SOME RACIAL AND POLITICAL IMPLICATIONS OF GROWTH IN VIRGINIA'S CAPITAL CITY--ANNEXATION IN THE SIXTIES

by

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Major paper submitted to the Graduate Faculty of the
Virginia Polytechnic Institute and State University
in partial fulfillment of the requirements for the degree of

MASTER OF URBAN AFFAIRS

in

Urban Affairs

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December, 1973

Blacksburg, Virginia

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INTRODUCTION

The problems of governing our nation's cities became major concerns during the 1960s. This has been apparent in the urban affairs literature and in concerns voiced by urban leaders throughout the country. Many of these problems can be attributed to the changing makeup of population in many cities. The successful city resident has become the suburban commuter. The economically less fortunate have migrated to the city in hopes of finding success through better employment. Consequently, the poor, the elderly, and the black citizens have gained majority status as the economically successful have left for the "better life" in the suburbs.

These fundamental changes have created tremendous problems in the areas of housing, employment, and financial stability of city governments. Rather than approaching these problems directly, city officials have sought, in many instances, to weaken the impact of these problems in the city. The use of merger or annexation has been a means of doing this.

Annexation has historically been a method of extending city services when growth has spread development beyond the city's boundaries. It has also been a method of obtaining vacant territory for a future city expansion. However, annexation recently has been used as a tool to preserve the "status quo" of those in power and to save the economically strained city.

On January 1, 1970, Richmond, Virginia, received 23 square miles

and an estimated 44,000 persons, mostly white residents, through annexation. This growth came after 10 years of attempted merger or annexation of surrounding counties. Even today, the fate of this recently acquired territory is in doubt. This annexation was agreed upon through compromise motivated by racial fears. The annexation award changed Richmond from a majority black city to a majority white city once again. This annexation has produced the most vigorous annexation battle in Richmond's history. A Richmond black has effectively waged a campaign for de-annexation through the federal courts. Likewise, many of the mostly white, middle-class annexed citizens have continued a vigorous battle to reverse the annexation of 1970.[1] Through the experiences of the 1960s, the city leadership came to realize that annexation was no longer an easy method of solving the city's "problems."

The purpose of this paper is to present the changing uses of annexation. It is hoped that this analysis will emphasize the need for structural change of the Virginia annexation laws. A mechanism for evaluating and considering the political and social effects of boundary expansion must be created. The effects annexation will have on various groups in a city must be weighed against the benefits annexation will bring to the city seeking it. It is not enough to consider only the physical ramifications of annexation, as has been the procedure in most annexation courts in Virginia.

Also, the paper depicts a real-life, urban situation which affords an understanding of the attitude and rationale behind the actions of

various members of the metropolitan community. Through this understanding, it is hoped that those entering public service will be better equipped to cope with political struggles that governmental service presents.

This paper will explore the racial implications surrounding the attempted merger and annexation efforts in Richmond of the 1960s. It will also examine the political motives of the suburban citizens who balked at annexation and continued a de-annexation movement. Special attention is paid to the Chesterfield de-annexation campaign which allied city blacks and suburban whites in a common goal. Although emphasis is placed on the events surrounding the Chesterfield annexation and subsequent de-annexation movement, an understanding of the earlier Henrico merger and annexation attempts is essential for a full comprehension of the situation.

This paper is divided into five chapters. Chapter one examines why a city may wish to expand its boundaries. The various means through which a city may expand are examined. The history of city-county consolidation or merger is discussed, and the various annexation methods in use in the United States are analyzed.

With the perspective of chapter one, chapter two examines the judicial system of annexation in Virginia. The historical evolution of Virginia's system is discussed. The chapter then explains Virginia's use of a three-judge court to hear the evidence for and against the proposed annexation before making an independent judgement on whether or not annexation will be granted. Factors used by the

court to determine the necessity of annexation are discussed. The court has the authority to decide how much territory will be awarded as well as the terms of that award.

Chapter three explains the events related to the one merger and two annexation movements in Richmond during the 1960s. Chapter four examines the racial and political factors and motives related to the merger attempt and the two annexation suits which Richmond experienced during the sixties. This chapter expands the events discussed in chapter three. Chapter four also examines the de-annexation efforts that have transpired since the 1970 annexation of a section of Chesterfield County.

The closing chapter presents the author's general conclusions. These conclusions first examine how the Virginia annexation system affects city-county relations. Secondly, some summary conclusions are voiced concerning the changing motives for using annexation. The author's conclusions regarding the racial motives behind the 1970 annexation of Chesterfield are given. Finally, as a result of observing annexation in use in Richmond during the 1960s, some recommendations for changes in Virginia's annexation statute are discussed. It is hoped these changes would make annexation more efficient and prohibit its use for racially oriented purposes.

ENDNOTE

[1]Interview with Roger C. Griffin, Jr., President, South Richmond Council of Civic Associations, Richmond, Virginia, October 25, 1973.

CHAPTER I

BOUNDARY EXPANSION--VARIOUS METHODS

One of the common themes found in literature relating to government in metropolitan areas is that there are too many governments. This condition leads to extensive duplication of administration, services and other governmental functions. In Virginia, cities are independent entities. Territory is completely the city's, and a city shares no overlapping jurisdiction with surrounding counties. Within this type of governmental structure, duplication is even more pronounced.

Methods for expanding city boundaries have been tried in order to reduce this inefficient duplication. As population and industry flows over the boundaries of a city, the influence the city has on that growth becomes minimal. Cities cannot develop comprehensive plans for orderly development if they have no jurisdiction in the urban areas where expansion is occurring. Many cities have exhausted their available vacant lands. This means the city must accept a no-growth or limited-growth policy unless means to extend their boundaries are available. Business and industrial development is a lucrative tax base for cities; and if this development is diverted to surrounding counties, city budgets will suffer.

Cities also wish to extend their boundaries to recover the suburban population, many of whom were former city dwellers. On occasion, suburban residents have petitioned to become a part of the

city to benefit from the services the city renders. However, with suburban counties offering much the same level of services as the neighboring city, the demand for boundary expansion has come from the city seeking to extend its tax base. With tax rates within the city sometimes two or three times higher than the county rate, citizens beyond the city boundaries have shown much resistance against becoming city residents.

Cities sometimes counter this resistance by claiming that county residents are benefiting from city facilities and services but not sharing in their costs. The city has claimed, on occasion, that its taxes are higher than the county's because the city is supplying services to county residents who are not contributing any support to the costs incurred.

A relatively recent motive used by cities for increasing their boundaries is the necessity of changing the racial makeup of the city. Many cities have had a steady increase in the black population within their borders. Boundary expansion has been a means of preventing the black population from becoming politically dominant. This type of expansion motive will be explored in depth in the paper.

Cities may provide water, sewage or gas facilities to residents outside their borders. Although the respective counties compensate the city for these services, the fact that the city is supplying these services adds substance to the city's argument that such residents ought to be a part of the municipal government on which they depend. However, creating a consolidated or merged metropolitan government is

not an easy task. The city that proposes merger with an adjoining county has to have something to offer the county resident. In the traditional sense the city was urban and the county was rural. In such a setting, extension of city services would be an attractive inducement. But this is no longer the case. The birth of the "suburban county" has found many localities providing the services and needs in much the same fashion as the city. The "suburban county" has sought to promote a high level of service as a weapon against merger or annexation. The counties of Fairfax and Henrico in Virginia, for example, provide their citizens with almost every benefit that Virginia's cities provide.

Even if services presently received do not satisfy the county resident, prospects of higher taxes turn many suburban residents against merger. Though tax dollars may be more efficiently spent, the fact that the county citizen may be subsidizing the struggling city budget leaves many opposed to cooperation. Many county citizens have left the city's high taxes, crime, crowding, etc., and simply think living in the city again would be unbearable.

Merger was quite successful during the nineteenth century since the merger decision was usually made by state legislatures. In the late nineteenth century, five counties and two cities merged to form the great New York metropolis. The climate that produced several mergers in the nineteenth century was not present in the twentieth century.

> The absence of 'home rule,' the limits on county powers and resources, thus making city services far more attractive to suburban residents, and the existence of powerful state party organizations, all created a set of circumstances not duplicated in the 20th century.[2]

Municipal reformers brought forth changes in the twentieth century that transferred the merger decision from the legislatures to the local electorate. The power was shifted from the politicians to the people. A side effect of this shift was that merger became considerably more difficult.

The urban sprawl of the twentieth century extended the powers of urban counties, thus allowing suburban residents to have a high level of services while avoiding the problems of the big city. Consolidation or merger was almost non-existent during the first half of the twentieth century. In recent years certain notable successes have raised hope for its use. Since 1952, four mergers have taken place in Tidewater, Virginia. According to David G. Temple in his book, Merger Politics, the Tidewater mergers were the result of united support from county and city leaders and the threat of annexation if merger did not take place; and, above all, the mergers seemed to project the image of preserving the "status quo" of the area.[3] That is, consolidation would preserve the area intact rather than pull it apart slowly through annexation. A willingness toward compromise and cooperation seemed to make merger a favorable alternative in Tidewater.

In 1962, Nashville and Davidson County, Tennessee, merged after a merger proposal was rejected in 1958. Here a combination of threatened annexation, a sudden rise in taxes and a county and city

effort to oust an unpopular mayor seemed to aid the merger effort.[4]

Suburban county governments and residents generally see their problems and needs as different than those of the "inter-city." Merger seems to require a rare set of circumstances that will override the natural suburban bias toward consolidation with the "inter-city." The city is usually characterized by higher tax assessments, large debt ceilings and a large economically deprived populous. Suburban residents simply do not want to inherit the monumental problems faced by the city.

A more recent factor in opposing county-city merger is the black city resident. Throughout the twentieth century, blacks have moved to America's cities in increasing numbers. In the sixties they became a significant voice in cities such as Richmond. Having been under-represented for most of their lives, a chance for some real political power finally was realized through the civil rights legislation of the sixties. With effective organization, blacks know they have power in numbers. Consolidated government is a way of weakening that power. Their votes cannot be counted on when merger is discussed.

For the city the easier method and much more successful means of growth is through annexation. While some cities rely on annexation if merger fails, others prefer it to merger because it requires less compromise or cooperation with a neighboring county. In Virginia it is preferred because it does not require the popular support of those annexed.

Before examining how the Virginia annexation system functions, it

is important to get some perspective on the uniqueness of Virginia's system. I am going to present a survey of the various annexation methods throughout the United States and, in some detail in the following chapter, present the Virginia system.

Annexation may be fundamentally divided into two systems. The first relies primarily on special acts of the legislature in each instance. The second is a generally applied code that is used statewide. Those states having a statewide code can be divided as those that have specific requirements to determine the legality of a proposed annexation and a second group that uses broadly established standards that require discretionary interpretation.

The oldest method used for altering municipal boundaries is a special act of the legislature. If a city desired expansion of its boundaries, the city would have to introduce legislation in the state legislature. Like any other proposed bill, the annexation request would have to be passed by the state legislature and approved by the governor. Of course, the lawmakers would have the right to amend the request, either reducing or expanding the territory requested. State courts have consistently ruled that municipalities are formed by the state legislatures and therefore can be changed to any form the legislature desires as long as public interest is protected. As might be imagined, the legislature-controlled boundary expansion method has met considerable opposition. "Proponents of self-determination argue that local government belongs to the people and that the creature of the state concept of local government is an anachronism."[5]

Many localities resent the state being the sole judge of their growth prospect. The legislature is composed of individuals not directly knowledgeable about the needs of each locality. From the practical standpoint, most state legislatures are overloaded with work. They may meet for only short periods each year and do not want to be bogged down with the added responsibility of deciding fair annexation settlements. The political "logrolling" that can occur among legislators, who have only nominal interest in various city growth requests, makes this method less than desirable. Only 11 states still rely on this method of annexation. Even in some of these states other methods are also available.

In other states that have established specific requirements for annexation, exceptions have been established for certain cities or towns in their borders. In Nebraska, Omaha and Lincoln receive special treatment that other cities within the state do not. Missouri has established St. Louis and Kansas City as home rule cities, thus making them exempt from the state's annexation statutes.

Most states in the country have legislative standards to regulate annexation statewide for all cities. These standards or laws usually involve interaction among locally involved parties or conformity to legislatively drawn guidelines that describe how the annexation is to take place.

Most states provide for the final decision of the annexation settlement to be made by the voters affected. The three groups directly involved in annexation proceedings include the representatives of the

city and county involved in the annexation arrangements, the residents and property owners of the territory to be annexed and the citizens of the jurisdiction that will lose territory. The level of conflict between the annexor and the county losing land is usually determined by the amount of authority the county will lose because of such action.

