or more of ground leaf, plus a five thousand pounds of tobacco fine.  

Since tobacco was such a major money crop and therefore of foremost importance, failure to heed the laws concerning it were quite justifiably severe. This act, no matter how much it was called for, failed to boost the price of tobacco. Other acts concerned with this problem met similar fates. From 1661 until the 1730's the price either declined or remained steady at a low price.  

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34 Heimann, op. cit., pp. 48-49.
35 Henning, op. cit., II, 119.
II. MULBERRY TREES

The prolific growth of mulberry trees around the Indian settlements and elsewhere, encouraged the English to conclude that Virginia was an ideal location for the development of a silk industry. Greatly encouraged by England the colonists made great efforts throughout the seventeenth century to establish the culture and production of silk on a paying basis.37 Noting this, it seems quite interesting that another act passed in March, 1661, is concerned with the silk industry. This act states in part "Whereas by experience silke wilbe the most profitable commodty for the country if well managed, and whereas the greatest condencement thereunto required is provision of mulberry trees," each acre of land held in fee-simple was to have ten mulberry trees planted, and sufficiently fenced and tended. A twenty pounds of tobacco fine was to be imposed upon those not following the dictates of this act. The grand jury was to take particular note of this, and was ordered to present those who failed to comply.38

However, despite this act, the lure of profit exhibited by the easy and faster tobacco crop, plus the difficulty in obtaining for the colony enough skilled silk workers, the result of the silk venture was failure. The project was abandoned. The courts had failed to enforce


38 Henning, op. cit., II, 119.
the act anyway.39

III. CORN

Virginia was troubled by its corn supply almost from its beginning. In 1608 the first real need took place. With the coming of the first snows it was found that increased numbers in the little settlement had brought on an acute food shortage. Captain John Smith bluffed the great Indian chief, Powhatan, into supplying the needs of his people and Jamestown was saved.40 Later, a treaty with the indians greatly aided the colonists in acquiring the corn which they desperately needed.41

Dramatically then, Virginia's corn problem was brought to the attention of everyone connected with Jamestown. It is no wonder that by 1629 laws were being made to enforce the growth of corn. Every laborer was ordered to tend two acres of corn or else forfeit all his tobacco.42

Apparently this order was not carried out for another act passed in March, 1661, stipulated that two acres of corn, pulse, or wheat be planted for each tithable person tending a crop in a family. This law

39Jester, op. cit., p. 17.
41Ibid., p. 154.
was a bit more modern in its approach. However, it was a necessary act even at this time in order that the colony would be more assured that no food shortages would occur. If this act had been carried out, there would have been no reason, other than bad weather and resultant bad crops, for a food shortage to come about. Grand juries were again chosen to help guarantee that this act would be followed by the colonists. Each grand jury was charged to present all offenders.

Farmers at this time were unwisely choosing to grow money crops instead of food crops. As a result the food shortages were more frequent. Food shipped from abroad was more expensive and not fresh. It was, therefore, inadvisable to import their food. Thus this act was needed for the best interests of the colonists.

IV. RELIGION AND MORALITY

1691. The next act in our sampling tends to show the strong moralistic values imposed upon the colonists by law. As early as 1629 the laws concerning religion and morals savored strongly of harshness. However, in many cases they were equally judicious. Religious zeal and enthusiasm permeate the laws of the Colonial Virginia people. At times it seems that this tendency was more prominent than anything else, with more consideration being given it than for any other type laws.

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43 Hening, op. cit., II, 123.
45 George Lewis Chumbley, Colonial Justice in Virginia, The
Therefore, one should not be surprised to find that in April, 1691, an act was passed by the Assembly entitled "An Act for the more effectual suppressing the several sins and offenses of swaring, cursing, profaning God's holy name, Sabbath abusing, drunkenness, fornication, and adultery." As if this were not enough, no person was to travel on Sunday unless he wished to pay a twenty shilling fine or spend "three full hours in the stocks." Drunkenness was to be rewarded by a ten shilling fine or three hours in the stocks, while fornication and adultery were punishable by fines of ten and twenty pounds sterling respectively, or thirty lashes or three months in jail. Grand juries were to make presentations for these offenses twice yearly with one third of any fines charged going towards building and repairing churches, one third towards the salary of ministers, and one third to the informant. This act was voided by a subsequent act in September, 1696.

1696. These acts concerned with religion were ill-used from the first. Many false accusations occurred and according to law were perfectly legal. One man could accuse another of a moral or religious crime and bring about his conviction. To help meet the demand that justice be carried out more fairly an act was passed in September, 1696, which required that swearers, cursers, or profaners of God's name should be convicted by at least two witnesses or by the confession of the

offender. A one shilling fine was to be imposed upon those convicted. Sabbath breaking included such things as traveling and attending unlawful meetings or assemblies, and was punishable by a fine of twenty shillings or two hundred pounds of tobacco. Drunkenness, fornication, and adultery still ranked high among the offenses, and the penalty was approximately the same as in 1691. Grand juries and church wardens were charged to present offenders of this act and the revenue gained thereby was to go towards the maintenance of the parish minister. 47

1744. By September, 1744, acts such as those just mentioned were being moderated somewhat. At this time the Assembly decided that any person presented by a grand jury for missing church for one month could be excused, if a witness would swear that he or she had attended another church. 48

Offenders of these religious acts are most easily found in the county records. Since they were minor, they were committed much more frequently and this brought on the special charges. They reflect the attitude toward sin which was so prevalent at that time. Today many of the provisions contained in these acts would seem senseless and unconstitutional, but at this time they were considered important and were imposed upon the colonists by law. Perhaps this may serve to illustrate why these laws were so commonly being broken. In many cases, in addition

47 Ibid., pp. 137-140.
48 Ibid., v, 226.
to a new and more promising life, the people of Virginia had come searching for complete freedom of religion and freedom in general. What they found when they arrived was anything but freedom of religion. This brought about resentment, and resulted in laws being broken.

V. SUMMARY

We find then through our sampling of these special charges that a variety of charges was issued to the grand juries of Virginia counties. In most cases these charges served to focus special attention upon certain specific laws which were commonly being broken. In most instances they were chiefly concerned with minor crimes, but since these minor crimes were being committed frequently, they were quite important to the Assembly. Such acts as those concerned with the corn crop are especially significant though, for the prosperity of the colony rested upon its ability to sustain itself. In turn, the tobacco acts helped govern the economic well-being of the colony. Who can say that without such laws prosperity would not have ceased to exist? Therefore, although seemingly minor in scope, these special charges carried great weight and were of major importance.

It seems safe to assume that these special charges reflect an increased interest and respect on the part of the county grand jury system. It can also be said that the increased responsibility given to the grand jury resulted from the comparative worth of the system. This is not to say that it was perfect, far from it is more likely the case. However, it was greatly improved since 1661 and was fast becoming more worthy of respect and increased responsibility.
CHAPTER IV

PROCLAMATIONS

So far it has been shown that grand juries were empowered through act of the Virginia Assembly by both special charges and general laws. There was yet a third method for lending authority to grand juries. This method was used in both restating special charges and general laws and therefore stressing special importance to them, and also in initiating new powers. In the latter case, however, it was used sparingly. This method was through proclamations issued by the governors of Virginia. Often this method was used by the various governors as a means to stirring up the county courts towards greater efforts of law enforcement. It was usually applied when law enforcement was becoming lax.

Most of these proclamations were concerned with offenses that were repeated with regularity. Therefore, most were concerned with minor offenses. They were issued to the county courts especially, since the governor presided over the General Court and therefore was able to personally instruct its grand jury. A proclamation issued by the governor and sent to the county courts was undoubtedly taken seriously.

I. JANUARY 11, 1683

One such proclamation was issued on January 11, 1683, and was

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sent to each county court throughout the state. It specified that each county court was to put all the laws in force, particularly the act for planting two acres of land in grain for every tithable. The same old problem was tormenting the colonists again, perhaps not as seriously but still persisting. Farmers were again neglecting the food crop in order to grow more tobacco. Each county court was ordered to appoint grand jury men who were to return an account of the execution of the law to every General Court.  

It is quite interesting to note that this proclamation specified that the county findings be forwarded to the General Court and not the county court. This was a method whereby the governor could check up on the individual county courts. The governor was quite interested and determined to keep his finger on the pulse of Virginia's food crops and was seeking to make Virginia self-sustaining in this respect. He was also seeking to keep tobacco production under control and by doing so help to insure that a more or less stable market value could be established. Tobacco was used as a medium of exchange in Virginia at this time. With rapid fluctuations in the value caused by supply and demand, many problems arose. Therefore, it was very important for the economic prosperity of the people as individuals and Virginia as a whole, that a somewhat steady value be maintained.

50 Executive Journals, I, 38.
II. JUNE 18, 1684

On June 8, 1684, Lord Howard, governor of Virginia, issued a proclamation requiring that all grand juries inquire into the size of tobacco hogsheads and whether or not they were the size specified by law, "43 inches long and 26 over the head." This was necessary to guard against the unscrupulous planters who might build smaller hogsheads and ship tobacco in them for the same price as legal size.

In carrying out the dictates of this proclamation, at least one county grand juror became quite involved in obeying. He was a good deal overzealous in actions for on September 1, 1684, in the Henrico County Court he came to trial. His name was Thomas Holmes. He had been bound over by a Captain Randolph on complaint of Benjamin Hatcher, for coming to Hatcher's house in his absence "by the bare authority of being a Grand-jurymen" with two others, going to the tobacco house, taking a tobacco stick, entering Hatcher's house "to the great disturbance and affrightment" of Hatcher's wife and children, and measuring the outside of a hogshead to see if it complied with the law. The court held that Holmes should have secured a warrant from a justice, if as a grand jury man he wished to search for violations of the law. The jury accordingly found that Holmes was guilty of trespassing. Hatcher recovered twelve hundred pounds of tobacco in damages and costs.52

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52Scott, op. cit., p. 69.
From this happening, it seems evident that at least one proclamation brought results. Perhaps the action was a bit overdone but nevertheless it stresses the fact that grand juries were functioning as a part of the county court system.

III. MARCH 13, 1683

On March 13, 1683, another proclamation was issued which, if taken at face value, clearly shows that something was wrong with the functioning of the county grand juries. The fault seemed to be with either the county court or the grand juries. One or the other was failing to meet the requirements set by law. This proclamation is so clear and to the point in its language and meaning that it seems appropriate to record it at this point. Although an act passed by the Virginia Assembly had provided that a

Grand jury be annually Impannelled and sworne in Every County, to Enquire of the breach of all poenall Lawes, in their Severall Counties, and to make presentment thereof, to the Severall Counties Courts twice a yeare in Aprill Court and December Court . . . and it being represented to me that for want of due execution of the same, severall Lawes are become ineffectuall, in which that I may have a true Informacion whether the same hath been through the default of grand juries makeing Presentments by Law Required, or in the Justices in not Directing Grand Juries to be Impannelled or by the Justices Remisse Execution of the Lawes on offenders when Presented, Therefore I Thomas Lord Culpeper Baron of Thorsway his Majesties Lt. and Govern, Gen. of Virginia . . . doe by this Proclamation, Require and strictly command all and every County Court of his Maj. Collony of Virginia to give Directions of the Impanneling of Grand Juries within their Respective Counties, which O. J. so Impanneled are to Enquire and due Presentments make, of all the offenders ag. the Lawes of this Collony . . . 53

53 Executive Journals, I, 47.
The proclamation continued with a special charge for the grand juries to inquire "after the breach of that most provident and necessary Law" concerning the planting of corn or wheat for each tithable person.

Next, it continued with,

and I doe hereby Require and Strictly Command the Justices of every County • • • to Return all such presentments made by the G. J. from March, 1680, and that shall be made from this time to the twelveth of Aprill next, under their respective hands sealed up to the Secretaries Office on the twelveth day of ye next Gen. Court. 54

This was a big year for county courts sending their findings to the General Court, for the January 11, 1683, act also required that this be done. Evidently Governor Culpeper did not trust the county courts to follow the orders of his proclamations. Otherwise he would not have demanded that the presentments be sent to the Clerk of the General Court. If justices of the peace did not adhere to this policy he continued, they would "Answere to Contrary at their uttmost perills." 55 He was more determined than anyone, whose records have been found, to try to find out how well or how badly the system was functioning. He was quite obviously seeking to aid law enforcement in some way, but first sought to find the facts of the matter.

IV. DECEMBER 2, 1690

On December 2, 1690, Governor Nicholson issued a proclamation ordering justices of the county courts to appoint and swear in "ye best

54 Ibid.
55 Ibid.
and most substantial of ye Inhabitants of their counties." He goes on to list a formidable number of offenses to which grand juries are to be charged to inquire about. Thus the system must have been found to be malfunctioning once more. Although proclamations had been issued and laws passed, dissatisfaction still existed towards the grand jury.

The long list of charges presented in this proclamation reveals that Nicholson himself was either completely dissatisfied with the results of the grand jury system or else he was determined not to leave anything out. It seems that he listed almost every charge given to a grand jury at any time prior to his proclamation. He certainly left nothing to the imagination of the county courts. Everything that grand juries were supposed to make presentments for was in his list.

V. APRIL 1, 1712

In order to portray the variety that these proclamations entertained, one last reference will be made at this point. Governor Spotswood on April 1, 1712, issued a proclamation which stated that the minister or reader of each parish by act of March 23, 1661, had been ordered to "well truly and faithfully Record all Births Burials or Marriages that shall happen within their parishes in a book to be provided by the Vestry for that Purpose . . ." The penalty for failure to comply had been set at five hundred pounds of tobacco. This fine, when collected, was to be used by the parish. Also "every Master of a family

\[56\] I[bid.], p. 148.
shall give notice to the minister or Reader of the Day of the Birth
Death or Marriage of every person to him or them related under the pen-
alty of one hundred pounds of tobacco." Governor Spotswood noted also
that many clerks of the Vestry and heads of families were neglecting to
comply with this act. In his proclamation he therefore charged county
justices to in turn charge grand juries to present offenders of this act
and to make sure that it was carried out. 57

VI. SUMMARY

Proclamations were used personally by Virginia governors to re-
emphasize the importance of laws passed by the Assembly. In most
instances the proclamations were concerned with offenses of a minor
nature which were being committed frequently. As we have seen, some of
these proclamations covered a multitude of charges to the grand jury,
perhaps even a catalog of them in some instances. Also, as in the pro-
cclamation of April 1, 1712, they sometimes contained orders which per-
tained only to a single act. Therefore, they were varied in text and
construction with flexibility being a large factor. Each governor could
fit a proclamation to his own needs.

From the evidence supplied us by these proclamations, we must
assume that the grand jury system as well as the county courts were not
being used as the governors wished. Otherwise these proclamations would
not have been issued. Since different governors issued them, we must

57 Hening, op. cit., IV, 550.
also assume that a definite fault was either a permanent or recurrent part of the system. Whether laxity on the part of officials or the grand jurors is of no consequence, for it was the system that was at fault.

However, it is most difficult to estimate where the basic fault for this failure can be found. Perhaps the county courts were not appointing and swearing in these grand juries as the law required. At least part of the time this was the case for it is recorded in the early acts. Perhaps grand jurors themselves were lax in performing the duties prescribed to them by law. Surely the demands of daily life in some sparsely settled areas made many county grand jurors' duties seem less important. As we shall see later in Chapter X, this was often found to be the case.

It is even possible that the governors who issued the proclamations were misinformed on the fact that many laws were being broken with offenders going unpunished. We might surmise that little lawlessness occurred and that most laws were being observed. Travelers were known to comment frequently on the rare occurrences of serious crimes in Virginia and we find that there are few recorded cases of serious crimes taking place in Virginia during this entire period.58

At any rate many presentments were made during this period. Most of them were minor. Proclamations probably helped to bring about increased law enforcement through focussing special attention on given acts.

CHAPTER V

SUMMONS, OATH, CHARGE, AND PRESENTMENTS

So far several points about grand juries have been discussed with little mention being made of what went on before the end results, protection and detection, could become realities. It might be best to begin with the grand jury's relation to the county court. The grand jury was a body which could conduct investigations for the county court, both in special matters and also as a general course of action. In this respect it could be called the right hand of the court.

As has been mentioned previously, the grand jury served in a fashion similar to that of a modern policeman. As such, one writer says that there could be no institution designed to cooperate with the judicial powers in the detection and punishment of crimes more perfect than that of the grand jury. He also cited that one of the most important duties of a grand jury was to protect the innocent against "groundless and malicious accusations" which were all too frequent in a government where any person might obtain and pursue a public prosecution at the expense of the state. 59

Therefore, it seems that the grand jury was both detector as well as protector, in many cases serving in two major capacities simultaneously. Its duty was quite clear in that it was charged to detect offenders, but at the same time poor evidence was to be considered as an

indication of innocence. It could act at the direction of the county court or of its own volition. The individual grand jury could be good or bad depending upon the county court, its foreman, and its own members.

Overzealous grand jurors such as Thomas Holmes (above) were clearly overstepping their authority. Men such as this hurt the system more than they helped it. The system had no room for such men, although they occasionally found a place on a panel.

When an accusation was made by someone other than a grand juror, it was the duty of the grand jury to examine the evidence they presented carefully, in order to insure that the innocent would be spared the embarrassment of a trial before a court. This was clearly an important responsibility.

I. SUMMONS AND OATH OF OFFICE

As mentioned in the acts above, it was the duty of the sheriff of each county court to summon twenty-four of the most capable freeholders of his county to serve as a grand jury. He was directed to do this by the county court. Failure of either of these functions thwarted the whole system and so, as we have found, fines were imposed upon those failing to carry out the duties of their offices in this respect.

Originally these jurors were summoned or appointed some six months in advance and they were supposed to be on the look-out for any and all breaches of the law until their meeting. Later, however, they were summoned only a month or so beforehand. They met and presented
their offenses and were then dismissed. After being presented with a summons, a grand juror was supposed to report to court on a set date announced on the summons. If on that date less than fifteen of the summonses were obeyed, no grand jury could be sworn in and each of those whose failure to appear caused the grand jury to be short of the required fifteen was fined. If, however, fifteen or more showed up, no fines were forthcoming and the grand jury was duly sworn in.

The official oath of the grand jury was not made law until 1792. However, we can safely say that custom had dictated the oath which was read into the law at that time. Therefore, we can assume that the following oath, taken by a grand jury in King and Queen County, Virginia, must have been quite similar to those used at earlier dates. The first part of this oath was directed to the foreman of the grand jury who was either elected by the other members, or appointed by the county court. The second part was directed to the remainder of the body.

You as foreman of this inquest shall diligently inquire into and true presentments make of all such matters and things as shall be given you in charge or otherwise come to your knowledge touching the present Service, you shall present no person through malice Hatred or ill will nor shall you leave any unpresented through

60 Scott, op. cit., pp. 68-69.

fear favor or • • • affection or for any reward hope or promise thereof but in all your presentments you shall present the Truth, the whole truth and nothing but the truth according to the best of your skill and Judgement So help you God.

The same oath that A.B. your foreman has now taken before you on his part you and each of you shall well and truly observe and keep on your respective parts So help you God.62

II. CHARGE TO GRAND JURY

After being sworn in the county grand jury was subject to a charge given by the presiding justice. In this charge would generally be found those offenses that the justice believed to be most important, at least as far as his county was concerned. He might also include any special charges or proclamations issued by the Assembly or the governor. In the charge the justice would outline the duties and what he expected the grand jury to accomplish.

Perhaps the charge of a justice of Lower Norfolk County in 1662 will serve best as a good example of a county court's charge. This justice began his charge by mentioning many offenses against morality such as swearing, blasphemy, fornication and several others. He then moved on to more serious crimes such as treason, murder, and rape. He pointed out, however, that if punishment involved the loss of life or limb, the county court could not try a lawbreaker. Instead his case would be forwarded to the General Court, which sat in Jamestown at this time. He continued, instructing the grand jury to present the county itself if it

62 The Pollard Family Papers, 1782-1907, Virginia Historical Society Library.
failed to erect a pillory, a pair of stocks, and other items. He then moved to offenses concerned with agriculture and closed with "by the performance of these (charges) you will discharge your duties to God and to the King; and shew yourselves necessary members in promoting the good of the commonwealth." 63

As one can discern almost at first glance, these charges were not original. What the presiding justice did was select the offenses which grand juries were directed to investigate by acts of the Virginia Assembly. He built his charge around these special charges as stated in the acts. Of course he could include any proclamation charges made by the governor, or a special charge designed for his locality if he wished. He was allowed discretion in this matter, but most frequently it is found that the charge was based upon the acts of Assembly.

At least one county grand jury claimed ignorance of the laws concerning what to present, and how to present for offenses. When receiving its charge in June, 1685, a grand jury of Henrico County, after being sworn in and impanelled, claimed ignorance of the laws concerning its functions. Some of the members were obviously unfamiliar or unsure of how to go about performing their duties. Therefore, to insure that all the members understood how the grand jury was to conduct its affairs, the laws were publicly read and explained to them. They were also ordered to take particular notice of them and the clerk

entered this upon the record. Thus a failure to understand the duties completely could have hampered this grand jury. Obviously these grand jurors were either sincere about doing their duty, or else seeking a way to avoid serving. They accomplished the first end, if that is what they desired, but were thwarted in the last.

III. PRESENTMENTS

The last of the functions of the grand jury was to make presentments. Originally this was probably the primary cause for having a grand jury. But gradually the idea came about that the grand jury could be used to protect the innocent, and this took its place alongside the detection of offenses.

When making presentments, each member of a grand jury presented his own evidence and findings with his name and those he presented written into the county records in many instances. It was the duty of the grand jury, headed by its foreman, to examine the evidence against a suspect at this time. It was supposed to decide whether or not the evidence was sufficient enough to bring about a conviction, or at least to hold the suspect. If enough evidence was found to show with little doubt that a suspect was guilty and that a probable conviction would be won, he was held for a trial before a petit jury. If the evidence was

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64 Scott, op. cit., p. 69.