The initiation of the annexation is usually within the power of any of these three groups. When the member of one of these groups or their elected representatives can initiate and also finalize an annexation without the approval of either of the other two groups, this is known as unilateral annexation power. Approximately 15 states have laws empowering the city to vote whether they want to extend their boundaries without the consent of the county. In five states, the annexation laws provide the city representatives with the sole power to decide if their municipality should be increased.

If viewed within the framework of the Virginia city-county separation, such leverage wielded unilaterally by the city superimposes great power. "Cities and counties in Virginia are independent of each other in the same manner as two counties elsewhere are independent and coequal local units."[6] However, the city-county relationship in practically all states except Virginia provides for an overlapping of city and county jurisdictions. Annexation extends city services to the area annexed, but the county continues to share in the provision of these services as well as the power of taxation. Consequently, there is no loss of territory by one jurisdiction and gain by another but rather a sharing of responsibility by the city and the county.

No states allow the annexee the power to decide unilaterally if it wants to become part of the city. Nowhere in the United States do county citizens have the power to make themselves a part of a neighboring city unless that city agrees to accept them.

Joint annexation determination occurs when any two of the parties to annexation are allowed to decide the annexation question. In all such methods the annexees and the annexor are the two parties involved. In 21 states the annexation can be initiated only by the residents or property owners of the area to be annexed. To become annexed, this petition must be approved by the annexor. In 17 states, a petition of annexation initiated by the annexing city must be approved in some form by the annexed individuals.

The form of municipal growth practiced by Texas has received much comment because of the dramatic growth it has generated among major Texas cities. The key factor in the Texas success is the authority to annex that is placed on "home rule cities." According to the state constitution, home rule cities can provide in their charters the procedure they will use in annexation proceedings. Texas cities of 5,000 or more can vote to become "home rule cities" if they so desire. In 1938 the Texas Supreme Court stated:

> The Home Rule Amendment and the Enabling Act transferred to the specified cities through the agency of their qualified voters the same power which the legislature has heretofore possessed to change territorial boundaries.[7]

The Texas "home rule cities" may annex any part or shape of a territory as long as it is contiguous. The annexations cannot be challenged in

the courts on the basis of their wisdom or the purpose of the action. Federally, the purpose could be challenged if racial motives entered into motivation to annex.

According to a study done by the Texas Legislative Council, "home rule cities" have used annexation for some of these reasons:

(a) Tax revenue
(b) To prevent annexation by another city
(c) Prevent the incorporation of the area as a separate city
(d) Solely for the purpose of increasing the land area of the city
(e) Increase the population of the city
(f) Annexation in response to petitions of inhabitants of the area[8]

Most "home rule cities" allow annexation without the consent of the territory or people being annexed. In most cases, this action is taken by city council action; but in a few cities, such as Corpus Christi and Fort Worth, a majority of the city voters must approve such action. A minority of the "home rule cities" require approval by the voters of the specific area under consideration. This annexation independence has made Texas cities very strong politically and economically. It has meant many fringe areas containing service and regulatory deficiencies have been brought under the full and permanent jurisdiction of a general urban government. Unified, metropolitan or regional government could be realized easily under Texas annexation regulations.

In some states, only property owners are allowed to vote in annexation referendums. Methods are used to determine the importance of an individual vote according to the proportion of real estate he owns in the proposed annexation territory. Delaware allows each voter

who owns property in the area to be annexed, one vote for every $100 of assessed real estate valuation on their property.[9] This aristocratic philosophy reasons that the land owner is the only one who has a valid interest in the territory to be annexed.

Other states, as stated, require legislative preconditions before annexation can occur. Some of these require preconditions as well as popular approval. The first type of standards include physical characteristics that must be present before annexation is valid. These characteristics include compact and contiguous boundaries in relation to the annexing city. Such a requirement is an attempt to keep cities from acquiring only selective territory that does not represent even and contiguous expansion of its boundaries. Some municipalities have attempted to annex non-adjoining areas and connect them to the city through shoestring strips of land. Laws requiring physical compactness of cities can prevent such action.

Other preconditions prohibit cities from taking land from certain types of municipalities. An example of this type of precondition is those that bar cities from annexing incorporated territory. In Virginia, cities cannot annex other towns or cities, thus the City of Norfolk is contained from future territorial growth because the city is surrounded by other Virginia cities.

Another type of precondition includes those factors used to protect the annexed area from financial harm by the annexor. Such statutory protectors are especially important where states have unilateral annexation power as has been described in Texas. Where the

annexed area has to agree to the settlement, statutory protection from exploitation is not as necessary. Representative examples of these preconditions are described in the following paragraph.

In Alabama annexation of contiguous territory will be permitted only if the proposed territory is homogeneous to the annexor and is not a part of any other municipality. Obviously, a term such as homogeneous is very vague and difficult to interpret. In Indiana conditions for annexation include (1) the annexation must be in the best interest of the city and territory to be annexed; (2) the territory is urban representing an economic and social part of the city; (3) the annexation is fair and just; and (4) the financial status of the city is sufficient enough to provide municipal services to the annexed area within the near future.

In Montana annexed land must be contiguous to the city, but where land used for industrial or manufacturing purposes is annexed, prior written approval must be received from the land owners. North Carolina includes such preconditions as a requirement that at least one-eighth of the annexed area's boundary borders a city. The area to be annexed must be developed for all or some urban purposes. To be developed urbanly, a portion of the land must have a total population of two or more persons per acre, whereas the total area must have at least one person per acre. The proposed residential land for annexation must be subdivided with at least 60 per cent of the land in lots of one acre or less in size. Also, the conditions include a requirement that 60 per cent of the total number of all lots and tracts at the time of

the annexation be used for residential, commercial, industrial, institutional or governmental purposes.

Rather than setting legislative guides and regulations for the annexation process or referendums, other states have established a quasi-legislative commission to act as a judge. This third party approach is similar although not the same as the judicial approach that we will see in detail through the Virginia system. Nine states have established some type of quasi-legislative body to act as an impartial judge. States using this type of system include Alaska, Kansas, Michigan, Minnesota, New Mexico, North Dakota, Ohio, Pennsylvania and South Dakota. The power of these commissions varies from only a veto power in the states of Michigan, Ohio and Minnesota to broader authority to require or deny a boundary change as found in the states of Kansas, North and South Dakota, New Mexico and Pennsylvania. Some of these quasi-legislative bodies serve only as appeal bodies when settlements cannot be worked out. Others are directly involved in proceedings of a settlement. Except for one state, no action can be taken by these commissions unless petitioned by a governing body involved or in instances where local initiative has started annexation proceedings.

The Alaska system is truly unique to the quasi-legislative process. The Alaska commission can initiate changes and these changes become effective unless rejected by a majority of both houses of the legislature.

Minnesota established a revolutionary annexation process. Their

system was an attempt to take annexation out of the political and popular spheres and place the responsibility in the hands of a board of experts. This board of three, all appointed by the governor, is given the authority to regulate boundaries in most areas of the state. The board's power lies in vetoing or modifying proposed annexations. It can not force an annexation plan if a majority of the voters have rejected it.

In a limited way, the judicial system is used in annexation procedure in Indiana and Kentucky. Indiana allows judicial involvement if the annexed citizens file an objection to the annexation. However, unlike judicial review, the judiciary in Indiana has the power to force annexations that are brought before them even if the municipalities have rejected it.

Kentucky uses a jury to decide some of its annexation cases. The theory is that a jury is just as qualified to hear the merits of an annexation as are judges. If the jury finds that less than 75 per cent of the land owners in an area to be annexed object to the annexation and that the annexation is in the best interests of the city without causing any undue harm to affected property owners, then an annexation award should be granted.

A revolutionary approach to the annexation began in Virginia at the turn of the twentieth century. This unique judicial system is examined in some detail in chapter two.

ENDNOTES

[2]S. J. Makielski, Jr., "City-County Consolidation in the United States." The University Press of Virginia, Vol. 46, No. 2 (October 15, 1969), p. 2.

[3]David G. Temple, Merger Politics (Charlottesville: University Press of Virginia, 1972), pp. 177-85.

[4]Brett W. Hawkins, Nashville Metro (Nashville: Vanderbilt University Press, 1966), pp. 137-40.

[5]Frank S. Senjstock, Annexation: A Solution to Metropolitan Area Problems (Ann Arbor: Michigan Legal Publications, 1930), p. 14.

[6]Temple, *op cit.*, p. 17.

[7]Council of State Governments, The State and the Metropolitan Problem, A Report to the Governors' Conference (Chicago: Council of State Governments, 1956), p. 36.

[8]Texas Legislative Council, Municipal Annexation, Report to the 57th Legislature (Austin: Texas Legislative Council, 1960), p. 37.

[9]Robert G. Dixon, Jr., and John R. Kersteller, Adjusting Municipal Boundaries: The Law and Practice in 48 States (Washington, D. C.: American Municipal Association, 1959), p. 42.

CHAPTER II

VIRGINIA'S JUDICIAL SYSTEM OF ANNEXATION

"The most consistent use of annexation in this century has been in Virginia."[10] Before examining how annexation was used in Virginia's capital during the 1960s, it is imperative to look at the structure of annexation in Virginia, both historically and physically. At the same time, it is important to understand an element that makes Virginia's system unique and perhaps one of the most difficult states in which to annex. Virginia is the only state in the union that follows a statewide practice of city-county separation.

In other areas of the United States, annexation adds another layer of government to the newly encompassed citizens with no territorial loss to the county or municipality. The county and city governments usually share service responsibilities since they both maintain jurisdiction over the same territory. In Virginia, annexation is a complete gain for the city because the county loses all jurisdiction in the annexed area. Since the county gives up part of its population and revenue sources, annexation battles in Virginia have been very bitter and hard-fought affairs. Anti-city feelings have long been a characteristic of suburban county attitudes toward city annexation hopes.

"The earliest method employed in the Commonwealth to accomplish extension of boundaries of municipal corporations was by the legislature."[11] Each annexation request was handled as a special

legislative bill and since these matters were of local interest, annexation bills usually passed through the General Assembly with little opposition. With the creation of a new state constitution in 1902, the former practice of presenting an annexation bill in each case was abolished in favor of one specific law to handle the annexation process statewide. The constitution of 1902 stated:

> "The General Assembly shall provide by general laws for the extension and the contraction, from time to time, of the corporate limits of cities and towns; and no special act for such purpose shall be valid."[12]

With this provision adopted in the constitution, the legislatures of 1903 and 1904 labored with considerable difficulty to establish a law to serve as a statewide guide for annexation procedure in any Virginia city. It did not seem feasible for the legislature to set specific conditions and standards that all cities in the state would have to meet in order to gain annexed land. A majority of the members of the legislature felt that aspects of the situation--county opposition, specific city needs, and attitudes of the citizens--would have to be considered case by case. Certainly, a specific law could not serve the best interests of those involved in each instance. The General Assembly seemed to agree on this point, but as Chester Bain states in his book, Annexation in Virginia:

> The members of the session were deadlocked over the same issue that has characterized the annexation controversy down to the present day: whether the extension of municipal boundaries shall be determined by a judicial procedure or by the affected people voting in a referendum.[13]

The debate centered around the theme that the counties "flourish and develop and grow at the expense of the cities," meaning that the counties that border cities reap the benefits of city life but do not pay a dime in support of them. Those legislators favoring a referendum maintained that "people of the territory proposed to be annexed should be consulted."[14]

In the 1902-1904 special session of the General Assembly, the proponents of referendum were dominant in the populous-conscious House of Delegates, while those favoring a judicial system for deciding annexation claims were dominant in the Senate. With the convening of the regular session in 1904, only 39 of the 100 members of the House of Delegates who had attended the special session returned. With this new makeup in the House of Delegates, opposition to the judicial system changed; and a bill providing a judicial structure for deciding annexation questions passed in both houses.

The "judicial system" for determining annexation awards seemed a victory for the cities of Virginia. In retrospect, it may be doubtful that many annexation awards would have been approved if the annexed area of the county had to accept the award through a vote.

The city-county separation system in Virginia has made the urban city and suburban county natural enemies. The county is threatened by the city's potential power to annex sections of its territory. The county vigorously opposes annexation in Virginia because annexed territory is removed completely from the county's jurisdiction. Many times, the county's heaviest industrialized and populated territory

borders the city. Annexation removes a significant portion of its tax base, thus making budget balancing difficult in the immediate years following the annexation. City-county cooperation is difficult because the county fears the city may use these acts of cooperation as evidence for annexation approval. For example, the city may be able to expand services such as water, gas, and sewage to sections of the county more efficiently than the county. However, if such cooperative effors are allowed, the city may use this as evidence that these county citizens belong in the city.