65 York County Records, 1671-1694, p. 125; Henrico County Records, 1677-1692, pp. 32, 33, 312-313; Elizabeth City County Records, 1684-1699, pp. 4, 93.
found to be weak or unconvincing then, he was released.

Only evidence against the suspect was heard at this time. No defensive argument was allowed. This would come later before a trying jury.

IV. SUMMARY

Evidence regarding how business was actually conducted by grand juries during their meetings is quite hard to find. No voluminous records were kept, in fact records for meetings are non-existent. Some court records contain names of those presented and a bit more information than others, but most have very little to say about grand juries. Therefore, secondary sources have been sought and even here information is sadly lacking. For these reasons this chapter is necessarily short. However, it is felt that the information presented should suffice to supply the reader with a pretty good picture of the actual functioning of a grand jury.
CHAPTER VI

PRESENTMENTS 1632-1752

A sampling of presentments made in the various counties throughout colonial Virginia will now be shown. The general types of crimes committed will be shown, and also an attempt has been made to show the presentments made by different counties. This group of presentments is by no means exhaustive. Many, many more can be found in the county archives. No effort has been made to present a quantity of presentments, although the statistics to be gained from this might be interesting. Instead, the presentments chosen were chosen for their representative features. Many were found frequently in the records while some were isolated cases, but in general they represent all the presentments uncovered thus far.

In general the same offenses were committed frequently in all areas. Presentments for cursing and offenses of like nature are perhaps most numerous. As one might assume, most of the presentments were concerned with minor crimes. As you will remember, major crimes were forwarded for trial to the General Court.

I. PRESENTMENTS AGAINST AVERAGE CITIZENS

1632 - June 14 - William Gallopin and Jane Champion, the wife of Percifal Champion, were indicted for murder and concealing the death of Jane's child, later sentenced to be hanged.66

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1654 - December - A Lower Norfolk County grand jury found true bills for fornication, incontinence before the marriage ceremony, disregard of the prices fixed by law in selling, a theft of corn, the use of improper weights and scales, and violation of the Sabbath.67

1685 - A Henrico County grand jury made presentments for building tobacco casks of a larger size than the law permitted; refusing to grant the legal rates in grinding corn; omitting to keep steelyards in a mill; concealing a tithable; tending tobacco seconds; packing ground leaves, slips, and rubbish in hogsheads; and failing to plant in corn the area prescribed by statute.68

1692 - Westmoreland County - common swearing, adultery, fornication, drunkenness, theft of hogs, neglect to plant corn, failure to attend church, and to repair highways, selling liquor without a license, stopping public roads, obstructing the rivers with posts and stakes, and tilling fields on Sunday.69

1693 - Isle of Wight County - "misdemeanor of beating their host and disturbing the company," striking a grand jury man, committing incontinence.70

1721 - July Court - Williamsburg, General Court (?) - five women presented for "having a bastard," two for being drunk, stopping the road, eleven persons for not attending church, and one for not remaining in "Church during time of Devine Service."71

1747 - May 21 - Augusta County - five swearers and two "Sabbath-breakers."72

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67. Lower Norfolk County Records, 1651-56, p. 111.
68. Henrico County Records, 1677-1692, pp. 312-313.
70. Isle of Wight County Records, 1688-1704, Virginia State Library, p. 90.
72. The Virginia Historical Register (Richmond: MacFarland and Ferguson, 1850), III, 16.
1750 - November 28 - Augusta County - Jacob Coger presented for "a breach of the peace, by driving hogs over the Blue Ridge on the Sabbath Day." 73

1751 - May - Augusta County - James Frame presented "for a breach of the Sabbath in unnecessarily traveling ten miles." 74

1752 - June 12 - Williamsburg - one rape and one felony - no true bill. 75

1752 - December 12 - Williamsburg - one murder and two felonies - no true bill. 76

Such was the general complexion of the Virginia grand jury system's presentments during the colonial period. It can readily be seen that in a great number of cases religious or moral issues were at stake as well as offenses pertaining to agriculture. As one can observe some grand juries tended to be a great deal more active than others. Some brought in many presentments, while some found fewer, and in some instances no presentments were made at all. 77

II. PRESENTMENTS AGAINST OFFICIALS AND MINISTERS

Most of the presentments found recorded in the archives were concerned with the average Colonial Virginia citizen. However, this was definitely not a hard and fast rule. It must be remembered that the

73 Ibid., p. 75.
74 Ibid.
75 Virginia Gazette, June 12, 1752.
76 Ibid., December 15, 1752.
77 Middlesex County Records, April 1, 1689, Virginia State Library, p. 313.
grand jury was responsible to the people's welfare, in many cases being charged to present the county court itself for failing to obey the laws and regulations of the county and state. Therefore, position or rank in society was not supposed to deter a grand jury from seeking to do its duty. Undoubtedly many powerful officials were overlooked when found to be acting suspiciously, but this was not true in all cases. The records hold many charges against these individuals.

Ministers, judges, and sheriffs were among those presented for offenses which they had committed, either in connection with their office or as private citizens. Surely these men can be said to have represented the most powerful and influential segment of the population. Some of these presentments will now be shown.

On October 16, 1678, ministers and officials of Lower Norfolk County were presented for not "Looking that the people come to church on the Lord's day to heere devine service according to the canons of the Church of England. . ." On May 3, 1742, Rev. Thomas Blewitt was presented in Richmond County "for a Common Swearer" and was cited for previous charges of drunkenness, and swearing on November 5, 1739.

Another grand jury of Lower Norfolk County presented the local justices for failure to purchase weights and scales for public use, to hold terms of court for the proper lengths of time, to establish a

78 Lower Norfolk County Virginia Antiquary (Baltimore: Friedenwald Co., 1904), V, 123.
79 Calendar of Virginia State Papers and Other Manuscripts (Richmond: A. R. Micon, 1886), I, 234-235.
workhouse, and to see that the usual procession for the preservation of 
metes and bounds was frequently repeated.\textsuperscript{80} The Lower Norfolk County 
grand juries seem to have been especially active in respect to present-
ing officials.

In 1760 a magistrate was indicted by a Prince Edward County grand 
jury for swearing one oath. Another was indicted for the same offense 
in 1762, and in 1763 still another was indicted for swearing four oaths 
and was subsequently fined twenty shillings.\textsuperscript{81} Prince Edward also 
seemed to be quite fearless of the county justices. These officials 
were not tried by the county courts of course, for this would have 
failed to serve the cause of justice. Instead they were taken for trial 
to the General Court to ensure less intimidation and greater justice.\textsuperscript{82}

Not even sheriffs were free from the presentments of the grand 
jury. It has been a widely accepted fact for quite some time that the 
sheriff of a county was one of the most important, if not the most 
important, men in the county. Undoubtedly this is true, but not even 
this fact caused some grand juries to falter in doing their duties. In 
April of 1676 Thomas Chamberlayne was commissioned sheriff of Henrico 
County. His position, however important, did not seem to merit or 

\textsuperscript{80} Bruce, \textit{op. cit.}, I, 608.

\textsuperscript{81} Herbert C. Bradshaw, \textit{History of Prince Edward County, Virginia; 
From its Earliest Settlements through Its Establishment in 1754 to its 

\textsuperscript{82} Lower Norfolk County Records, 1656-66, p. 351; Westmoreland 
County Records, 1690-1698, pp. 66-67.
deserve a great deal of his respect though, for it failed to interfere with his rowdy behavior. On April 30, 1679, he was presented by the Henrico grand jury for being drunk and fighting like a common laborer. For this action, he was suspended from his duties by the Governor and Council who heard his trial and decided upon his case. 83

At first glance one might begin to think that the presentments made against these high ranking members of society might be a brash move on the part of a semi-educated group such as the grand jury seemed to be. It has already been shown how, in most cases, these groups were semi-educated; but when one finds that the foreman of a grand jury was often one of the leading lawyers of the area, it is more easily understood. Charles Holden and John Tankard, both leading lawyers on the Eastern Shore of Virginia, were often found serving in this capacity. 84 Thus it can be seen that with proper leadership and guidance in the right direction, the grand jury could be quite effective in ensuring that laws were carried out in the counties.

SUMMARY

From these presentments it can be concluded that some counties were using the grand jury system to effective advantage. By the time of the Revolution the county grand juries had done outstanding jobs in some cases simply because the whole system was slowly coming to life. Most

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83The Virginia Mag. of Hist. and Bio., op. cit., XXIII, 158.
84Bruce, op. cit., I, 608.
of the grand juries were not doing what they were capable of doing, nor what was expected of them. Otherwise there would not have been so many proclamations and acts reemphasizing the duties of the system. The eighteenth century, though, marked a steady progression of effectiveness of the system, for it improved steadily if not fast. By the end of the eighteenth century it had become accepted and given important responsibilities, which shall be reviewed later.

Due to the number of presentments made and continued legislation which placed new and increasingly varied and important duties upon them, the grand juries must have been doing a fairly presentable job for the conditions under which they had to operate. At least a job done well enough to warrant added trust.

In many cases grand juries failed to be intimidated by the power and influence of local officials. As shown above, many grand juries did not fail to present these officials if they were found committing offenses. If the system could stand against these persons, surely it must have been an accepted part of the county court system. Since these officials were the most important men in their localities, a less permanent or accepted means of detection would have been ignored.
CHAPTER VII

GENERAL COURT GRAND JURY

So far the General Court grand jury has been discussed only in conjunction with the county court grand juries. This has been done since there was little legislation passed which was directed at the General Court grand jury prior to the period of the Revolution. Although the General Court had been using a grand jury for quite some time, its major importance came about during and after the Revolution. With this in mind it should suffice to say that most of the functions and duties of the early General Court grand juries were very similar to those of the county courts. Of course, the General Court handled more important cases, but procedure and functions were for all practical purposes the same.

I. DEVELOPMENT OF THE GENERAL COURT PRIOR TO 1777

First it might be well to discuss the development of the General Court itself so that a good idea of this important judicial body might be formulated. Although the General Court was later to become the highest and most powerful court in Virginia, it was subordinate to the Assembly, as a judicial body, until near the end of the seventeenth century. Until this time the Assembly served as the Supreme Court in Virginia. The first day of every session was devoted to hearing presentments and indictments made by grand juries of the counties, and to inquiring into any abuses which might have been practiced by judges or
Appeals lay from the General Court to the Assembly until around 1680, when Lord Culpeper, taking advantage of a dispute between the Council and the House, secured a royal order forbidding such appeals. Thereafter, the General Court was regarded as the highest court in Virginia. Appeals lay from it directly to the King.