Referendums would not have been successful because in annexation the county first loses all jurisdiction of the territory considered. This usually means part of their most thickly populated and lucrative tax base is wiped out. Secondly, city governments generally require higher tax assessments, thus drawing opposition from those to be annexed. Add to this the factor that today's suburban counties have most of the services that the city provides, and there is little reason why the county citizen would want to be annexed. Therefore, a judicial system seemed the only consistent way the city would be afforded the opportunity to grow in Virginia.

A few annexation settlements were established under the new judicial system. However, it was not long before the great rivalry between Henrico county and Richmond decided the constitutionality of the new system. Richmond was attempting to annex land from Henrico when Henrico filed suit claiming that the annexation statute passed by the General Assembly was unconstitutional and void. The county's

basic argument was that the legislature could not delegate legislative power to the judiciary. The old argument of "separation of powers" was being debated on the state level.

The county cited this sentence in the Virginia Constitution:

> Except as hereinafter provided, the legislative, executive and judicial departments shall be separate and distinct, so that neither exercise the powers properly belonging to either of the others, nor any person exercise the power of more than one of them at the same time.[15]

The county said the annexation statute removed control from those who opposed or desired annexation and placed control at the discretion of an annexation court. The county also ably stated that the statute not only authorized the court to refuse the boundaries asked by the city, but also permitted the court to set its boundaries in awarding territory. The county claimed that such power was obviously a delegation of legislative powers to the judiciary. The county also took issue with the court's right to decide if the annexation proceeding was "expedient" on the city's part. How can "expediency" be judged without considering the political aspects of the question?

Another point established by Henrico maintained that allowing the annexation court to award terms different from the city petition left the county in the dark with regard to its defense. The county claimed the court might award twice as much land as asked for in the petition. How could the county defend itself against a settlement of an uncertain outcome? The county called this a denial of "due process."

On these grounds, a suit was filed with the Virginia Supreme Court of Appeals. However, with minor exceptions, the State Supreme

Court upheld the position of the City of Richmond. The city made a distinction between the delegation of legislative power and the delegation of responsibility.

The basic question for the Supreme Court of Virginia was whether the Virginia Assembly had granted legislative or judicial powers to the newly established annexation court process. There was little doubt that legislative delegation was unconstitutional, but had such delegation been given? The majority opinion stated that Henrico's arguments were too narrowly defined.

> The majority of opinion next noted that whereas the statute did devolve upon the annexation court duties which if segrated and taken by themselves would be technically legislative in their character, 'it did not,' when the whole statute is read together and its purpose considered, ...impose upon the court purely legislative functions, such as would make it obnoxious to the constitutional provision invoked.[16]

The Supreme Court's opinion with regard to "necessity and expediency" has become a landmark which annexation courts have used as their basis ever since.

> The necessity for or expediency of enlargements (of municipal boundaries) is determined by the health of the community, its size, its crowded conditions, its past growth, and the need in the reasonably near future for its development and expansion. These are matters of fact and when they so exist as to satisfy the judicial mind of the necessity for or expediency of annexation, then in accordance with the provisions of the act, the same must be declared.[17]
>
> Thus, while the determination of what facts shall exist for a law to become operative cannot be delegated, the legislature may delegate to some other agency including the judiciary, the power to determine whether the enumerated facts do exist.[18]

Secondly, the city asserted that the annexation court was not required to formulate a theory with regard to annexation "expediency" but must

apply judgment to the validity of the facts presented. The city claimed that the annexation statute set standards for necessity of annexation which included health of a community, its size, its crowded conditions, its past growth and "need" for development space in the future. These same standards could be used to determine "expediency," the city maintained. A city initiating annexation proceedings must prove, with evidence and testimony, these factors of necessity and expediency, while those opposed must show this evidence and testimony incorrect and insufficient. Proof of any one factor can be grounds for annexation, but the city usually tackles them all.

The vast majority of Virginia's cities that want to annex use the "necessity and expediency" section of the annexation statute to initiate proceedings. However, there is a second method established in the statute. The second method of initiation involves petition by 51 per cent of the qualified voters in an area adjacent to a city. In the Richmond annexation cases, county resistance has been consistent. Without exception, the initiation has come through city ordinance asking for annexation.

Since its establishment in 1904, Virginia's annexation statute has endured with little revision. The number of judges in the annexation courts has increased from one to three, and the official who selects the circuit judges was changed from the governor to the chief justice of the State Supreme Court of Appeals. The last change seems to have been a further removal of the process from political manipulations.

In order to examine the annexation statute, the General Assembly created an 11-member Commission to Study Urban Growth in 1950. The commission made two recommendations for the statute that were approved by the 1952 General Assembly.

The first recommendation was designed "to make the law more flexible and place in the annexation court a greater degree of discretion."[19] This was done by eliminating rigid controls which referred to assumption of county debt, compensation for capitol improvements in annexed areas and specifications for services within the annexed areas.

The second recommendation gave the three-judge courts the power to see directives carried out. This power was strengthened through establishment of each annexation court for a five-year period, allowing it to re-open a case if circumstances called for further deliberation. This gave the courts the power to enforce or modify their decrees, as circumstances might require. This second recommendation also proposed the use of a pretrial conference in all proceedings as well as limiting annexation proceedings against a particular county to once in a five-year period.

A similar study was made in 1964 by the Virginia Advisory Legislative Council (VALC). The VALC gave its endorsement to the basic annexation procedure, although it offered minor changes--none of which were enacted into law. One of the most important recommendations dealt with reducing the cost and complexity of annexation proceedings. Such a recommendation would certainly have aided Richmond, where hotly contested battles have been extremely expensive for taxpayers. Upon

establishing some historical perspective regarding the Virginia statute, a look at the structure itself is important.

Virginia's system is unique for many reasons. First, Virginia's system is the most committed to judicial determination of any state in the union. Legislative commissions set up to study the Virginia system have consistently re-asserted faith in the judicial system. Secondly, the judicial criteria supposedly maintains the system free of political pressures routinely found in legislative enactments. Thirdly, the annexation court's use of "necessity and expedience" has served as a pattern for other states such as Indiana and Colorado.

The Virginia annexation procedure has three major steps. Initiation of the annexation petition is the first step. While initiation may be started by the citizens of an outside locality, governing body of the county, or government of a bordering town, these methods are seldom used. Annexation is initiated 99 per cent of the time in Virginia through efforts of a city seeking new territory.

To initiate annexation, the city files notice of the proceedings with the circuit court of the county where land is sought. Information in the initiating ordinance includes a description of the boundaries of the territory sought, a defense of the "necessity and expediency" of the annexation bid, and, finally, a statement of terms and conditions upon which annexation is to be pursued. Included in this statement of terms are plans for the future improvement of the annexed territory as well as plans for its future use.

There are four general reasons used by most Virginia cities as grounds for annexation of surrounding territory:

> These factors concern (1) the crowded and congested conditions within the city, (2) the need for governmental services and functions by the people in the area proposed to be annexed, (3) the "community of interest" between the city and the area sought to be annexed, and (4) the need for the orderly development of the city and its surrounding environs.[20]

Proof of one of these is enough to begin annexation proceedings. However, most cities present evidence in all four areas.

After the city has passed the required ordinance as described above, notification must be given in two forms to the parties involved. First, notice must be given to each member of the governing body and the Commonwealth's Attorney of each county from which territory is to be taken. The second type of notice required is public notice, meaning that notice and ordinance must be published in a local newspaper, at least once a week, for four consecutive weeks.

After the initiation has been filed by the clerk of the circuit court of the county whose territory is being annexed, the next task is the selection of the court. The three-judge court is chosen in the following manner. The judge of the county circuit court in which the proposed territory is located is one member. The second judge is the circuit court judge of the city initiating the suit. The third judge is selected from any state circuit court divorced from the area engaged in the suit. If a vacancy occurs on the court during the trial, the statute makes provision for a substitute judge, possessing the qualifications required by the law to be chosen as a successor. In courts with a substitute judge, trial proceedings do not have to

reheard; and the trial proceedings continue as the new judge is updated with trial data.

After notice to annex served on the county officials officially starts the wheels of the annexation proceedings, the county usually tries to stop or slow the process. Prior to court proceedings, the county usually files an answer to the city's motion for annexation. The county really tries to establish that contentions of the city are false or misleading. The county's reply to city charges, while not an official part of the statute, is a method of presenting the position of the county before the court.

In the reply to city charges, the county usually makes a denial of the facts represented. A distinction should be made between this denial and a so-called motion to dismiss the charges. The motion to dismiss is directed at procedural misuse or alleged unconstitutionality of the statute. Finding procedural errors in the initiation motions of cities has been a major weapon used by counties to delay the city's annexation progress. Efforts to find the statute unconstitutional seem useless, remembering that constitutionality was established in *Henrico* v. *Richmond* (1906).

Assuming the county is not able to delay or void the annexation trial, the next step is a pretrial conference. One of the first functions of the newly formed annexation court is the pretrial hearing between the court and the attorneys for the various parties. During this informal hearing, what might be called the ground rules are agreed upon. This hearing establishes understanding of what the

issues of the annexation are. The city and county may amend their positions or file additional positions or contentions. Finally, the stipulations with regard to facts, documents, records, photographs, plans, and like matters are agreed upon. The pretrial hearing seems to be an attempt to shorten the lengthy legal battles in bitterly contested annexation suits. Agreements derived from these closed-door conferences are usually minimal, considering that most parties want their defenses and objections left open to public scrutiny. Certainly most county officials do not want to concede points to the city in private without first some public show of battle. As shall be seen in the Richmond-Chesterfield annexation of 1969, much time and effort went into presenting the county and city positions; but in conclusion a compromise was made with the county, knowing a territorial loss was imminent.

Pretrial hearings do gain some concensus, although most fundamental disagreement has to be settled in open court. The public hearing is conducted in the following manner. First, the counsel representing each party makes what is known as an "opening statement." These statements are usually brief expressions of information established in the city's annexation ordinance and the brief replies of the county defendants.

Following this step, the city usually attempts to present evidence to show that the ordinance of annexation was properly passed and that all statutory requirements of notice to proper parties were accomplished. Once this has been satisfied, the city presents

evidence with regard to the area to be annexed. This evidence consists of maps and charts of the area which are used to show how the city is planning to improve the area and to show evidence of potential growth that this area will afford the city. Expert witnesses and cross-examination are used by both sides. Being the defendant, the county tries to use the tool of cross-examination to contradict and discredit the city's witnesses. However, the county also presents expert witnesses to corroborate its contentions.

During the hearing, the city and county attorneys will try to expand the factors surrounding the "necessity and expediency" of the annexation. Claiming a need for additional land, the city will assert that the lack of suitable land for residential and industrial development has driven residents beyond the city limits in search of building sites. On the other hand, the county may counter that growth in the county is preferred by family and business units because county taxes are lower. The city may claim the county taxes are lower because the county has successfully evaded financial responsibility to the city. Cities have been known to go into counties and build public facilities in order to strengthen their case for needed expansion room in a future annexation trial.

The need for services in the area to be annexed is another strong factor warranting the city an annexation award. The city seeks to prove it can serve the annexed area better and with a greater variety of services than the county. Expert witnesses will attest to the area's need for additional services. The city sometimes testifies that

the health or safety of its residents will be compromised if the county residents on its fringe are allowed to go without certain services such as sewage treatment or better police protection. Regarding the need for services, the Virginia Supreme Court of Appeals remarked in the 1941, *Richmond* v. *Henrico* suit:

> A county resident may be willing to take chances on police, fire, and health protection and even tolerate the inadequacy of sewage, water, and garbage service. As long as he lives in an isolated situation his desire for lesser services and cheaper government may be acquiesed in with complacency, but when the movement of population has made him a part of a compact urban community, his individual preference can no longer be permitted to prevail. It is not so much that he needs the city government as it is that the area in which he lives needs it.[21]

To determine present services, the court does two things. First, it takes the testimony of a selected group of county residents. Secondly, city and county officials and expert witnesses are directly examined about the types of services that the city currently renders and those services that can successfully be extended to fringe residents. The fact that the county provides some services is not evidence of sufficient services. If the city can prove its services are superior to the services of those in the county, the need can also be established. Of course, capital expenditure alone is not a valid criteria since bureaucratic inefficiencies may make the delivered product no better than the county's.

Services, such as sewage treatment and water, may be delivered more cheaply on an areawide basis. In Richmond, the city supplies a large portion of the sewage treatment and water service to the county.

The city used the fact that it supplied services to the county as a weapon in the 1964 annexation case.

Another significant factor for proving "necessity and efficiency" is the community of interest. Often the city takes great pains to show that a large percentage of people in the proposed annexed area have contact with the city. When people in the surrounding area use city streets, libraries, museums, entertainment facilities, and other services, the city in effect is subsidizing these people. However, a Virginia city considering annexation may be reluctant to regulate use of city facilities by non-residents because this fact can be used as a basic reason to approve the annexation. In the hearing, the city will show that not only does a bond exist between city and county residents, but also that the city directly caused the fringe growth to exist around the city. Comprehensive and orderly growth is stressed by the city. The city may claim it is impossible to plan effectively for an urban environment where a part of area is out of the city's jurisdiction.

Usually, sometime during the proceedings, the court will make a physical inspection of both the proposed annexation area and the city. Members of the county and city governments accompany the judges to point out conditions that they want to bring to the court's attention. Realizing that two of the judges are familiar with the area since one resides in the county and the other in the city, the major benefit of such an excursion is for the third member of the court. This judge, not being a resident of the area, may very well gain greater insight

into the case through visual inspection of the conditions described in the hearing.

After the "official" inspection, the hearing continues. The city finishes presenting its case in an effort to show the annexation both necessary and expedient. Then, presentation is completed with an outline of terms and conditions through which annexation is to occur. The county's case generally consists of a counter to the case presented by the city. The hearing is closed with the usual courtroom practice of giving closing statements which try to hammer down the points made during the hearing.

At this time the case is in the hands of the court. Whether the annexation is to be awarded is the court's decision; but, most importantly, the court has the statutory power to decide terms and conditions of settlement. Although the city establishes terms of settlements and the size of the area requested, the court is the final arbiter. The size of the annexation awards as well as the compensation to the county is at the discretion of the court.

Besides the factors discussed relating to "necessity and expediency," the court in making its annexation decision will consider the financial positions of the governments involved. The court is highly concerned with the city's ability to keep its service covenant with the newly annexed individuals. The court can be convened any time within five years after the annexation if agreements are not kept. The court must satisfy itself that the city can assume the financial burden which annexation entails.

After the court has determined if the annexation is expedient and necessary, the court is given the added responsibility of determining fair and equitable terms to accompany the boundary change. The court is perceived as an impartial arbitrator distributing the potential gains from trade in a predetermined way. This saves the communities involved the costs of bargaining toward mutually satisfactory agreements. Although many annexation courts encourage localities to reach agreeable financial terms, the burden is usually left to the court. If the settlement is imposed by the court, only the city has the right to reject it. However, rejection by the city also means the city has to reject the annexation award. Richmond rejected the terms of the Henrico award in 1964 and thus forfeited the opportunity to annex a section of Henrico.

The law regarding compensation gives discretionary power to the courts. The law, as amended in 1954, states that the courts shall "balance the equities of the case, and shall enter an order setting forth what it deems fair and reasonable terms and conditions..."[22] The rationale for giving this discretionary power to the courts in setting annexation compensation is that circumstances surrounding each annexation differ so radically that great injustice to some parties would occur if the courts were bound to a rigid rule. However, inequities in statutory guides result many times from vague and unspecific meaning rather than from specific standards for all to follow. Virginia circuit judges are usually not financial experts; therefore, their judgments regarding fair settlements can very well

grant unjust terms when there are no specific guides to follow.

The courts have generally focused their attention on three areas in determination of intergovernmental compensation payment: (1) the loss of tax base needed to service the pre-annexation debt of the county (2) public improvements in the annexed territory which will be lost to the county (3) the loss of revenues suffered by the county because of annexation. How much each of these factors is to be weighed is left to the court's judgment and the precedent established by past annexations.

The 1972 General Assembly approved a bill halting all annexations after March 1, 1972. The five-year moratorium will continue until January 1, 1976. During this period a legislative study commission, the Commission on City-County Relations, is considering the problems of urban growth.[23] This evaluation will examine the uses of annexation during the 1960s. No doubt, the commission will examine political and racial implications of annexation that have arisen during the past decade. A case in point is Richmond and the city's growth struggles in the sixties.

ENDNOTES

[10]Council of State Governments, *op. cit.*, p. 40.

[11]William L. Martin and J. E. Buchholtz, "Annexation--Virginia's Dilemma," Washington and Lee Law Review XXIV, (1967), p. 241.

[12]Virginia Constitution, Article VIII, 126 (1902) as quoted in Chester W. Bain, Annexation in Virginia, (Charlottesville, Virginia: The University Press of Virginia, 1966).

[13]Chester W. Bain, Annexation in Virginia, Charlottesville, Virginia: The University Press of Virginia, 1966, p. 7.

[14]*Ibid.*, p. 8.

[15]Brief for Appellant, p. 13, *Henrico County* v. *City of Richmond*, 106 Va. 282, 55SE 683 (1906) as quoted in Chester W. Bain, Annexation in Virginia (Charlottesville, Virginia: The University Press of Virginia, 1966), p. 16.

[16]*Henrico County* v. *City of Richmond*, 106 Va. 282, 293, 55 S.E. 683, 687 (1906) as quoted in Chester W. Bain, Annexation in Virginia (Charlottesville, Virginia, The University Press of Virginia, 1966) p. 21.

[17]Council of State Governments, *op. cit.*, p. 43.

[18]Bain, *op. cit.*, p. 18.

[19]Virginia General Assembly, 1952 Senate and House Documents, House Document No. 13, "Adjustment of the Boundaries of Virginia Municipalities and Adjacent Counties," Report of the Commission to Study Urban Growth, p. 5.

[20]Bain, *op. cit.*, p. 42.

[21]*Henrico County* v. *City of Richmond* 177 Va. 754, 789, 15 S.E. 2d. 309, 321 (1941).

[22]Virginia Code, 15-52.12 (Supp. 1954).

[23]Edward L. Morton, "Municipal Annexation in Virginia," The University of Virginia News Letter, Vol. 48, No. 9 (May 15, 1972), p. 33.

CHAPTER III

TRIALS OF MERGER AND ANNEXATION IN RICHMOND 1961-70

To understand the unique developments encountered by Richmond's growth campaign, a chronological knowledge of what has happened is necessary. This chapter will present a brief history of these events and will prepare a foundation for comprehending the racial and political aspects to be discussed in chapter four. The legal struggles of the 1970s to keep the territory annexed from Chesterfield County have roots in the early 1960s.

On January 16, 1959, the Richmond Regional Planning Commission released a study conducted by Public Administration Services of Chicago. The report indicated that voluntary merger was the most efficient and democratic way to solve the problems of Richmond and the County of Henrico. The report attracted considerable attention in the press and among political leaders, especially in the city. One section of the study read:

> By pooling their resources in one government, the citizens of Henrico County and Richmond City are not creating a superjurisdiction, but are making a timely and logical combination of two well-run legislative and management teams for the more effective development of their common resources and facilities. They are accustomed to good government and through the combination they will attain even better government...
>
> The plan will unite the people of the two communities in joint endeavors and interests. Henrico's problems will be those of Richmond and those of Richmond will be those of Henrico. Together they will be able to cope with them better.[24]

An organization of Richmond business and political interests, known as the Richmond First Club, extensively publicized the findings of the study. The report seemed to bolster contentions that Richmond's professional and political leaders had been propounding for years--Richmond was a city victimized by decentralization caused by the automobile and increased mobility of its citizens.

From the U. S. Censuses of 1930, 1940, 1950, and 1960, the following supportive statistics were derived. Richmond's population in 1950 had been 230,310, but in 1960 it had dropped to 219,958. In Henrico, the population of 1950 had been 57,340, but had jumped to 117,339 in 1960. This increase basically was caused by city dwellers moving to the suburbs. It was the loss of these middle-class, young families that distressed City Manager Horace H. Edwards the most, according to the Richmond Times-Dispatch newspaper. Richmond's black population, on the other hand, had increased from 73,008 or 31.7 per cent of the population in 1950 to 91,382 or 42 per cent in 1960.

The decade of 1950-1960 marked the first time in Richmond's history that population growth began to concentrate in the surrounding counties to a significant degree. The 1950-1960 decade saw the first decrease in Richmond's population during the twentieth century.

PER CENT GROWTH PER JURISDICTION

	RICHMOND	HENRICO	METRO AREA
1930-40	5.5%	38.4%	11.2%
1940-50	19.3%	36.7%	23.2%
1950-60	-4.5%	104.0%	24.5%

City officials expressed concerns that an economically disadvantaged black population replacing the exiting whites was creating major problems for the city budget. The only reference the Chicago report made to race was a concern that the city schools were changing from white to black because of the exodus of whites and influx of blacks.

Making the Chicago report a reality seemed very remote. The city was urging that a committee of county and city representatives be established to discuss the merits and disadvantages of merger as described in the consultant's report. City and county negotiation groups finally met to discuss merger possibilities.

Henrico County has shown little, if any, interest in such a proposal; and it was a surprise when the county agreed to the proposed conference. According to the Richmond Times-Dispatch, later years provided some insight into Henrico's action. Henrico, like many counties in Virginia, felt that the state's annexation laws too strongly favored the city. Henrico's entry into merger talks was viewed as an effort to buy time. The county knew that proposed changes in the annexation statute were to be considered by the 1962 General Assembly. The county reasoned that merger talks would delay any annexation proceedings by Richmond, and perhaps a later annexation suit would be based on an annexation statute that was less city-oriented.

The county and city merger negotiators took their jobs seriously, however. The city negotiators had the sympathy of at least one member of the Henrico Board of Supervisors, who considered himself a Richmond native and merger sponsor. The city and county representatives met

several times but had great difficulty reaching an understanding on the points of taxation and representation. Henrico had a large portion of rural land which certainly could not have been taxed according to urban rates. Determining how a system of differing tax rates would be established was a difficult question. Henrico merger representatives also objected to the higher tax rate at which Richmond assessed its real estate as compared to the county rate. To solve the dispute, the city agreed to allow Henrico to merge with no immediate tax increase but instead a scaled increase over a 14-year period.

Representation was the next problem. Richmond presented a four-borough plan for the "new city." The Richmond political structure had wanted a continued at-large system but accepted the four-borough-at-large plan as a compromise with the county. However, the borough plan and at-large combination was disliked by many Henrico leaders and also by most of the city's black population. According to one study of the merger, borough lines split established black neighborhoods and divided blacks about equally within three of these boroughs.[25] The intention seemed to be to keep the black representation within the new city to a minimum.

If dilution of the black vote was a method of insuring approval in the 95 per cent white county, the voters there certainly did not see it that way. Two of the more rural, less-populated districts in Henrico objected to the borough proposal because the proposed borough lines meant large numbers of Richmond Negroes would be placed in the rural districts. Edwin H. Ragsdale, Chairman of the Henrico Citizens

Committee, was quoted by the Richmond News Leader as saying: "This proposal takes people with absolutely nothing in common and lumps them into the same voting district."[26] (The racial implications of the proposed merger will be analyzed further in the following chapter.)

To sell county citizens on its plan of merger, the city offered the county government employees their same status under the "new city"; and the city offered all county residents improved city services to the county urban area at the existing cost. Although the county supervisors never intended for the merger conference to reach an agreement, one was reached. The result was that the county Board of Supervisors felt compelled to order a referendum at the urging of the city.

As will be analyzed later, Richmond merchants endorsed the merger; but black leaders in Richmond judged the merger a move to dilute black voting strength. Many Henrico citizens still argued that the merger would have meant higher taxes and lower quality in the county school system.

The city, finding it difficult to persuade many Henricans of the merits of merger, decided to use the "merge or be annexed" strategy to encourage approval. City Manager Edwards allowed a proposed annexation plan to be released before the merger election as a threat to persuade county citizens to vote in favor of merger. This arrogant philosophy of the city seemed to raise resentment rather than sympathy for the city's problems.

The vote was a blow to pro-merger forces. When the votes were counted on December 18, 1961, the results showed the city favoring a

merger by a vote of 15,051 to 6,700, while the county vetoed the merger proposal 13,647 to 8,862. In the city, 100 per cent of the black voter precincts voted against merger; 68 per cent of the racially mixed precincts voted against it; and 95.7 per cent of the white voter precincts voted for it.[27] However, because the county rejected it, the merger was defeated. Only one Henrico district favored the merger; and perhaps the threat of annexation played a role here because this district was completely urban and bordered the city more compactly than other sections of the county.