Jamestown was the first site occupied by the General Court. It was held there until around 1700, at which time it was moved to Middle Plantation. This site was to become known as Williamsburg. For the most part the General Court was regarded by its contemporaries as being just in its dealings with those brought before it. One contemporary held a rather exalted opinion of the Court saying "wherein as great care is taken to make the laws and pleadings upon them easy and obvious to every man's understanding as in other parts they doe to keep them a mistery to the people. . ." The basic fundamentals were brought over from England, but those parts giving opportunity for trickery or delays

85 Hening, op. cit., II, 108.
were done away with. If this was truly the case, the General Court
was truly a commendable body!

Until 1777 the General Court was composed of the governor and his
Council of State. The governor presided over the Court, and the pre-
sence of at least five members was necessary for the transaction of busi-
ness. It met twice a year, in April and in October. "It was supreme
in all cases in chancery, kings bench, common pleas, exchequer, admir-
alty, and ecclesiastical matters, and no appeal was allowed but to the
King in Council." It had original jurisdiction in all cases above six-
ten pounds sterling and heard appeals from the county courts.

The county court served as a court of inquiry in serious offenses.
It could mete out severe punishment to slaves, but serious crimes com-
mittred by freeholders had to be tried by the General Court.

II. DEVELOPMENT OF GENERAL COURT AFTER 1777

In 1777 the composition of the General Court was changed. The

90 Cyrus Harreld Karraker, The Seventeenth Century Sheriff: A Com-
parative Study of the Sheriff in England and the Chesapeake Colonies
1607-1689 (Chapel Hill, N.C.: The University of North Carolina Press,
91 Martha W. Hiden, How Justice Grew; Virginia Counties: An
Abstract of their Formation (Williamsburg: 350th Anniversary Celebra-
92 Hening, op. cit., IX, 401.
93 Flippen, op. cit., p. 308.
94 Bradshaw, op. cit., p. 32.
Virginians wished to set up a General Court which would exclude the governor and his council. The Revolution made this possible, and since the people wished to have a separation of powers, it was done.

According to the new format, five judges were to be elected by a joint ballot of both houses of the General Assembly. These judges were to hold office for only so long as their actions were approved. Any three of these judges composed a quorum and could sit and conduct business in the usual manner.

Court sessions were to be held semi-annually, in March and in October, each of the terms lasting twenty days or more. The Court was not necessarily to be held in Williamsburg, for the site was to be chosen at a later date. However, in October, 1777, Williamsburg was chosen as the site; but provision was also made that after a two year period, if desired, the site of the Court could be changed. 95

By May of 1778, it was found that extra court sessions were needed to prevent the delay of justice. Therefore, additional ones were provided for, one in June, the other in December. 96

This should serve to present a general idea of what the General Court was, and how it functioned. Now the grand jury for the General Court will be discussed.

95 Hening, op. cit., IX, 601.
96 Ibid., p. 601.
III. GENERAL COURT GRAND JURY

Grand juries of the General Court could take action with regard to all criminal offenses, except that those in which the penalty was less than twenty shillings came to be excluded by act of Assembly. 97 In actual practice, however, the greater part of the General Court's business consisted of considering indictments and presentments sent up by the county courts. These were made against offenders suspected of more serious charges than the county courts could handle. 98

The grand juries summoned to appear at the time of the meeting of the General Court originally were chosen from among "the most able and discreet Men in Town." A rather interesting controversy arose as to the proper method of choosing them, a controversy having nothing to do with the administration of colonial justice, but growing out of the methods of colonial political practices. It seems to have been a common practice for grand juries gathered at the capitol to express their opinions on things in general, and on the administration of the royal governor in particular. It became an advantage, therefore, for the governor to have a group of grand jurors chosen who could be counted on to pass on a laudatory resolution, which he could modestly forward to the Board of Trade as an indication of general public opinion.

1705. One such governor greatly desired this, for taking matters

97 Ibid., v, 523.
98 Scott, op. cit., p. 69.
into his own hands, Governor Nicholson sent outside the capitol for a foreman for the grand jury. He also gave orders to the sheriff as to choosing or excluding other members. This led to a great deal of criticism and was probably one of the main reasons that the Assembly, while revising colonial laws in 1705, took definite action and ordered that the grand jury at the General Court should be chosen from among the bystanders at the court. The intention seemed to be that in this way the "most capable persons" might be chosen.

Another move in 1705 tended to focus special attention on the General Court grand jury. Although it did not say a great deal about the General Court grand jury, this was probably the most complete act concerning grand juries for the General Court up to this time. It stated in part "Whereas the city of Williamsburg is so placed that persons may easily evade being summoned to attend the General Court, as grand jurors . . . or to be taken upon any precept of the said court, unless the power of the sheriff, and his officers attending the said court be enlarged," it was, therefore, duly passed that the sheriff and his assistants who attended the General Court were empowered to summon grand jurors during the sitting of the Court. They could summon these men to serve from all of Williamsburg and half a mile around.

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99 Ibid., p. 70.
100 Howe, op. cit., p. 88.
101 Scott, op. cit., p. 71.
102 Hening, op. cit., III, 303.
were avoiding summonses by simply stepping outside the Williamsburg limits. This act was designed to make it a little more difficult to do this.

Partly due to the actions of Governor Nicholson, the above act was quickly modified. In October, 1705, additional power was afforded the sheriff attending the General Court. He was enabled to summon bystanders at the court to serve on the grand jury provided they were freeholders. To insure that only the most capable citizens were chosen to serve, the act continued with "it shall be lawful for the said general court, upon the first or second day of their sitting, to make a rule, for the sheriff, or other officer, attending the court, to summon twenty-four persons as aforesaid to attend the court for a grand jury." Failure to appear might result in a fine of four hundred pounds of tobacco. Therefore, it seems that summoning bystanders to serve on a grand jury would be resorted to only as the occasion demanded.

1748. In October, 1748, an act was passed which repeated previous provisions concerning grand juries. This act was concerned mainly with the county courts, but it did make somewhat brief mention of the General Court grand jury. It restated the provision that the sheriff attending the General Court should summon a grand jury from among the bystanders attending the court. A limitation was placed upon this body at this time, however, for no cases could be examined unless the penalty was more than twenty shillings or two hundred pounds of tobacco. Also, no

103 Ibid., pp. 367-371.
General Court grand jury was to make a presentment upon the knowledge of less than two of its members.\textsuperscript{104}

\textbf{1777.} With the revision of the laws in 1777 and the provision for a new arrangement for the General Court, which has already been discussed above, a new act was passed concerning grand juries for this body. The Assembly must have been fairly well satisfied with the organization of the grand jury, for at this time it simply rewrote provisions contained in earlier acts. The change in government demanded a reenactment of the laws, and this provided a chance to include many provisions under one act. In this way the rules and regulations concerning the grand juries could be found much more easily.

The provisions of this act should be discussed since it contains all the provisions considered worthwhile by contemporary Virginians. The sheriff of the county in which the General Court was to be held was ordered to summon twenty-four freeholders, "qualified as the laws require," to serve on a grand jury. This was to be done before every General Court. Therefore, the same grand jury would not serve two times in succession. On the sixth day of the Court, the grand jury was to be empaneled, composed of at least sixteen of the twenty-four freeholders summoned. Prior to this time fifteen had been the minimum number required in order to swear in a panel. These sixteen men were to inquire of and present all treasons, murders, felonies, or other misdemeanors whatever, which shall have been committed or done within this

\textsuperscript{104}Ibid., V, 523-524.
Commonwealth. " Upon any indictment for a capital offense being made by
the grand jury, the judges were to bring the offender before a petit or
trying jury.

No grand jury was to make a presentment upon its own knowledge
upon the information of less than two of its number, nor where the pen-
alty was less than twenty shillings or two hundred pounds of tobacco.
Every person summoned to appear for duty on a grand jury and failing to
do so, unless having a good excuse, could be fined up to four hundred
pounds of tobacco. 105

This act was by far the most comprehensive act passed which was
concerned mainly with the General Court grand jury. There were very few
acts devoted entirely to this body, and there was really no great need
for them. Since the grand juries of both county and General Courts
served in the same capacity, acts could be made to concern both. At the
day of an act concerning counties, a clause could be added making it
apply to the General Court also. In this way, up to a point, both bodies
developed simultaneously. There were exceptions of course, but these
were not so numerous until the Revolution. The two main differences
between the two were: (1) the General Court grand jury could decide on
more serious offenses, and (2) the General Court's jurisdiction embraced
the entire state.

105 Ibid., IX, 617.
IV. SPECIAL DUTIES

1779—Estimate tobacco prices for Assembly. In May, 1779, the grand jury of the General Court acquired an additional duty and responsibility. It was empowered to estimate tobacco prices, this estimate to be used to pay members of the General Assembly, since their salaries were paid in tobacco. 106

However, problems soon arose here since members of the Assembly were also eligible for duty on the grand jury. It was, therefore, possible for high estimates to be made by the grand jury, if members of the grand jury were also members of the Assembly. Thus an increase in salary might easily have been brought about by a grand jury which was partial to its own economical well-being. A favorable estimate could be made which would greatly enhance a politician's chances in the Assembly.

Realizing that this problem could easily arise, the Assembly passed an additional act which excluded members of the Assembly from duty on the grand jury. Candidates for a seat in the Assembly were also to be excluded. 107

1779—Estimate tobacco prices for Virginia debt. In 1779 Virginia was setting up a fund "to borrow money for the use of the United States, and for other purposes." By an act of the Assembly at this time, the judges of the General Court were ordered to appoint grand jurors to

106 Ibid., X, 29-30.
107 Ibid., p. 10h.
estimate tobacco prices. This was done to ensure a set value for the money borrowed, and the principal and interest to be paid. This was quite necessary since tobacco prices were in such a constant state of variation. A rider attached to this act stated that owners of certificates for raising money could not be members of the grand jury for estimating tobacco prices. Again this provision tended to eliminate the chance of a partial estimate being made.

That this duty was placed in the hands of the grand jury is in itself quite revealing. From this evidence it must be concluded that the grand jury of the General Court had won a place of respect before the eyes of the people. Its members must have been worthy, otherwise this duty would never have been given to them. The "most worthy and discreet men of town" most certainly were being chosen to serve.

V. SUMMARY

By 1780 the grand jury for the General Court had been provided for by act of Assembly and had proven to be worthy. As we have seen, its development moved along similar lines with the grand juries of the counties until about the time of the Revolution. By this time it had become an integral part of the Virginia judicial system. The new state of Virginia had included it in its laws with little or no changes being made. This in itself is evidence of its general acceptance.

In addition to its regular duties, it had acquired additional

108 Ibid., pp. 182-188.
ones, and important ones at that. It was to estimate tobacco prices in
order to ensure proper pay for the Assembly, and also to ensure that
money borrowed for the war effort would be repaid fairly. In addition,
all serious offenses in the state were to be tried before the General
Court. Therefore, the grand jury for this Court had become a very
important body, both in theory and in fact.
CHAPTER VIII

DISTRICT COURTS AND GRAND JURY

The highest court in the colony of Virginia was the General Court sitting in Williamsburg. After the Revolution had begun and independence was won this was continued, although, as has been shown above, under a somewhat different arrangement. In general, justice was being carried out by the General Court. It was serving its purpose as well as possible under the circumstances. But there were two big problems facing the General Court, time and distance. By having all major offenses brought before the General Court, these two problems were quite important.