Eight days later, on December 26, 1961, the city filed suits against Henrico and Chesterfield to annex substantial portions of each. Not long after Richmond submitted its ordinances of annexation against the two counties, Henrico secured a "writ of prohibition" on appeal to the Virginia Supreme Court of Appeals. Because Richmond had initiated its annexation suits against Henrico and Chesterfield on the same day, the following legal question was asked: "Is the city of Richmond required to proceed in one annexation suit in the Circuit Court of Henrico County against both Henrico and Chesterfield counties, or may it proceed in separate annexation suits against the counties of Henrico and Chesterfield?"[28]

The court made note that two separate ordinances against Henrico and then Chesterfield were filed. Therefore, the intention of the city seemed to indicate trying one suit and then the other. Because there were two petitions, the city had the right to proceed in one suit and docket the other until the first suit was completed. This

ruling seemed logical and certainly in favor of the city. However, this legal action delayed the suit for six months.

The electoral process had failed, but the city looked to the judicial process with optimism. According to statutory procedure, the city presented its case first. The case was based on testimony which attempted to prove Richmond had almost exhausted the vacant industrial, commercial and residential land within its boundaries. As the annexation statute states, it is the city's duty to show that annexation will be beneficial to Richmond, Henrico and the whole metropolitan area.

> Richmond requested 152 of Henrico's 245 square miles. About 120,000 persons--all but about 5,000 of the county's population--live within the area sought.[29]

The city claimed it could provide public services better, faster and more economically than Henrico and that it already supplied many of these services on a contract basis, including gas and water. The city also maintained that annexation would permit comprehensive planning for the area's orderly residential, industrial and commercial growth.

Richmond claimed that containing its growth would lead to stagnation, and the entire metropolitan area would suffer. But Richmond officials admitted during the merger campaign that the population shift to economically poor blacks was the major reason for Richmond's problems. The city attempted to introduce racial studies prepared by the Harland, Bartholomew Associates Consultants of St. Louis as evidence. These studies compared the racial distribution of Negroes in Richmond in 1934 with the 1960 distribution of Negroes in Richmond.

A second study described the age and racial composition of whites and blacks in the city, demonstrating the large increase of young blacks and the decline of middle-aged whites. With these exhibits in the case, the court adjourned. When it reconvened, the court denied entrance of these racial studies into the record because, as the judges stated, racial evidence has no grounds under Virginia's annexation law. The court was also afraid that racial evidence in the record could serve as grounds for de-annexation under the Civil Rights statutes of the United States.[30]

The county, in presenting its case, of course, attempted to find holes in the city's evidence. A long line of witnesses took the stand to claim that Henrico could provide the services necessary to its citizens. The county tried to portray its government as a progressive, efficient operation able to handle any problems Henrico encountered. As part of the counterattack, the county's lawyers attempted to show weaknesses and extravagances in Richmond's government.

During the proceedings, the county did not mention race. However, Henrico's concept of problems encountered by a city with a large, economically poor, black population appeared less than sympathetic. The city claimed it had very little vacant land for development.

> ...County technicians contended that the city had considerable vacant land that could be developed, and that it could get more land by clearing slum areas.[31]

No mention was made of substitute housing for the homeless created by slum clearance. Henrico is a county of middle-class, white inhabitants who may or may not have a firsthand conception of inter-city urban

problems. Henrico's claim of available land in Richmond seems very doubtful in light of several examples, such as the following. One of Richmond's most successful native sons, Richard S. Reynolds, wanted to build the home offices of his Reynolds Metals Company within the city limits during the late fifties. After an extensive search, the company was forced to locate within western Henrico County because available land could not be found in Richmond.

The final arguments in the case were heard on September 30, 1963. However, after legal delays, the annexation court did not rule until April 27, 1964.

The city asked for 152 square miles but received only 17 square miles. Reaction was mixed in both the city and county. Richmond had received a fairly concentrated area of population and industry but very little land for expansion. County officials were disappointed that large commercial centers of the county had been lost, but the city considered its victory minimal.

In analyzing its reasoning for awarding land to Richmond, the court made these comments. With regard to need for additional territory, the court noted the wide variance of land available as stated by the city and the county. The court seems to take notice of Henrico's method of calling slum areas vacant land when it states:

> Since the county's method of approach did not truly take into consideration net available land, the court is of the opinion that the city's figures are more accurate and more in accord with the view taken by the court.[32]

Yet, the court was not consistent with this statement since Richmond had been awarded only 11 per cent of the land requested. The court

also noted that the evidence showed commercial and civic interests of city and county as the same. Through evidence given the court, Richmond was providing Henrico at the time of the suit 80 per cent of the county's water, accepted 60 per cent of its sewerage in Richmond's sewerage and was the county's only source of gas. Using these statistics, the city very ably proved the county's need for governmental services offered by the city.

The fourth element of establishing "necessity and expediency" is financial ability of the city to pay for annexed area. This was the crucial point that barred this annexation award from being carried out. The court had a high opinion of Richmond's financial position, calling Richmond's ability to pay "apparent from the evidence." The court may have misread the city's financial position, considering the price put on the annexation award. Using these factors, the annexation court concurred with the city attorney's proof of "necessity and expediency" as defined by the 1906 Supreme Court of Appeals ruling.

The decision ordered Richmond to make improvements costing about $12 million dollars in the 17-square-mile area. In addition, the city was required to pay the county for loss of net tax revenues, public improvements and other services--a total sum of $43 million dollars.

The annexation award, although falling far short of what Richmond hoped to receive, nevertheless included a majority of Henrico's industry and a sizable part of the county's population. The annexation settlement included 35 per cent of Henrico's population and all the giant shopping centers that were in the county. But the city had

been awarded area at an extremely expensive price, a concentrated section of the county that afforded little growing room, if any. Delegate George Allen, Jr., summed up the sentiments best when he said that "the decision would make neither the city, nor the county happy."[33]

Required payment by the city illustrates the real issue of annexation in Virginia. A 1952 revision of the annexation statute regarding county compensation has left the outcome of annexation proceedings very much in doubt. Before 1952, the statute spelled out how the financial settlement with the county was to be handled. Under the statute, the city was forced to make a mandatory settlement with the county.

> ...the statute sets up a rigid mold into which the court must fit the facts in each case. Once this has been accomplished, the court has little discretion left as to the sum which will be required to be paid by the annexing city or town or arrangements more satisfactory to both parties which might be worked out.[34]

The General Assembly's Commission to Study Urban Growth felt the compensation requirement too rigid. They recommended the settlement be left to the equity of the court. The recommendation was legislated by the General Assembly in 1952. The commission decided the pre-1952 statute could work to the disadvantage of one or more of the parties; however, the settlement of the 1964 Richmond-Henrico suit seems to indicate the opposite. The discretion of the 1952 revision left the annexation court the power to charge the city out of the annexation market. The present statute seems inconsistent--with the demand for fairness left to chance.

Chester W. Bain, one of the foremost authorities on Virginia annexation procedure, explained in his study Annexation in Virginia:

> More specific standards fixing the value of public improvements for which the city is to reimburse the county's loss of taxable revenues and improvements to be made by the city in the annexed area should be added to the statute.[35]

Bain seems to be saying that the statute regarding county compensation should be revised similar to the pre-1952 statute. This provision of the annexation statute seems to be one area where "let well enough alone" should have been practiced in 1952, certainly from Richmond's viewpoint.

Because Richmond considered the cost of the award prohibitive, the city declined the court award. The city made claims that the award did not give any development land and that the revenue generated from the annexed area would be less than the cost of maintaining the area. Although these points are valid, the city was not physically able to afford the annexation award.

Richmond City Councilman James C. Wheat expressed the sentiments of city council to the press:

> Unification of the metropolitan area to the benefit of all citizens has been the object of the City of Richmond's efforts, first to merge, and then to annex. Acceptance of the annexation court's decision would be in direct conflict with this concept. Under the court's decision the area of Henrico County remaining outside the annexation line would receive a financial windfall which could permanently set it apart from the rest of the metropolitan community. By the same token the financial structure of the core city, whose well-being is essential to the stability and growth of the metropolitan community would be adversely affected.[36]

One of the city lawyers described the annexation award as being too expensive, lacking school buildings for the enlarged student

population, and no development land for subdivisions. The price tag attached to the area was great. There is little doubt, however, that there is one key reason why the award had to be rejected.

Richmond was not physically able to raise the funds necessary to compensate Henrico. The city certainly did not have excess funds to pay the county. Richmond had intended to float bonds to create the funds necessary to fulfill the court order.

> Cities in Virginia may raise monies for operation by the issuance of bonds and the collection of taxes. Virginia municipal bonds can be of two types, general obligation bonds and revenue bonds. Revenue bonds can be used for capital improvements which generate revenues such as utility expansions.[37]

The Henrico award required the city to spend $13,490,000.00 during a five-year period on capital improvements and to pay the county the balance of $41,435,000 for schools, property and net loss of tax revenue. The city could have borrowed the $13 million, plus floating revenue bonds. But unknown to the city until just before the award, the city charter did not allow the issuance of general obligation bonds to pay for the costs of annexation. Therefore, the city which was already operating on a debt budget in 1964 had no means of raising the $41 million to compensate Henrico. The rejection was made official on March 8, 1965. This rejection of the award would be used later as evidence that the city was not annexing for racial purposes because it had rejected an award which would have solved its "racial problem." However, this argument could not stand in the face of the financial reasons for annexation rejection.

Following the rejection of the Henrico annexation award, city

officials contacted officials of Chesterfield County to discuss the dormant Chesterfield case (now more than four years since being filed) in order to affect a compromise of the pending suit. From late 1965 until June 1969 when the award was granted, two levels of activity were being negotiated. The city fought the annexation battle before the court in two trials because a mistrial was declared in the first. Also, on various occasions in this same time period, the Richmond and Chesterfield county officials participated in informal compromise talks. Many were held in secret.

Not being able to reach a compromise settlement with Chesterfield preceding the Henrico award rejection, the city revived the Chesterfield suit on November 5, 1965. In this suit Richmond was asking for 72,991 of Chesterfield's 112,528 population and 52 square miles of the county's land. However, the suit was dismissed on a technicality on March 25, 1966. The suit was dismissed because the city declined to include information regarding future uses of property in the annexed area as required by the annexation statute.

The city appealed this ruling to the Virginia Supreme Court of Appeals and did not receive a ruling until September 8, 1967. This was 17 months and 14 days after the suit dismissal in the annexation court. The Supreme Court opinion stated:

> We hold that the statutory language under consideration did not constitute a mandate and that the city's failure to comply therewith was not a jurisdictional defect.[38]

The Supreme Court also commented that the statute said any information regarding future use that is "deemed necessary" should be included.

The court asked what "deemed necessary" meant. The annexation court's evaluation was reversed by the Supreme Court of Appeals.

Before the court annexation could sit, city and county officials agreed to a truce until June 15, 1968, so that they could pursue political matters in the General Assembly. Several Assembly members were lawyers who were involved in the suit.

The evidence supporting annexation presented by the city was basically the same case presented in the Henrico trial. Minor revisions were made, but the city continued to emphasize its need for development land and the increased services the city could bring to the annexed area. The racial studies prepared by the St. Louis consultants and rejected at the Henrico trial were presented to the Chesterfield annexation court. This evidence was rejected at the first Chesterfield trial; but, following the mistrial and the replacement of one of the three judges, the court accepted the evidence in the second trial.

During the trials, several city officials testified; and their basic arguments for annexation give a clear picture of the official city attitude. In his opening statement, Horace Edwards, chief counsel for the city, made the statement: "The evidence will show Richmond's great need for territory for residential and industrial development."[39] This emphasis on the necessity for vacant land was a major factor in the city's case.

Chief counsel Edwards also attempted to explain why Richmond needed new sources of revenue. Although necessity of additonal revenue is not a valid justification for annexation under Virginia law, Edwards

nevertheless introduced this information into court testimony. Edwards said the city was overburdened with individuals in the lower economic brackets. He claimed these individuals were responsible for a majority of the city school dropouts, a large part of juvenile delinquency and for draining the city with welfare costs. He presented evidence showing that 74 per cent of those earning $2,900 or less in the metropolitan area were residents of Richmond. Edwards also pointed out that 75 per cent of this group was black.