Sometimes a prisoner had to remain in jail for long periods of time before being brought to trial. Others, released on bail, had a trial hanging over their heads for a long wait. Even when brought to trial, the transportation of witnesses from long distances to Williamsburg was a large problem, not to mention the time element involved. This became more and more evident as time passed, and in 1788 the General Assembly decided that "delays inseparable from the present constitution of the General Court may often be equal to the denial of justice." The expense of criminal prosecution was unnecessarily burdensome with violations of the law frequently passing with impunity because of the "difficulty of attendance by witnesses." Therefore, they decided

109 Bradshaw, op. cit., p. 221.
I. DISTRICT COURTS

1786. Because of the obvious need for them, the Assembly voted to establish several district courts throughout Virginia in 1786. It stated that these courts were needed to ensure faster and more evenly distributed justice throughout all parts of the state. Three judges were added to the nine already serving on the General Court, and these judges conducted the district courts, two being assigned to each court. 110

1782--Kentucky district. The above was not the first act passed concerned with district courts. In May of 1782 "an act for establishing a district court on the western waters" had been passed and a grand jury provided for in the Kentucky district. This grand jury greatly resembled the General Court grand jury, indeed it served in practically the same capacity. Twenty-four freeholders were summoned. From these, sixteen at least composed the grand jury, just as the General Court grand jury needed sixteen in order to be sworn in. The county court still had fifteen as its minimum number.

The main difference between the General Court and the district court grand juries was quite simple. The district court in the Kentucky district did not have to follow the usual procedure in dismissing its grand jury. It could dismiss the grand jury "whenever necessary" and

110 Ibid.
order another to be summoned. This might be construed to be a good or a bad point as the case might be. A poor grand jury could be replaced much more easily, but at the same time a justice could use his power to serve his own ends if he saw fit. In either case, it was left to the discretion of the court.

This provision was probably included for one important reason. The Kentucky district was still rather rough, unsettled country at that time. When reviewing the difficulties of the early grand juries in the Tidewater areas, the Assembly probably felt that the functions of the court could be carried out more efficiently if provided with this power.

1792. Not until November, 1792, was a really comprehensive act passed concerning grand juries in the district courts. Prior to this time these bodies had been run according to acts provided for county and General Court grand juries. In the 1792 act these provisions for the county and General Courts were more or less repeated and made to bear on the district court grand juries.

Provisions were made stating that the sheriff of each county where a district court was to be held should summon twenty-four "of the most discreet freeholders of the district, not being ordinary keepers, constables, surveyors of highways, or occupiers of mills, to appear at the succeeding district court, on the first day thereof." These men could be summoned from any county in the district and were to inquire of and present all "trespasses, murders, felonies, or other misdemeanors

111Hening, op. cit., II, 88.
whatsoever occurring within the district. If the said number did not appear on the first day, the sheriff could summon freeholders to serve from the bystanders at the court.112

II. SUMMARY

The district courts were provided for in Virginia since transportation and communication were both difficult and slow. In addition General Court sessions were simply too far apart. Quicker, speedier trials were almost an absolute necessity in order to assure Virginia's citizens of justice. These courts were created to avoid having an innocent man sit in jail for two or three months before being brought to trial. This had been happening.

At the very inception of this court system, we find the grand jury. Therefore, another vote of confidence was paid to this body.

112 Samuel Shepherd, The Statutes at Large of Virginia (Richmond: Shepherd, 1835), I, 17.
CHAPTER IX

FURTHER DEVELOPMENTS OF COUNTY AND GENERAL COURT

GRAND JURIES

I. ACT OF 1792

The act of 1792 which concerned district courts was also applied to the county and General Courts. The sheriff of each county and the "sarjeants" from the cities of Williamsburg, Richmond, and the borough of Norfolk, and other corporations within the Commonwealth were to summon grand jurors quarterly to present offenders from the previous twelve month period, unless otherwise directed by law. When a presentment was made, it should always contain the name and surname of the prosecutor or informer. The town or county in which he resided, and the title or position he held were also to go on the presentment papers to ensure that no mistake would be made. The oath to be taken by every grand jury was also made law at this time. It was the same as the one mentioned already from King and Queen County. So this oath was in use even before it was made into law.

Inhabitants of corporate towns were not to serve as grand jurors of the counties in which they lay, since the interests of town and county dwellers were often dissimilar. Every grand jury for a county or corporation court was empowered by this act to present all offenses "made penal by the laws" of Virginia. However, the recovery of fines was to

113 Ibid.
be directed by other laws. In a presentment to a county or corporation court of a crime whose penalty did not exceed five dollars of three hundred pounds of tobacco, or to a district court not exceeding twenty dollars or one thousand pounds of tobacco, no information was filed. The offender was to be summoned at least ten days before court was to be held, and was to be tried without a jury.

Also every freeholder summoned to appear for grand jury duty and failing to do so, without a good excuse, could be fined up to eight dollars, replacing the old four hundred pounds of tobacco clause. Failure to attend the courts for grand jury duty was a common problem, and will be discussed later.

Perhaps the most important subject contained in this act was a part which had not been mentioned previously in acts concerning grand juries. This part concerned certain immunities and privileges to be extended to members of grand juries. It stated that "Grand jurors shall be privileged from arrests in all cases, except treason, felony and breaches of the peace during their attendance at court, coming to and returning from thence, allowing one day for every twenty miles from their places of abode, all such arrests shall be void." This was a very important development which could be of the utmost importance in many cases. It would ensure that grand jurors could not be arrested on trumped up charges in order to prevent them from making their presentments. Also, this would assure the courts that all presentments would be brought before them.

Since grand jurors had died from time to time after being sworn,
or had become sick, it was made lawful for the court to cause others to be sworn in his or their stead. If any member of a grand jury took a bribe, a penalty of ten times what he received was to be imposed. Finally since some sheriffs were still failing to summon grand juries, a penalty of twenty dollars was to be paid for this failure. 

II. ACT OF 1793

An act passed in 1793 proves to be very interesting and somewhat surprising at first thought. Prior to this time no provision had been made as to citizenship qualifications and membership of a grand jury. Theoretically, anyone could become a member of a grand jury, no matter how long he had been in an area, or whether or not it was his permanent residing place. As long as he was a freeholder, that is.

At first one might think that this was a great oversight on the part of colonial lawmakers, but with a little further consideration it may not have been as great a mistake as first imagined. Prior to the Revolution, Virginia's population was quite static. There was a flow to the west, to the east, and elsewhere. In addition to this new settlers were arriving at frequent intervals. It, therefore, became necessary to overlook such matters as citizenship qualifications, at least as far as the lawmakers' part was concerned. However, when left to the discretion of the county courts and sheriffs, it seems safe to assume that no great mistakes were made often.

\[\text{Ibid., pp. 18-19.}\]
But by December, 1793, it was found that citizenship and permanent residence was becoming more necessary, at least more apt to work at this time than before. A more stable population was probably the reason for this. Therefore, an act was passed requiring all grand jurors to be citizens of Virginia. Another important qualification had been made into law.

III. ACT OF 1795

The above act of 1792 concerned with district, General, and county grand juries was by far the most comprehensive act passed concerning grand juries. Its articles contained all the former provisions which had proved to be valuable in governing the makeup of the grand jury, and also contained new provisions designed to greatly improve this body. Even so, it was soon to be found lacking, for in December, 1795, amendments were made. When a presentment was made upon the information of two or more grand jurors, the names of the grand jurors giving the information were to be endorsed at the foot of the presentment. Also the name of any witness or witnesses were to be placed at the foot of the presentment. In none of the above mentioned cases was the person or persons so informing to be liable to costs.

Another amendment set forth at this time allowed any "ordinary

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keepers, surveyors of a highway, or owner or occupier of a mill to serve on grand juries in district and General Courts. No information has been found so far as to why these occupations were made an exception.

IV. SUMMARY

These three acts contained many important clauses. Immunities and privileges from arrests were not the least of these. With this regulation all presentments could be made on time. Corporate towns and county interests were both recognized and grand jurors were to be selected according to these interests. New appointments could now be made if death or sickness occurred. Citizenship became a necessary qualification for membership on a grand jury, a very important decision indeed.

Since some grand jurors had probably been prosecuted for their actions against citizens while in the act of doing their duty as grand jurors, they came to be protected against suit. Citizens could not prosecute them for their action, so long as they had been doing their duty. All these acts were quite important in ensuring that the grand jury system would improve, and continue to serve the public interest well.

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116 Ibid., p. 363.
CHAPTER X

SPECIAL CHARGES DURING AND AFTER THE PERIOD
OF THE REVOLUTION

During the seventeenth and eighteenth centuries general laws and
regulations concerning number serving on grand jury, their duties, pen-
alties, immunities, qualifications, and other important aspects of the
grand jury were fairly well provided for. The period during and after
the Revolution was an especially fertile time for improving the system.
We have already discussed the general laws concerning grand juries dur-
ing this period. Now let us review some of the more important special
charges issued during this time. They were mainly concentrated on
several general areas, taxing, tobacco, voting, tippling (drinking) 
houses, gambling, religion, and general crime.

I. TAXES

1759. As early as 1759 the county courts had been ordered to
particularly charge the grand jurors to inquire who had failed to deli-
ver to the clerk of the court an account of wheel-carriages and of land
owned. This was to be done so that the county might be able to tax this
property. If a citizen failed to deliver an account of his holdings to
the clerk, he was to be presented to the court. Upon presentment by the
grand jury, the court could summon offenders and try them without a
jury. The original intent of this act was designed to enforce the tax-
ing regulations in order to provide money for an adequate defense of the
The tax problem was nothing new to Virginia. During the seventeenth century the colonists became increasingly discontent over taxes. Protests and mutinies occurred in 1673, 1674, and 1675 against taxation. One recent writer claims that this problem provided more material for the background of rebellion.\footnote{117}

Governor Culpeper, in the late seventeenth century, made several suggestions to improve tax conditions in Virginia. He agreed with those who were critical of Virginia's tax laws, saying that taxes were unequal, high, and burdensome. Fraud was also a frequent occurrence in the collection of taxes. Many managed to avoid paying their proper share of the tax load. Realising this, Governor Culpeper proposed to place the power of taxation under the direct supervision of the British government. He favored this step for two reasons: (1) the Virginia Assembly meant well when managing the tax structure, but often misapplied the laws; (2) some sort of inspection system was needed, and it seemed to Culpeper that the British government was in the best position and much better prepared to bring it into being.\footnote{119}

Despite his advice tax problems continued to plague the colony.\footnote{118}

With Virginia's class supremacy, the upper classes did not wish to pay, and the lower classes were unable to pay.