The evidence regarding racial distribution showed Richmond losing 10,000 people between 1950 and 1960. However, the city had an increase of 19,800 in the black population. This meant that approximately 30,000 whites had left the city in this period. As previously stated, these racial distribution statistics were not permitted in the record of the first trial but were admitted in the second trial following the mistrial. Edwards was quoted in the Richmond Times-Dispatch as saying:

> ...evidence will show that for the future, since this economic imbalance of poor people is drawn from the non-white group, and since the white group is moving out of the city, and since the non-white group is growing in number, that the trend and the inevitable end, so the witnesses will say, is that great disparity in the poor and those who are earning in these marginal groups will continue to grow and grow and that the central city will continue to deteriorate because of this imbalance.[40]

During the first trial, City Manager Alan Kiepper was one of the city's last witnesses. Kiepper described two major problems that annexation would correct. The first problem was stated as:

> ...the loss of the leadership group from within the city limits of Richmond, and by the leadership group I refer to the middle class business, social, cultural leadership of the city which has exited the city in large numbers and is continuing to do so.[41]

In analyzing this situation, Kiepper attempted to state why he thought young, middle-class people were leaving the city limits. He said they go to the suburbs because they can find housing of a type and price they can afford, and the only way he saw to get them back was through annexation.

The second major problem concerns the old situation regarding available development land. Kiepper explained that when he first became city manager he took it upon his office to find a suitable location for a clothing factory which was threatening to leave the city. Richmond's Planning Department did a survey to find the appropriate sites, but the alternatives available made the city's presentation to the company almost an embarrassment. All of the selected sites had major flaws, from drainage ditches running through them to the threat of proposed highways dissecting them.

Kiepper also stated that 26 per cent of all property within the city was tax exempt, much of it resulting from state facilities. Kiepper touched on the racial dilemma when he summarized his points:

> I say to you gentlemen in all candor that the loss of leadership in the city and its replacement by lower economic groups that are placing great demands on the city and the loss of business and industry because of lack of vacant land, must be connected or, in my opinion, the economy and the society of our capital city will be in jeopardy.[42]

The county's case followed the same basic lines as outlined in the Henrico case. The county lawyers maintained that most of the services offered by the city were already being given by the county. County executives made a strong point that the city had one main

problem, a deteriorating inner core. They maintained that the county should not be forced to bail out the city through annexation.

The slowness of annexation procedure is plainly seen in Richmond's efforts during the sixties. After being plagued with setback after setback, a major blow occurred on January 9, 1969. With most of the testimony finished, the presiding judge, David Mead White resigned from the court and declared a mistrial. Judge White was a resident of the proposed annexation area. The city accused him of conflict of interest and of favoring the county's position. He had also received editorial attack in the Richmond News Leader that hastened his withdrawal. Earlier, Judge White had caused the trial to be delayed from October 17, 1968, until December 9, 1968, resulting from his personal illness. This new development meant a new judge would have to be appointed and given several weeks to familiarize himself with the testimony given to date.

During the summer of 1968, the court had suggested the parties in the suit might wish to reach a compromise settlement. A compromise seemed remote at the time of the mistrial. Shortly after the mistrial, a special session of the General Assembly met to draft and adopt a new constitution for the state. During this special session, the General Assembly's Aldhizer Commission introduced an amendment that would have allowed the legislature to expand Richmond's boundaries every 10 years. Also passed during this session was a bill amending Richmond's City Charter, allowing the city to float general obligation bonds as a means of financing the costs of annexation. This bill relieved

Richmond's financing problems; and, using the Aldhizer amendment as leverage, the city was in a better position to establish a compromise. Chesterfield was given verbal assurances that the city would neither push the adoption of the Aldhizer amendment nor stand in Chesterfield's way of gaining a city charter if some agreement could be soon reached.

The new trial was slated to begin on May 15, 1969; but during the months since mistrial, the city and county had begun to negotiate in earnest. Indeed, on the day the new trial was to begin, the parties involved reached a compromise agreement. The trial continued, but the outcome of the decision was in little doubt. As will be seen in the next chapter, the court intended to accept the entire compromise verbatim and only allowed the trial to continue to prevent extreme dissention among the intervenors.

On June 11, 1969, Horner, Bagley and their attorneys met to firm up an agreement on the compromise. The resulting agreement covered several points including the following:

a) the case to be compromised promptly
b) the city to get 44,000 people
c) the county not to appeal and to try to discourage the intervenors in the case from appealing
d) the city to withdraw support of the Aldhizer Amendments
e) the city not to try to annex more of Chesterfield and not to oppose the county's request for a city charter from the legislature.[43]

The motives of the logic behind the city's acceptance of far less than half of what it was asking seemed odd on the surface; but a closer look at Richmond's reasoning in the next chapter, should make the city's motives clear. From the county's viewpoint, the compromise

seemed a good move. Chairman of the Board of Supervisors Irving Horner, indicated that the court informally had informed the county that a court settlement would probably include more land and people than the compromise figures. Horner stated that the key to accepting the compromise was the fear that a court-drawn award would include the county's sewage and water facilities. If this happened, according to Horner, the ability of the county to grow and urbanize would be severely damaged. Secondly, according to Horner, the city's sole concern was the number of people it would be receiving. Therefore, the county saw a way to compromise, giving up very little of its commercial and industrial development. In Horner's words, the compromise reminded him of a lifeboat in which some of the passengers had to be thrown overboard to keep the boat floating. Horner sensed that the acceptance of compromise by the city was motivated by fear of black voting strength in Richmond, but he did not see any means for the county to use this fact in court against the city. Had the developments of the seventies been verbalized in Spring 1969, a compromise would never have been accepted; but hindsight is no consolation, according to Horner.

Although the annexation court made it clear that it was not bound by the compromise settlement, the three annexation judges accepted the settlement in its entirety. The court refused to consider any ulterior motives behind Mayor Bagley's and the city's acceptance of the agreement.

Judge Earl L. Abbott delivered the opinion of the court. Judge Abbott, who had replaced Judge White following the mistrial, was the

swing vote allowing the city to enter racially oriented evidence into the record. Regarding the compromise he stated:

> After mature consideration, we feel that the agreement is entitled to great weight. It must be remembered that the parties to the agreement perform the legislative function of their governments as duly elected representatives for the people. When they decided that their constituents are benefiting by an action, such a decision should not be treated lightly...The acquisition of...some 43,000 people would solve many of the city's problems both now and for some time to come...In sum, we believe that the boundary line set forth in the agreement should be the annexation line and that all terms and conditions specified should constitute the conditions of annexation verbatim, and we so adjudge and decide.[44]

Opponents of the annexation noted that the circumstances of the compromise were grounds to reject the annexation. First, there was no formal recorded vote on the agreement, either by the Chesterfield Board of Supervisors or the Richmond City Council. Intervenors in the case also claimed that the malapportionment of Chesterfield's representation in the Board of Supervisors was so great that an agreement by the board would not represent the true attitudes of the Chesterfield residents.

Commenting on the merits of the annexation award, the court made several observations. It noted there had been no annexation in Chesterfield since 1942; and since that date the growth of the suburban population lining the city boundaries had been great. "As usual, this growth has been to some extent at the cost of the city population because of the lower cost of residential property as well as the lower taxes in the county."[45] The growth in the annexed area since 1962, at the initiation of the annexation, until 1968 had been described as

"phenomenal." Thus, the land in the annexed area, according to the court, was definitely urban not rural in character. Such a determining factor would seem outmoded in the modern-day urban county.

The annexation court found that Chesterfield County had developed an excellent modern government which satisfactorily supplied citizens with needed services, such as sewage disposal, public water and police protection, and which was operating at a tax rate somewhat lower than the city's.

The court saw the central question as whether or not the city had the right to grow. According to the court, if cities are not permitted to grow in territory and population, the cities will face disastrous economic and social problems. Although not stated directly, this seemed to refer to the "black problem" in Richmond. The court's opinion was saying that it was not the county citizens' need for the city, but the city's need for the county citizens that warranted annexation approval.

The court gave several reasons why a compromise between parties to an annexation was better than leaving this decision completely to the court. The judges recognized the difficulty of the court in determining a fair compensation to the county. With only very general guidelines in the Virginia annexation statutes, the responsibility placed on the judges seems extremely difficult. The court noted that legislative powers were exercised in the awarding of territory. If such a decision can be made by those affected, the result will certainly be more satisfactory than leaving their chances to the court.

The court felt compromise "promoted better spirit" between the county and city. The compromise served the purpose of the established ruling bodies in each jurisdiction. Although the compromise may have neglected the attitudes of the minority interests in each locality, the court ignored this point.

The court was concerned that the compromise made no provision for the transfer of school responsibilities and utility services. If the county had not agreed to continue its plans for education within the annexed area during the period of adjustment, then the children's education would have been interrupted. The county agreed to continue its educational as well as utility services to the annexed area for a temporary period into the future until the city could take over these functions.

With no serious threat to their claim, Richmond looked toward January 1, 1970, when the annexation award would become official. After 10 years of fighting, Richmond had finally gained some area. However, the joys of victory within City Council soon turned to anguish as the annexation battle moved into its second phase.

ENDNOTES

[24]Publication Administration Services, Analysis of Richmond's Metropolitan Problems, Report for the Richmond Regional Planning Commission (Chicago: Public Administration Services, 1959), pp. 18-19.

[25]"Merger Talks Continue," Richmond News Leader, September 2, 1961, Sec. B, p. 12.

[26]"Merger Talks in Review," Richmond News Leader, February 4, 1962, Sec. B, p. 4.

[27]City of Richmond Registrar's Office, Richmond City Referendum, December 18, 1961.

[28]*Henrico County* v. *City of Richmond,* 203 Va. 908, 128 S. E. 2d. 263 (1962).

[29]"Annexation Case Argued in 34 Days," Richmond Times-Dispatch, April 28, 1964, Sec. A, p. 3.

[30]James E. Davis, "Court Rejects Racial Statistics," Richmond Times-Dispatch, June 25, 1963, Sec. H, p. 4.

[31]"Annexation Case Argued 34 Days," *loc. cit.*

[32]"Partial Text of Annexation Court's Decision, Richmond Times-Dispatch, April 28, 1964, Sec. A, p. 2.

[33]"Both City-County Officials Unhappy," Richmond Times-Dispatch, April 28, 1964, Sec. A, p. 2.

[34]Bain, *op. cit.*, p. 184.

[35]*Ibid.*, p. 235.

[36]James E. Davis, "Award Acceptance in Doubt," Richmond Times-Dispatch, July 5, 1964, Sec. A, p. 1.

[37]Brief for Appellee, p. 28, *Holt* v. *City of Richmond,* 459 F. 2d. 1093 (1972).

[38]*City of Richmond* v. *Chesterfield County,* 208 Va. 278, 156 S. E. 2d. 588 (1967).

[39]"Opening Court Arguments," Richmond Times-Dispatch, October 1, 1968, Sec. B, p. 1.

[40]*Ibid.*

[41]"Partial text of Kiepper Testimony," Richmond Times-Dispatch, October 12, 1968, Sec. B, p. 2.

[42]*Ibid.*

[43]Interview with Irving G. Horner, Chairman, Chesterfield Board of Supervisors, Richmond, Virginia, October 26, 1973.

[44]*City of Richmond* v. *County of Chesterfield,* 49 Circuit Court of Chesterfield, 210-11 (1969).

[45]"Negotiations Began Last Fall," Richmond Times-Dispatch, July 2, 1961, Sec. B, p. 1.

CHAPTER IV

RACIAL AND POLITICAL MOTIVES EXAMINED

Within this chapter, some of the political and racial motives leading Richmond to its expansion in 1969 will be examined. I will present the position of those who supported the annexation, as well as those who opposed it. Detailed review will be given to the racial factors which have left the fate of the Chesterfield annexation somewhat in doubt. Before the present situation can be analyzed, an understanding of some of the events surrounding the Henrico merger and annexation attempts must be clarified. A deeper comprehension of facets of the subject were gained through personal interviews with many of the individuals involved. Many of their views and reactions will be documented in this account.

Henrico County may have agreed to participate in the 1961 merger talks in an effort to delay an annexation suit being filed against them by the city. However, the anti-merger segment of the county citizenry was not overwhelming. Many county residents felt a merger referendum would have passed, if an attractive compromise had been formulated by the city and county conference committee.

The city's insistence on several points during the merger discussion left many to conclude that the merger referendum failed because of the city's attitude. Richmond knew annexation was a viable alternative if merger could not be won on the city's terms. The city also had possession of racially oriented studies, later

entered in the Chesterfield annexation suit, which showed the pattern of white exodus from the city and the steady increase of the black communities within the city. This study made in the early sixties predicted increases in the black voting strength; but, of course, the effect of the removal of the poll tax and the passage of the Voting Rights Act of 1965 were not taken into account.

The city felt the squeeze of a steadily decreasing tax base as the young middle class whites moved to the suburban counties, but the threat to established power on city council was unshaken in 1961. The St. Louis consultants' study had predicted blacks would be a threat at the voting booth by 1970 if present trends continued and no annexation or merger growth was added to the city.