1762. The latter half of the eighteenth century found Virginia still seething over the tax problems. These same problems plus a few added by the British were to precipitate war at a later date, but in 1762 the Virginia Assembly sought a solution to the tax difficulties. In that year "an act for the better and more regular collecting the public taxes" was passed. This contained a more adequate provision to aid in discovering those who were avoiding paying their taxes. It was an obvious effort to discover tax dodgers so that every man might be forced to pay his proper share.

At every court held in the counties in November, the county clerks were charged to deliver to the grand jury "a list of lands, tithables, and wheel carriages, taken in his county that year." The county court was charged to, in turn, charge the grand jury to examine this list and make presentments for "every concealer of land, tithable, and wheel carriage," . . . Offenders were to be tried without a jury. This helped matters somewhat, but still failed to solve all the problems.


122 Hening, op. cit., VII, 54.
1770—Resentment against taxes. Resentment against what were considered to be extremely high and unjust taxes was so great in some areas that members of the counties refused to serve on grand juries. In 1770, as a result of acts governing religion and taxes, ten men in Caroline County refused to serve on the grand jury. As a result each of these men was fined three hundred and fifty pounds of tobacco.

These men thought that the laws concerning religion, which assured them of anything but freedom of religion, were unjust. They were also greatly incensed against the tax laws, and therefore refused to serve on the grand jury since doing this would necessitate their aiding in tax collecting.

At this time negro slaves over fifteen years of age were taxed, while indentured servants and free white males over seventeen were also on the list of taxable items. It was also revealed that each set of wheels under a passenger vehicle was taxed at this time, a practice which would surely hurt transportation companies and others whose livelihood depended upon their vehicles. Each tithable was taxed at the rate of five pounds of tobacco. This does not seem to be at all high in the light of present day thinking, but to contemporaries it was probably excessively high. Perhaps they hated the idea of taxation more than the reality.

1772. Despite this growing aversion to taxation the Assembly was

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left with no choice except to continue taxing. Otherwise, how would the government be paid for? Increased taxation was begun by the Assembly when it decided to provide more complete tax laws, thereby avoiding confusion. On October 25, 1771, one such law was passed. Its provisions stated that before each April 10 a tax of twenty shillings was to be paid for each "coach, chariot, or other four wheel carriage (except wagons) and ten shillings for every chair or two wheel chaise." This eliminated complaints from wagon owners.

Every owner of these items was ordered to give a list of these, plus their tithables to the county clerk. The duty was to be collected by the sheriff who was to turn the money over to the treasurer prior to October 25, deducting 5% as his fee for collecting these taxes.

In November each county court, while swearing in the grand jury, was to charge it to inquire after those seeking to evade paying these taxes. Offenders were ordered to be denied a trial by jury. The legislators probably denied offenders the right of trial by jury in order to avoid having juries release offenders because of sympathy for their feelings on this matter.

1782. One further act in October, 1782, issued not under British leadership, but strictly by the Virginia Assembly combined certain previous acts and added an additional tax on land, poll tax, slaves, horses, cattle, carriages, billiard tables (an extremely high tax of fifteen

\[12\] Hening, op. cit., VIII, 498-499.
pounds), and ordinary licenses. The presiding justices of the courts held in May and November, annually were to give the act in charge to the grand jury, and the clerk of the court was to furnish the grand jury with a list of taxable property. This list was to be instituted by the local justices. 125

Summary. From these acts concerning taxes and the problems which faced them, it seems that many people resented paying them. Therefore, it became the job of grand juries to help see that offenders were held down to a minimum. However, this was not a solution to the problems. Only time could even begin to solve tax problems for even today they still face us.

II. TOBACCO

Early duties. Among the most important special charges made to grand juries in Virginia were those concerned in one way or another with tobacco. At first grand juries were charged to ensure that Virginia's greatest money crop was guarded against deterioration through faulty agricultural, preparing, processing, packing, and shipping practices. It has already been shown that as early as 1661 county grand juries were charged with duties concerning the tobacco crops. 126 Also, most of the early duties concerned with tobacco were designed to bring about the

125 Ibid., XI, 112-118.
126 Ibid., II, 119-120.
improvement of the quality of the tobacco raised in Virginia. However, one of the most important duties was centered around estimating the value of tobacco so that a fair salary might be paid to certain members of the government and other officials. A subsequent act provided that no member of the General Court grand jury was to also hold a position or run for election to a seat in the Assembly. The grand jury was sworn to make the said estimate "honestly, impartially, and according to the plain intention" of this act. In case of disagreement among the grand jurors as to what a just estimate should be, the average estimate was to be figured and this would be the amount settled upon.

1779. In October, 1779, because of rising prices of "all necessaries of life" an act was passed authorizing the grand jury to estimate prices at each General Court. Rising prices had caused the original estimate to be unfair and since no provision had been made for a flexible estimate nothing could be done about it. This new act was drawn up to provide the flexibility needed, for from this time forward the estimate would be able to vary with the current market prices.

Other positions affected. Other positions and items were also greatly affected by the grand jury's tobacco estimate. When the first estimates were made to pay the Assemblymen, many people looked upon the

127 Ibid., X, 29-30.
128 Ibid., p. 104.
estimate as being honest, fair, and also impartial. Therefore, others besides the Assembly began using the grand jury's estimates in their dealings with tobacco. As a result, in addition to the public debt being repaid according to the estimate, tobacco inspectors' fees, ministers' marriage fees, and many others were all paid according to grand jury estimates.

1781. However, this method of paying debts with tobacco soon became outmoded. It had been a very poor currency anyway. In November, 1781, an act was passed ordering tobacco fees for services to be discharged in transfer tobacco notes, or in specie, at the rate of twelve shillings and six pence for every hundred pounds of tobacco.

In 1781 the average price received for tobacco was higher than at any prior time in the history of Virginia. It was over one hundred times more valuable than it had been at any time prior to 1777, except for sporadic fluctuations in prices. In this year the price for tobacco was twice as high as in 1780, the next highest year, and five times as high as in 1779, the third highest year. At no other time did the average price of tobacco even approach the prices paid during these three years. Undoubtedly the Revolution may be given the credit for this unusually high price boom, for soon prices were again back to normal, a

130 Ibid., p. 274.
131 Ibid., p. 362.
132 Ibid., p. 489.
133 Herndon, op. cit., pp. 46-49.
little higher maybe, but far, far below the three peak years.\textsuperscript{134}

The records of John Norton, a large Virginia and London merchant, bear this out, especially for the year 1781.\textsuperscript{135} A wealth of information can be found within this book which concerns tobacco during the eighteenth century.\textsuperscript{136} These facts about the tobacco market have an important bearing on why the tobacco estimates made by the grand jury proved to be unsatisfactory. Certainly the grand jury's price estimate had not always met approval. To cite one example, in 1781 a houseowner in Richmond requested that rent for his house be paid for at the current Richmond tobacco price, and not that set by the grand jury.\textsuperscript{137} This is not to say, however, that the grand jury was at fault. The value of tobacco was rising rapidly. Fluctuations in the market were much more severe than at any previous time. No person, committee, or anyone else could have presented an accurate estimate that would have remained current.

It must be kept in mind that this method of estimates was originally intended to pay the Assembly for a limited time only. Therefore, it was not designed to endure. The perplexities of dealing with tobacco

\textsuperscript{134}Ibid., p. 49.

\textsuperscript{135}Frances Norton Mason (ed.), John Norton and Sons, Merchants of London and Virginia Being the Papers from their Counting House for the Years 1780-1795 (Richmond: The Dietz Press, 1937), pp. 433-444.

\textsuperscript{136}Ibid., pp. 566-567.

\textsuperscript{137}Cal. of Va. State Papers, I, 456-457.
had been shown earlier in the Parson's Cause, but no other road lay open to Virginia at that time. By 1781 though, other choices could be made. Inflation, the more abundant specie during and after the Revolution, and rapidly fluctuating prices tended to offset the necessity and practicality of trading with tobacco. It had simply outlived its usefulness.

III. VOTING

Except on the rare occasions when Virginia's General Assembly created a new parish or allowed the parishioners to elect a new vestry in the old parish, the election of members of the House of Burgesses was the only occasion when Virginians could choose their own officials. The chance to vote for their official representatives occasioned a great social climate in Virginia. People came from miles around to vote and at the same time to pay visits to friends, and attend to business and other matters. It is quite hard to distinguish which was most important to them.

All citizens were not granted the privilege of the franchise. Qualifications of the voters and candidates were: that he be a free white male, twenty-one years of age, who had owned one hundred acres of land not settled upon for the period of one year, or of twenty-five

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139 Morton, op. cit., II, 718.
acres "with house and plantation" in his possession or occupied by a tenant, and located in the county where he voted; or in a town established by the Assembly, the ownership of a house and a lot. Throughout the colonial period there was also a religious qualification. Women, of course, were not allowed to vote, and Indians and negroes, free or slave, were disfranchised. These qualifications were changed very little during the eighteenth and early nineteenth centuries.

Although tremendous celebrations accompanied some elections, many voters still failed to attend and vote. This was distressing news, for this was one of the great privileges which every eligible Virginian should have exercised. However, there were many reasons for this failure to vote. As usual, transportation, communication, the time element, and other factors enter the picture. Until better roads could be built, better communication established, and a myriad of other factors improved, matters would be quite difficult to control.

In 1785 the grand jury was charged to investigate freeholders who did not vote. The vote was given its deserved place of importance and although forcing a person to vote might be considered wrong, this was what was taking place. In October, 1785, an act was

110 Ibid., p. 719.
112 Morton, op. cit., II, 721.
passed requiring the sheriff or other officer, within ten days after an election of delegates or senators to deliver to the clerk of the county or corporation courts a poll of the qualified voters under his jurisdiction. The clerk was to deliver a copy of this to the next session of the grand jury. The grand jury was to make presentments on all those qualified to vote, who had failed to do so. The sheriff was also to lay before the grand jury a list of all landholders in the county. If a landholder failed to vote, he might be fined "one fourth of his portion of all such levies and taxes as shall be assessed and levied in his county the ensuing year." This act was still in effect as late as 1796 for in that year Chaney Gatewood, a resident of King and Queen County, was fined for not voting.

IV. "TIPPING HOUSES" AND GAMBLING

1779-Tipping houses. In October, 1779, it was decided that the number of "tipping houses" had become a public nuisance "encouraging idleness, drunkenness, and all manner of vice and immorality." Since previous acts had proved to be inadequate, an act embracing more severe penalties was passed at this time. "An act for regulating ordinaries and the restraint of tipping houses" had been passed prior to this time. The 1779 act simply increased penalties and made provision for charging the grand jury to present offenders.

143 Hening, op. cit., XII, 120-122.
144 Cal. of Va. State Papers, VIII, 382.
For each offense a fine of fifty pounds was to be imposed, plus the penalty from the previous act. One half of this fine was to go to the informer, and one half was to go to the Commonwealth. Those convicted twice were to be committed to prison for six months without provision for bail. Grand juries were especially charged to see to the enforcement of this act.¹⁴⁵

Gambling. By an act passed during the same session of the Assembly, gambling was censored. This vice had reached truly alarming proportions, according to the Assembly. Therefore, severe penalties seemed to be in order for offenses of this nature. Any person winning or losing over five pounds in a twenty-four hour period "shall be rendered incapable of holding any public office, civil or military," within Virginia for a period of two years. Thus small time gamblers were to go unnoticed. Only those skilled or lucky enough to win over five pounds, or unskilled or unlucky enough to lose five pounds were to be punished. Only big-time gamblers were considered to be degrading society enough to merit punishment.