The merger failed for several reasons. As discussed in chapter four, the threat of annexation if merger failed left a very bad taste in the mouths of Henrico residents. City Manager Horace Edwards, according to the Richmond Times-Dispatch, made a telling comment before the Richmond League of Women Voters in 1961. "They (Henrico) better damn well vote for merger or we will annex them," said Edwards.[46] One Henrico resident, with whom Edwards had spoken, felt that this so-called "arrogance" by the city officials had turned many favorable attitudes regarding merger into unfavorable attitudes.

A compromise was reached on the tax differential between Henrico and Richmond. There would be no tax increase in Henrico for five years, and then taxes would be increased on a 14-year scale until Richmond's level of taxation was reached. However, many county

citizens feared higher taxes. Several county politicians played up Richmond's great welfare expense compared with that found in Henrico.

Another major factor leading to merger defeat was the differing opinions about representation within the "new city." Richmond had rewritten its charter in 1948 to provide for at-large elections to city council. On the other hand, the county elections were on a district basis. County residents overwhelmingly favored keeping their district system. Likewise, blacks in the city told city council that they would not oppose the merger if given fair representation through a district or ward plan of election. Richmond presented a four-borough, at large, combination plan to the merger negotiators. This plan was accepted by the negotiators but not by man Henrico citizens or by the blacks in Richmond.

The eastern districts of Henrico objected to the plan because the proposed boundary lines would have placed large numbers of Richmond blacks in their districts. In the four boroughs, the populations seemed to be equally divided; but so too were city blacks. According to one study of the merger, borough lines divided established black neighborhoods and split blacks almost equally within three of the boroughs.[47] The intention seemed clearly to keep the black representation within the "new city" to a minimum.

Perhaps the dilution of black voting strength was a method of insuring county approval of the merger. The eastern Henrico citizens did not see the situation that way. Edwin H. Ragsdale, Chairman of the Henrico Citizens Committee, was quoted by the Richmond News Leader

as saying: "This proposal takes people with absolutely nothing in common and lumps them into the same voting district."[48] It seems obvious that Ragsdale was referring to the large number of blacks which would be situated in the previously all-white boroughs of Varina and Fairfax.

County opponents of merger also emphasized that Richmond schools were more than 50 per cent black. Opponents also noted that in 1960 Richmond had begun school integration. They inferred that merger would be an acceptance of school integration.

Blacks became upset when they seemingly were used as a bargaining point for the city and county. In the beginning, Negroes had not opposed the merger; but with various representation proposals presented, they became more disenchanted. The most powerful black political group in the city, the Crusade for Voters, said it could not in good conscience support a proposal that would effectively disenfranchise Negroes, giving them less power than they had. Thus, the black opposition to the merger became strong and vocal in the closing days of the referendum campaign to merge.

The city seemed willing to risk all or nothing in the merger referendum. It offered very few concessions to Henrico and none to the city's blacks. If economic considerations had been the city's only motive, then certainly Richmond proponents' position on the representation would not have been so arbitrary. Only two of the Henrico Board of Supervisors supported the merger, and they publicly said they justified their support as a means to help Richmond out of

its racial problem.

The racial implications spilled over into the annexation trial against Henrico which followed. Although the annexation court did not accept specific racial evidence in the trial record, they were very aware of the subject. John S. Davenport, one of the city's lawyers in the Henrico case, said the court moved away from accepting any purely racial material because the judges were afraid the suit might be dismissed on racial grounds.[49] The court did admit evidence showing the welfare costs in Richmond, cost of medical care for the indigent, and statistics illustrating the racial makeup of the Richmond school system. One of the judges in the case claimed racial balance in the schools should be admitted into the record because it was fact and not opinion. Such evidence, nevertheless, was solely racial in nature. The court maintained that its opinion would not be based on any racial factors.[50]

Other racially oriented testimony included evidence from the city welfare director, who stated that the black population in 1963 was 44 per cent of the total and that the welfare costs of the city would rise because a larger black population was expected. The assumption he was making was that the welfare costs increased as the black population grew.[51] The city's superintendent of schools testified about the racial balance in the schools and the problems incurred with a large black school population. One of the Henrico attorneys objected to the city's constant use of racially oriented evidence.

Although the city had asked for 152 square miles of the county and 115,000 of its population, Richmond was awarded only 15 square miles of highly concentrated area containing 45,000 citizens--98.5 of whom were white.[52] The award certainly had done nothing for the city's need for development land, but the award of 45,000 residents certainly would eliminate the city's fears of black takeover. The award did not give Richmond any county high schools. Consequently, the influx of several thousand white, county students into the Richmond high schools would tip the balance of enrollment back to the whites.

The Richmond Times-Dispatch made clear that the court award had changed the racial makeup of the city if it had done little else.

> While the city did not get all it wanted, it still got about 45,000 people. This is a reservoir of brain power, man power that should contribute significantly to the Richmond of the future. The citizens to be annexed are the type generally who are an asset to a community financially and otherwise. They represent a considerable need for schools for their children but they will not add significantly to government costs in such fields as public welfare and public health.[53]

The Times-Dispatch felt annexation would capture the escaped suburbanites that had left Richmond in the 1950s and restructure the type of population that made up the city at that time.

It seems inconceivable that the city would not have known that its charter would not allow borrowing for annexation expenditure. But this was the situation in which Richmond found itself in April 1964. Of course, the costs seemed harsh; but, whatever the costs, the city would have found itself in the same financial position.

Their budget already was overextended debtwise; and, with a prohibition against annexation borrowing, Richmond had no alternative.

With the background developments of the early sixties, the main emphasis of this paper concerning the racial and political motives of the Richmond-Chesterfield annexation and related events will now be analyzed. During the expansion attempts with Chesterfield, the attack reached two levels. From early 1965 and at various times until a compromise was reached, the city and Chesterfield met to negotiate a possible settlement. Because the negotiations were not successful, the city also used the annexation court in an effort to reach a settlement. The slowness of the court system found the city continually reverting to private negotiation in an effort to reach a settlement.

One of the strongest factors indicating racial motives was the continuance of the "secret" negotiation meetings. While the city was pursuing the suit in court on the same grounds used in the Henrico suit, the "private" negotiations were centered around but one subject, people. According to Irvin G. Horner, Chesterfield County Board Chairman and one of the chief negotiators, the city continually talked about needing 45,000 people.[54]

Several factors may have made people the top priority in settlement battles with the county. During the year 1966, the black population in Richmond reached a majority status. Secondly, 1966 elections were the first held in Virginia where the poll tax was eliminated for state elections.[55] Thirdly, vast changes were occurring in the voting strength of city blacks. The growth had gone from an

estimated 4,000 in 1956 to 22,000 in 1966; and in 1970 the black voting strength was estimated at 35,000.[56]

Before 1966, blacks had been no real threat in city councilmanic elections. In 1948 when Richmond was under a ward system, a black had been elected to council but gerrymandering of his district made him a one-term holder. In the early 1950s the city went to an at-large system of electing councilmen; and up until 1966, the business and professionally oriented groups had consistently elected all members of council. The white "establishment" power structure was known as "Richmond Forward." It gained its power and financial support from many affluent and substantial citizens of the city. Dr. William T. Thornton, a podiatrist in Richmond, founded the Crusade for Voters in 1960. This black-oriented political organization encouraged registration and endorsed candidates who were, if not black, at least sympathetic to the blacks' political point of view. Before the Crusade's formation, blacks seemingly had no political voice since Richmond Forward, formally the "Richmond Citizens Association," had ignored them.[57]

The 1966 councilmanic election must have been a signal to the white power structure that the city's political base was changing. For the first time in an at-large voting system, two Crusade-endorsed candidates were elected to Council. According to sworn testimony in a later trial, Richmond Forward had had an analysis of the black growth made following the results of the 1966 election.[58] The members of the Richmond Forward organization were made aware of the black growth.

Resulting from legal delay, the Chesterfield annexation court did not hear testimony until June 1968. By this time another of the every-two-year council elections was held; and this time three Crusade-endorsed candidates were elected to council. An analysis of the 1968 election indicated that black voter strength was continuing to grow; and in 1970, further black gains could be expected.[59] The Richmond Forward organization elected six members to council in 1968. In the nine-member council, five votes constituted a majority. However, six votes were necessary to pass any appropriation. The Crusade-endorsed councilmen, or the "anti-establishment" members, were only one member away from having the power to block appropriations. It was in the light of these circumstances that the annexation suit against Chesterfield opened in June 1968.

As the trial proceeded, the secret meetings between Mayor Bagley of Richmond and Chesterfield Board Chairman Horner intensified. In all meetings, the major concern was the number of people that the city would receive by settlement.[60] The secrecy that the participants draped around these meetings was extreme. At no time did Mayor Bagley officially inform city council of his actions. Only he and the other five Richmond Forward councilmen knew of the secret meetings. All knowledge of the secret negotiating was kept from the three Crusade-endorsed councilmen. These three councilmen had gone on record against the annexation, and Mayor Bagley felt their acknowledgement of his activities could destroy hopes of a "compromise."[61]

Meanwhile, Richmond was trying to find within the General Assembly

a solution to its expansion problem. With the results of the 1966 election known, a member of the Richmond delegation in the House of Delegates introduced legislation in the 1968 session to force merger of Richmond, Henrico, and Chesterfield. A commission to study this legislation was formulated and was known as the Aldhizer Commission, named after delegate George Aldhizer of Rockingham County. The commission reportedly considered its role that of preventing Richmond from becoming black-controlled by increasing the percentage of white voters in the city through forced merger.[62] This commission created a bill known as the Aldhizer Amendment which would create a third and new method of increasing the population of Richmond. The amendment allowed the legislature to expand Richmond every 10 years. City officials lobbied for the passage of the bill.

The bill passed the General Assembly. But procedure required its passage in the next session before it could officially become law.

The Chesterfield Board of Supervisors recognized that passage of the amendment was likely to occur. With the Aldhizer amendment as an alternative if annexation failed, it seemed Richmond was going to take some of Chesterfield's land in any instance. There seemed to be no advantage to further delays, and the risk of settlement by the annexation court could have left the county in a worse position. Horner said the county considered the possibility of the city being taken over by blacks in the next election but did not see this as likely. If the blacks did claim control, they would probably repudiate the annexation, solving Chesterfield's problem. However, if the white

"establishment," Richmond Forward, returned to power the likelihood was that they would take far more land and people than they would settle for in 1969.[63]

Almost all the testimony had been heard in January 1969, when Judge White declared a mistrial and removed himself from the case. The mistrial did not hamper the "secret negotiations" between Horner and Bagley. On May 15, 1969, Horner and Bagley agreed upon a boundary line which encompassed the required number of people, according to Horner. Mayor Bagley claimed the city accepted the "compromise" in an effort to stop the lengthy proceedings which had cost the city millions of dollars in legal fees stretching over the 10-year period since 1961.

Horner stated that the agreement of May 15, 1969, contained an understanding that both parties should press for completing the annexation trial by the end of June. The reasoning was that if an award of territory was not forthcoming by July 1, 1970, then the possibility of the city receiving the newly annexed citizens on January 1, 1970, would be in doubt. In Virginia all annexation awards become effective on the first day of the year. Appeals to annexation orders must be filed within four months following the award. If the annexation court case which was still in progress did not end by July, there was grave doubt that appeals could be heard and denied prior to January 1, 1970.

The parties to the "compromise" finalized the agreement on June 11, 1969. The parties involved now took the contents of settlement to the annexation court. The county was officially concluding its

arguments in court against any annexation when its case was interrupted to present the compromise to the court. The acceptance of the "compromise," of course, brought an end to the county's case. However, there was one major block to an early end of the trial. The intervenors in the case had not been heard. Their arguments were to follow the presentation of the county's case. These intervenors included many citizens in the "proposed annexed" area and other Chesterfield civic groups.

On June 16, 1969, when the compromise was presented to the court, the city and county parties to the compromise and the judges retired to chambers to discuss the compromise and how to implement it. Surprisingly, the court reporter also accompanied them and took down what they said, although one of the judges warned about releasing these conversations to the public. The presiding Judge Abbott, who had earlier replaced Judge White following the mistrial, best described the context of this meeting in the judges' chambers.

> All right. I am going to ask the reporter not to write this portion and if he does write it up not to make it accessible where the press and the radio can get it. When you write it, just hand it to me instead of laying it on the desk and I will give it to you gentlemen later on. I just don't want the press getting ahold of what we have been talking about in here because the whole thing will just--it would be wrong.[64]

Discussion then centered around the compromise agreement. Judge Abbott later released this testimony into the record, as is legally necessary for any testimony taken by a court reporter in Virginia. The following excerpts give an indication of the cooperation the court was giving the city in this matter:

Judge Abbott: Well, first I would like to say that we are pleased that you have gotten together and settled your differences. I think it might in the end create good will and harmony between people but I think mechanics is a good question to consider.