In addition to the above punishment an offender was also liable to pay a fine of ten shillings for every pound over five which he won. All gambling debts were to be voided and passed on to the offender's heir. Any person who bet on horses or games was to "be deemed an infamous gambler and ineligible for any office of trust or honor within

¹⁴⁵Hening, op. cit., X, 145.
this state." Any tavernkeeper allowing gambling in his establishment was to lose his license and pay one hundred pounds to the informer. The grand jury was ordered to be especially watchful for these offenders and to make presentments for them. 146

1792. An additional act concerning "regulation of ordinaries, and restraint of tippling houses" was passed on December 26, 1792. Under the provisions of this act justices of the county courts were to set prices charged at the said establishments at least twice yearly. The proprietors of the establishments were required to put up a list of rates and prices for all to see. If this was not done as prescribed by law, they were to be fined and had no right to demand pay for goods or services. No taverns were to be opened unless a license was applied for and issued. There was to be no "more drinking than is necessary" on Sunday. Severe penalties were imposed for the breach of these provisions and again the grand jury was charged to see that they were kept. 147

These vices of drinking and gambling were big problems even in the seventeenth and eighteenth centuries. The laws mentioned above were created in order to stop unfair prices, and to curb excessive drinking and gambling. Presentments made by grand juries helped to accomplish these ends.

146 Ibid., pp. 205-207.
147 Shepherd, op. cit., I, 142-145.
V. RELIGION AFTER 1770

Even during the seventeenth century there had been religious persecution in Virginia. Governor Gooch had charged grand juries to present "Presbyterians, Methodists and c." But religion had been more or less free during the period 1760-1770. However, in July, 1771, a dissenting minister was indicted for preaching "Contrary to law." 148

Governor Botetourt had died in Williamsburg on November 15, 1770. His death took the government of George III by surprise, and it was almost a year before the king's ministers could find a suitable replacement. Although Botetourt had been relatively light on dissenters, his temporary successor, William Nelson, president of the Council, was not so. Like several of the other Council members, Nelson was a leader of the aristocrats with hereditary wealth and position. These men feared the demands of the lower orders of society more than they feared the Crown of England. Nelson agreed with his fellow Councillors that Virginia needed a strong State Church to help keep "troublesome elements in their place," and to put this program in force he ordered a renewal of the persecution of dissenters. 150

The reinauguration of this program made itself felt in Caroline County in May of 1771. At this time John Young was brought before the

148 Howe, op. cit., p. 88.
149 Virginia Mag. of Hist. & Bio., op. cit., XX, 319.
150 Campbell, op. cit., pp. 211-213.
local court and charged with "preaching the gospel at Thomas Pitman's contrary to law." Here a grand jury heard the case first and a true bill was found. True bills were also found for members of the congregation who were presented to the county court for attending the service. When arraigned, Young offered no defense and "acknowledged that he preached the gospel at Thomas Pitman's to a number of people, not having Episcopal ordination or being licensed as a dissenting preacher, contrary to the acts of Toleration." After deliberating the court decided to imprison him until a fine was paid for his good behavior for one year and one day. The indictments against Young's congregation were quashed.  

It seems evident from the foregoing incidents that Virginia citizens were certainly not enjoying that freedom of religion and speech for which her history books claim they had come to America to find. Many such cases were brought before grand juries during this period. Religion was a prime problem. However, a movement was beginning to make strides towards gaining religious freedom, and separation of church and state. Certain strides were made in this direction during the 1770's, but it was not until 1786 that the Virginia legislature passed the religious liberty statute, erasing the need for presentments against dissenters.  

151 Ibid.  
VI. MISCELLANEOUS SPECIAL CHARGES

The grand juries in Virginia were also charged with miscellaneous other special duties. These charges vary greatly in importance. A sampling of these charges will now be shown.

By 1763 the people of Fredericksburg were seeking to find ways to make their town a better place in which to live. Winchester and Williamsburg were striving to do the same thing. Therefore, the Assembly passed certain regulations regarding these towns. Because of the danger of fire caused by the erection of wooden chimneys for houses, the Assembly passed an act in May, 1763, outlawing all such chimneys. At the same time they determined that it would be unlawful for the owners of goats and hogs to allow these animals to roam the streets at will. Any animal allowed to run loose within the city limits would cause a fine to be imposed upon its owner. This fine consisted of one shilling per month per animal. The fine for having wooden chimneys was set at five shillings. Grand juries were charged to present offenders for these offenses.¹⁵³

Virginia had its problems with game management also. Most people view eighteenth century Virginia as teeming with wild game. However, this was not always the case. In 1772 deep snows fell in Virginia causing deer to yard up in sheltered areas. This presented a perfect opportunity for hunters with deer dogs to stage very rewarding hunts.

¹⁵³Hening, op. cit., VII, 651-652.
So rewarding that they were virtually slaughtering the deer herds, and threatening the whole deer herd with extinction.\textsuperscript{154} It was not uncommon to find eight or ten deer hanging up in a hunter's smokehouse at one time.\textsuperscript{155} Therefore, a fifty shilling fine was placed upon all those found guilty of killing a deer in the snow by act of February, 1772.\textsuperscript{156}

Surveyors not performing their duties were to be presented by an act of October, 1779.\textsuperscript{157} Treason cases were also charged to the grand juries by act of October, 1786 and also justices could be presented for allowing "any road, bridge, causey, or mill dam" to be found out of repair.\textsuperscript{158} Rioters and participants in routs and unlawful assemblies could also be presented.\textsuperscript{159}

Therefore, it can be seen that a great variety of charges were made to the grand juries. These added more responsibilities, and more dependence upon the system.

\textbf{VII. PRESENTMENTS--1781-1796}

Now a variety of presentments made by grand juries of this period will be shown. It does not seem necessary to show a large number of

\begin{itemize}
\item \textsuperscript{154}\textit{Ibid.}, VIII, 591-592.
\item \textsuperscript{155}\textit{Virginia Wildlife Magazine}, December, 1961, p. 7.
\item \textsuperscript{156}\textit{Hening, op. cit.}, VIII, 592.
\item \textsuperscript{157}\textit{Ibid.}, X, 165.
\item \textsuperscript{158}\textit{Ibid.}, XII, 179.
\item \textsuperscript{159}\textit{Ibid.}, pp. 331-332.
\end{itemize}
these, but there are many on the records. Instead an effort has been made to choose representative presentations from different areas of the state.

Various cases for different crimes between 1781 and 1796 show the variety of cases presented by grand juries. On November 6, 1781, the grand jury of Rockbridge County presented Colonel John Bowyer for preventing men from going on a militia tour of duty when lawfully called. Also, Captain John Paxton was presented for offering to make bets in public company that Cornwallis would make his escape or go where he pleased whenever he wanted. In 1789 a grand jury acquitted John Whitney, who was accused of counterfeiting and passing United States securities.

In 1793 freeholders of Mecklenburg County numbering five hundred and ten were presented by the grand jury for failing to vote. In a petition to the governor and Council asking that their fines be cancelled, many of these freeholders claimed that they "were either themselves or their Horses so particularly employed they could not attend the Election without manifest injury to their crops." In 1793 Richard Pearl received presentation from the grand jury of Prince Edward County for stealing "one Joint of Bacon, a quantity of

161 Cal. of Va. State Papers, IV, 625.
162 Ibid., VI, 419.
soap and flour of the value of ten shillings." He was subsequently sentenced to be hanged for this crime. 163 In the same year John Bullitt received a presentment from the Staunton grand jury for horse stealing. He also was later sentenced to be hanged. 164

Among presentments made in Westmoreland County in 1796 were cases for not keeping a sufficient way over a mill, for tearing down a fence, trespassing, debt, and gambling. 165 From the above information, it is quite evident that the grand jury was a functioning part of the judicial system, and entered into almost all phases of crime and offenses.

VIII. SUMMARY

Special charges came to be a regular means for emphasizing the importance given to certain crimes. In general these charges concerned the crimes regarded as most important by the Assembly. From the wide variety of subjects treated, there must have been a general feeling that the grand jury was a worthwhile system.

163 [Ibid., pp. 519-520.]
164 [Ibid., pp. 507-508.]
165 [The William and Mary Quarterly (1), (Richmond: Whittet and Shepperson, 1892-1919), IX, 31-34.]
CHAPTER XI
WEAKNESSES OF THE GRAND JURY IN VIRGINIA

There were many weaknesses inherent in the grand jury system. Perhaps the earliest threat to its success was the apparent lack of confidence exhibited by the county courts. However, the act of 1677, levying fines for the omission of the county courts' appointing a grand jury, gradually overcame this feeling. Since this weakness has already been discussed, it will not be mentioned again at this time.

Many other weaknesses were acquired and overcome as well as could be expected. We will now discuss some of the most important of these weaknesses, keeping in mind that each of them could seriously hamper an individual county grand jury, or the system as a whole.

I. NON-ATTENDANCE

It has already been pointed out that fines were brought into being to overcome absences from grand jury meetings. These fines were used as a means to encourage citizens to heed the county courts' summons to appear for grand jury duty. Absence from jury duty was probably one of the major problems facing the system at first, and was a predominant problem as late as 1800.

Men often seemed reluctant to serve on grand juries. This may have been the result of their failure to realize the important of this body, but the real reason was probably a combination of factors. No monetary reward was offered for serving in this capacity. They had no
incentive to give up valuable time in order to serve. As is well known, most of Virginia's citizens were uneducated at this time, and it is quite understandable that they might be averse to giving up any of their somewhat limited time to serve a more or less public function. Poor communications and transportation facilities did not help matters at all, just as terms of court often fell during the planting and harvesting seasons, thus making it difficult for a farmer to find spare time. Any person who has ever lived on a farm realizes that if a good crop is to be had planting and harvesting are two items that will not wait until later.

Even though laws were passed placing fines upon those failing to attend, absences continued. Failure to heed a summons for grand jury duty resulted in a fine, but if due cause could be shown for an absence such as ignorance, a juror could be released after paying all officers' fees. However, once a fine had been set by the county courts, any remission of the fine had to come from the governor. Many citizens wrote letters to the governor asking that their fines be withdrawn, and it is from these letters that we find most of the information concerning absences.

Excuses for failure to attend the courts for grand jury duty were varied, some worthy, others seemingly not so. A sampling of these excuses follows. In 1783 a former magistrate sought to have his fine
suspended because of a crippling disease.\textsuperscript{167} Another in 1785 sought the same thing, claiming that he had been traveling from Philadelphia and was therefore unable to attend.\textsuperscript{168} In 1790 a man claimed his summons had been illegal.\textsuperscript{169} In 1792 another claimed he had found a substitute who lived much closer to the court than he did. The sheriff who had summoned the petitioner had agreed to summon the substitute instead, or so the petitioner said. This substitute had failed to appear and now the original man wished to have the fine placed upon the substitute.\textsuperscript{170}

In 1793 a man failed to attend the grand jury for a district court, thinking that since he was an overseer of a highway he would, therefore, be ineligible.\textsuperscript{171} Other excuses were offered as well.

From the number of excuses sent to the governors in these petitions for remission of fines, the number of absences must have been very large. The county records certainly bear this out. From these petitions and the county court records, we must assume that increased enforcement of the regulations was being initiated by the county courts. Therefore, the system was finding a firm footing.

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\textsuperscript{167}Cal. of Va. State Papers, III, 463. \\
\textsuperscript{168}Ibid., IV, 57. \\
\textsuperscript{169}Ibid., V, 145-146. \\
\textsuperscript{170}Ibid., VI, 63. \\
\textsuperscript{171}Ibid., p. 495.
\end{flushright}
II. UPPER CLASS FAILED TO SERVE

Another weakness of the system was found in many localities where the upper class did not wish to serve on the grand jury. Because of their wealth and influence they could ensure that they would not be called to serve on the grand juries. This seems a shame for surely their power and ability could have aided greatly in crime investigation as well as in other respects. In Caroline County, grand jurors from the upper classes were infrequent. They considered it beneath their dignity and duty to serve in this capacity and only did so under extreme circumstances. Only one family, the Taliferros, of the ruling class took an active part in grand jury functions. This family served on twelve panels. Also it might be added that the same families served again and again on the grand juries of Caroline County. 172 It is easy to see that this condition might have been conducive to bias and unfair practices, but on the other hand a very select and ambitious grand jury could have been the result in many instances, a group dedicated to justice no matter the social status of the individual brought before it. However, not all counties had this problem. Henrico County, for instance, had many substantial and respected citizens serving on its panels. 173

III. METHOD OF SELECTION

Still another weakness inherent in Virginia's grand jury system

173 The William and Mary Quarterly, op. cit., XXIV, 280.
was the lack of a provision for the method a sheriff was to use in selecting twenty-four freeholders. He could choose any freeholder he desired. True, the county court had the final word in the selection but the sheriff held a great deal of power there. The county court also was not governed by law in its selection of at least fifteen of those summoned by the sheriff to compose a panel. In Massachusetts the inhabitants of the counties elected two men in place of a grand jury at this time. Among other reasons, this was done because of a sparse population and was later changed when the county court and a grand jury system was begun, but elections for members of grand juries were still held. 

This method of selection seems to be more inclined to choose honest and trustworthy individuals from the people's viewpoint. This would also tend to do away with favoritism towards the wealthy upper classes and to prevent biased and stacked panels. The Virginia system depended too much upon the integrity of sheriffs and county courts and also those chosen to serve on the panels. This is not to say that all sheriffs and county courts were dishonest and would all choose jurors who would cater to their desires and wishes. However, this could occur more easily than if elections or more democratic methods had been provided. Perhaps many stacked juries were chosen (at least one seems to have been and will be discussed later), but they must have been fairly honest for the most part. Otherwise the growing responsibilities and duties of grand juries

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during this period would not have taken place.

IV. OPINION NOT FINAL

The purpose of this paper is certainly not to set the grand jury up as an all powerful body. As the administration of justice increased in other fields, so the grand juries' duties and powers, as well as limitations, also increased. However, we must always keep in mind that a grand jury was certainly not the final authority in criminal or in other cases. It remained an inquiring body, not a trying one. Therefore, indictment without evidence would not have gained a dishonest grand jury much. The power of a grand jury to fail to find a true bill, when sufficient evidence was presented, was the real problem if dishonesty was one of a grand jury's weaknesses. Even in this though a grand jury's decision was not final. Edmund Randolph, in reply to a letter from the Governor of Virginia on April 4, 1782, wrote:

*I may venture to assert without danger of confutation that an examination and acquittal before a single magistrate is not a bar to a second prosecution. ... However an acquittal by one examining court is a good plea at bar but on the other hand it is notorious that when a grand jury finds a bill 'not true' the suspected person may be again drawn into question at a future day.175*

Thus failure to find a "true bill" did not always ensure that the suspected person could not be tried again at a later date. Therefore, even with the great power intrusted to the grand jury we find that its authority was not final. It was simply a body designed to protect the

innocent from a jury trial, not to protect the guilty from a future trial.

V. JUSTICES VOICING OPINION

Justices could also hurt the system by giving an unwarranted opinion to a grand jury or other jury. In an essay entitled "Thoughts on Juries" the essayist warns jurists not to be swayed by the judge and his opinion, "for a jury are the Sole judges whether a Defendant be, or be not, guilty of the Offenses laid to his Charge." Apparently judges had been giving opinions and therefore influencing juries. The essayist certainly disapproved of this.

VI. USE OF GRAND JURY POSITION IN POLITICS

Against Governor Spotswood. In some instances grand juries used their positions in unfair political practices. One such instance is recorded in a letter from Governor Spotswood to an unknown recipient who had interceded for him with the board of trade. In this letter he makes mention that a certain select grand jury of "officers and persons under very particular Obligations and Expectancies . . ." had been traveling throughout several counties "from house to house to engage men . . . by threats and promises . . ." to serve their purposes. Their purpose was to discredit Spotswood in some way not made clear in the letter.

176 "Virginia Gazette," July 22, 1773.

177 Lee-Ludwell Papers, Virginia Historical Society Library.
Nevertheless, their position, as a group, was being used to influence their own ends. This could easily be done by threat of false evidence or the promise of withholding evidence.

For Governor Spotswood. Spotswood also had reason to thank a grand jury for its support. Around 1719 the Virginia Assembly refused to pass certain measures recommended by the governor and transmitted an address to the King, praying that the instructions which required that no acts should be passed affecting British commerce or navigation without a clause of suspension should be rescinded. They also complained that the governor was attempting to subvert the charter agreements. One writer seems to feel that the domineering ambition of the Council was long the fruitful source of mischiefs to Virginia, and it is on this account that many of the complaints and accusations against the governors are to be received with many grains of salt. The twelve members of the Council were members of the Assembly, judges in the highest court, and held command of militia as county lieutenants. 178 This made it quite quite easy for them to rush a letter to the king through the House of Burgesses before he caught wind of it. However, Spotswood was not caught napping and immediately used the address of a grand jury, in a letter to the Lords of Trade, to explain his position. He stated that the grand jury was composed of "21 of the Principal Gent'n of the Country" and since they supported him, he was doing his duty. He also

suggested that "some of them (members of the House of Burgesses) disown the part they had in it" (meaning the letter to the King). 179

However, this was not the end of the matter for the House of Burgesses wrote a paper in reply to the grand jury's effort "to expose and Vilify the House of Burgesses in Virginia, And to confront their Address to his Majesty with a Counter-Address of the Grand Jury of that Country." In this paper the House of Burgesses implies that the grand jury approved any opinion of the governor because he was responsible for their appointment. 180 No matter what the statements made in this address, Campbell's evidence seems to indicate that the House was fighting a losing battle. The grand jury had virtually come to Spotswood's rescue. This instance may also be used to point out the fact that many people disapproved of the appointment of grand jurors, for this was a criticism made by the House of Burgesses.

VII. FAILURE TO SCREEN THOSE APPOINTED

Even though the laws regarding grand juries were quite specific in that only freeholders were eligible for grand jury service, some members were found to be lacking in this qualification. On November 3, 1740, the Governor's Council took under its consideration the case of


several criminals who had been indicted by a grand jury which had a member who was not a freeholder. Upon the discovery of this fact, the court assigned lawyers to the case to notify and advise the convicted men of this fact and its ramifications. "And after having Conferred with their Council, and being given to understand that the Court was Sencible of the advantage they might take of this accident, they were brought to the Bar and waved taking any Exception to the Proceedings. . . ."

Instead they placed themselves upon the mercy of the court. The Governor's Council took note of this and advised the Governor to pardon them. We thus find another weakness which shows the lack of care used by the courts in selecting grand jury men.

VIII. SUMMARY

These weaknesses were all very important in determining the success of the grand jury system in Virginia. Each had to be overcome, or at least controlled if the system were to function properly. By 1800 most of these problems were still present. Some had been brought under somewhat limited control, but they were to remain for quite some time.

CHAPTER XII
SUMMARY AND CONCLUSIONS

By 1600 the grand jury system had developed greatly in Virginia. Its position had been quite weak at first, even so weak as to be done away with. The act of 1677, which placed fines upon those not carrying out the acts concerning grand juries, probably helped as much as any other factor to ensure the system a more stable footing. Because of this act the latter part of the seventeenth century marks an important turning point for the system. After this time the system developed steadily.

The eighteenth century was the time of greatest improvement. Many regulations were made into law and many new duties and responsibilities were added to the growing list of the grand jury. However, many regulations were still left to custom and a later generation. Many weaknesses were still to be found during this period, but strides were being made to overcome them.

The position of the grand jury had come to be more and more respected by Virginia's citizens. Its position had been relied upon by the governor. "The relation borne to the county court by the grand jury was, from some points of view, more important than that borne to it by the sheriff, constable, and coroner combined." 182 This can be said,

182 Bruce, op. cit., I, 608.
since its duties were often similar and many times the same as these officials'.

The grand jury served in an important inquisitorial capacity. It was one of the citizens' chief means of investigating the conduct of public officers and determining whether or not the offices were properly operated.

During this period the county court acted as a court of inquiry in serious offenses. It could mete out severe punishment to slaves, but serious crimes committed by freeholders had to be tried before the General Court. Therefore, the county grand juries had little to say in these cases, except to forward their findings to Williamsburg.

During the eighteenth century the General Court began its most important development. By 1800 its grand jury had served in very important functions such as estimating tobacco prices. These and other duties made it a very important body. Also, district courts developed during the 1790's to fill in the gap created by distance and time elements. The grand juries for these bodies performed the same duties as those of the General Court.

By 1800 the grand jury had become quite useful in the Virginia court system. In a land where many people lived in rural areas, public officials could not be delegated to enforce the law in every little

farming area. Therefore, in this case the grand jury was given more or less police powers and helped to replace the lack of this arm of the law. Of course, crime continued and the system suffered from many inherent weaknesses and growing pains, but it was an improvement over no enforcement agency at all.

The grand jury system must have been well thought of for it was included in the United States Constitution. In this document we find that "No person shall be held to answer for a capital or otherwise infamous crime unless on the presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war, or public danger." Although this provided for a grand jury only in serious cases, Virginia's early laws provided that grand juries could operate in minor cases also.

One final conclusion can be used to sum up the entire system fairly adequately. In some areas the system worked well, in others less so. A good grand jury system more or less depended upon the individual courts and grand juries; and a good system was determined by the inhabitants of a locality cooperating with the county court. If this was not done, the system was undoubtedly a failure.

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