Judge Abbott: Let me ask this: Instead of taking time out for your Board of Supervisors to approve or for your City Council to approve, either one of them may turn it down and we have lost all this time.

Why not proceed with your case?

Mr. Mays (city attorney): Your honor, that's exactly what I was going to suggest.

Judge Abbott: And let us know what you have agreed on and let us make the decision which will be binding on the city and the county without going through the formality of ordinances and meetings of the Board of Supervisors.

Mr. Thornton (county attorney): This is what we had in mind your honor.

Judge Abbott: Then we can hear the intervenors and let them present their case and we will make our decision then.

If we approve what you all agreed upon, that will be our decision...The chances are we are going to approve it but sometimes things come up that you can't approve...we just proceed with the case and then when the evidence is in, let us hear the Protestors and then you can tell us what your agreement is and we can make our decision accordingly and in that way the Intervenors won't feel like they have been kicked around or left out...

Judge Abbott: I don't think we ought to put this in evidence but just proceed with the trial as if you hadn't been here.

Mr. Mays: Yes sir.

Judge Abbott: Then when the evidence is all in you can submit to us what your agreement is.

Judge Abbott: I might suggest that if you have entered into an agreement that the city need not cross-examine so extensively as you have (referring to the remainder of the county's case).

Mr. Mays: We hadn't planned to, your honor.[65]

This testimony, added to the record of the Chesterfield annexation trial, is conclusive proof that the court was quite willing to have an early settlement of the suit. The court accepted the "Horner-Bagley compromise" verbatim, as Judge Abbott stated the court would do in the judges' chambers on June 16, 1969. The annexation court was certainly sympathetic to Richmond's racial situation when it stated in its opinion: "Obviously cities must in some manner be permitted to grow...in population or they will face disastrous...social problems."[66] According to annexation opponents, the phrase "social problems" seemed to be a code word for the black voter strenth within the city.

A significant aspect of the annexation court's opinion was the basis for the territorial award. The court admitted that the county was supplying services to the annexed area as well as the city could hope to do. Providing urban services is a fundamental argument for awarding annexation. Likewise, a question of expansion room is another basic reason for awarding annexed territory. Testimony in chapter three points out that this was one of Richmond's basic arguments. The settlement did not bring Richmond any significant expansion territory. Almost all the territory was residential and already very thickly developed. Richmond's need for commercial and industrial development was not met. The court made no mention of this lack in their opinion.

Richmond's economic problem cannot be denied. The economic disparity between blacks in Richmond's Standard Metropolitan Statistical Area (SMSA) and the total population was extensive. The per capita mean income of a black in the Richmond-Henrico-Chesterfield area was

$4,281 in 1970 while the per capita average for all individuals was $7,644. The economic stress this placed on Richmond is evident when realizing that 90 per cent of all blacks in the SMSA are in the city boundaries.[67]

During the annexation or immediately after the trial, there was no noticeable black opposition. The opposition to the annexation came from the Chesterfield citizens who had been annexed. Their forces were organized into what was known as the "South Richmond Council of Civic Associations." This council included civic groups from subdivisions throughout the annexed area. Their opposition to the annexation was based on several factors. According to Charles G. Loomer, an annexed area citizen and fund-raiser in the Civic Association, residents had moved to suburban Chesterfield because they liked suburban living. Most citizens in the area preferred not to have sidewalks and gutters: in other words, they preferred their "rural character."

Taxes were one of the big issues which brought opposition from the annexed citizens. Loomer stated that real estate taxes increased from two to 3-1/2 times the assessment rates Chesterfield had charged. Loomer said his taxes went from $350 to $1,000 under the city assessment. The second major concern was the schools. There was concern that citywide busing would be ordered for Richmond under a suit of the National Association for the Advancement of Colored People; and, of course, this did happen in 1971.[68] Chairman of Chesterfield supervisors, Horner said that had he known annexed citizens would be "bused"

in a court-ordered busing plan, he probably would not have accepted a compromise. Instead, he would have preferred to bring the suit to completion in the annexation court.[69] The school issue has been a continuing objection to annexation because the white, annexed citizens felt Richmond was using their children to integrate the predominantly black schools of the city. The white population in the city is an older group with fewer children, leaving the schools largely black. The annexed area was characterized as young, middle-class businessmen with a large school-age population.

The annexed citizens felt they had been deserted by Chesterfield County. The annexed citizens had no prior knowledge that they had been "bargained away" in a compromise settlement until the annexation court decree was made public. When they learned the court had basically agreed to the compromise the week before their legal arguments against annexation were to beard by the court, they became even more incensed. The "compromise" included annexation of one section that had not been originally included under the city's territorial request. These citizens were completely surprised when the annexation boundaries were released by the court. Since they did not have prior knowledge that they were subject to possible annexation, the citizens claimed they had been denied "due process."

The combination of the ill feelings generated by the "secret compromise" settlement which had ignored the feelings of the annexed residents with the negative attitude toward city citizenship generated great friction. A clergyman in the annexed area told a city

representative: "I don't think you people understand the depth of the emotion here. If the City of Richmond were to burn tomorrow, the annexed citizens would stand on the banks of the James River and sing hymns of praise."[70]

Through a "Council of Civic Associations," the annexed citizens raised funds to hire counsel to appeal the annexation order. Notice of appeal was filed by the intervenors on September 10, 1969, the last day permitted under law. On November 24, 1969, the appeal of the annexation decree was heard by the Virginia Supreme Court of Appeals. This appeal was based first on the contention that the territory was not contiguous as required under the Virginia annexation statutes. Secondly, the boundary line had skipped over developed areas and seemed to include only highly populated areas, which was also a violation of Virginia annexation laws. Thirdly, the annexed citizens were denied due process under the thirteenth amendment. The contention was that Chesterfield was defending them; and, of course, the county was not succumbing to the "compromise." Another possible ground for appeal was the accommodation made by the annexation court and the parties to the compromise in chambers to complete the trial as soon as possible. However, this factor was not known at the time the "compromise" was announced.

The appeal was heard on a Monday by the state's highest court and denied on a Wednesday. Rumors insinuated that the justices had bragged that they would deny the appeal before it was actually heard. The two-day consideration of appeal arguments certainly indicates very

little consideration was given to these arguments. A stay was filed on December 19, 1969, and denied the same day. An application for a stay was then made to the U. S. Supreme Court, which was also denied by Justice William O. Douglas. A black citizen, Curtis Holt, sent Douglas a telegram urging the "stay" be granted. Holt's action was the first entrance of black opposition into this case. However, this was only the beginning of Holt's fight.

With the annexed area officially a part of the city on January 1, 1970, members of the dominant Richmond Forward party in city council made overtures to the citizens of the annexed area. An intense campaign was waged to woo the annexed citiznes, attempting to persuade them to join the "in" crowd and reject the black opposition. At a meeting at Willow Oaks Country Club in the annexed area, several council members, including Mayor Bagley, were present. According to Roger Griffin, President of the South Richmond Council of Civic Associations, who was also present at the meeting, the Richmond Forward councilmen addressed the civic leaders of the annexed territory. Griffin said their discussions were very racially oriented with the councilmen inferring: "you are part of the city now so join us against our common enemy." One councilman stated that the county area had to be annexed because the blacks would have taken over, otherwise. Griffin said at this meeting in January 1970 the Richmond Forward organization took several of the annexed citizens into the ranks of their leadership.[71] The "Team of Progress" councilmanic election organization was born as a successor to Richmond Forward.

The story behind Team of Progress (TOP) succession of Richmond Forward is very interesting. TOP had originally been organized as a political group for the annexed area citizens. After the annexation, TOP leadership saw their options as follows:

(1) Enter a formal alliance with Richmond Forward
(2) Enter a formal alliance with the Crusade for Voters
(3) Enter a formal alliance with the Richmond Area Taxpapers Association
(4) Follow an independent course with no alliances.[72]

A committee of TOP leaders met with Dr. William S. Thornton, chairman of the Crusade for Voters, to consider possible cooperation between the black organization and TOP. However, this committee made the recommendation that no formal ties be established with the Crusade. Likewise, they urged that no formal ties be established with Richmond Forward but instead to proceed as an independent political force centered primarily in the annexed area. In this position TOP could be a balance of power between the Crusade and Richmond Forward in gaining concessions for the annexed citizens.

These plans were shattered when the TOP directors voted eight to four on February 10, 1970, to merge with Richmond Forward. Several TOP leaders compromised their positions when offered leadership positions in a newly merged TOP and Richmond Forward organization. Among these was Roger L. Tuttle, a lawyer and president of TOP who was offered the presidency of the newly merged group. Two other leaders were offered council endorsement and financial backing by the wealthy Richmond Forward organization. One of these two TOP leaders was later elected to council.

Several annexed leaders rejected this marriage of TOP and Richmond Forward. Roger Griffin, president of the South Richmond Council of Civic Associations, saw the move as a play in the hands of the city; and he accused other TOP members of being "bought off" with leadership positions and promised endorsements in the upcoming June councilmanic election. Although some members of TOP, including Griffin, thought their name "Team of Progress" had been copyrighted by their president, Tuttle, it had not. Thus, Tuttle willingly agreed to let the name Team of Progress become the trademark of the merged organization. Thus, a split developed between the annexed leaders, with some choosing to join the city establishment and others deciding to stay independent and continue their efforts for de-annexation. If the white annexed citizens could have stayed united and thrown their political support to the Crusade candidates, perhaps a Crusade majority would have been elected to council; and then, in turn, the Crusade majority could have rejected the annexation as thanks for this support. However, no such "coup" was possible now.

Curtis Holt's battles against the annexation would bring together an unlikely consolidation of poor blacks and affluent white suburbanites in a common struggle for differing motives. With the annexed territory officially part of Richmond on January 1, 1970, Curtis Holt began to consider the effect these newly acquired Richmond residents would have on the 1970 councilmanic elections. Holt was an announced candidate for council in the May election.

Curtis Holt had been an active precinct worker in the black

community for several years. He had established a get-out-the-vote organization known as the "Grass Roots" that seemed to rival the much larger and more powerful Crusade for Voters. Holt claimed his personal ambitions for public office were not great. As president of the Grass Roots organization, he was nominated by his fellow members to run for council.[73]

Realizing he had little in common with the middle class suburbanites in the annexed area, he concentrated his campaign in the black communities of Richmond. In the election held on June 9, 1970, Curtis Holt lost; but his loss made him determined to fight the annexation of January 1, 1970. Holt believed that these annexed citizens, 98 per cent whites, had diluted the black vote and had been annexed for the sole purpose of maintaining white control of the city. Blacks were in a majority before the annexation but dropped to 42 per cent of the population after the annexation became official.[74]

In the 1970 election, three incumbent Crusade-endorsed councilmen were re-elected. However, had the annexed area been excluded from the election, results showed that four Crusade-endorsed candidates would have been elected. This would have given the "anti-establishment" councilmen fiscal control of the city because six votes are needed for an appropriation measure in the nine-person council. Curtis Holt would not have won even if the annexed area was omitted from the votes. He would have finished as high as twelfth rather than seventeenth in the city, including the annexed area vote. Candidate Walter Kenny, a black, would have finished ninth in the old city but finished twelfth

with the annexed area votes counted. Ironically, a candidate from the annexed area finished ninth in the "new city" but would have finished twelfth in the "old city," excluding the annexed territory.[75]

The 1970 election had confirmed what Holt had continued to believe. The annexation was a premeditated move to dilute the votes of the black populous within Richmond. But was there any action he could take to correct the situation?

Holt said he sought advice from the NAACP but was turned away by their legal counsel, who called him a troublemaker. He then contacted the Richmond Human Relations Council, which referred him to the Richmond Legal Aid Society. Holt reasoned that since the Legal Aid Society was partially funded by the city, it would not effectively fight the city; so he ignored this suggestion.

With seemingly no recourse, Holt took upon himself the task of securing a lawyer. Holt set out to find a lawyer by proceeding through the lawyer column in the yellow pages of the Richmond telephone directory. He had called about 30 lawyers when one lawyer asked if Holt had contacted W. H. C. Venable. According to Holt, Venable was phoned and seemed very receptive.

Holt said in a subsequent meeting in Venable's office that his grievance was discussed. Holt is a very poor person, receiving a small income once a month; but money did not seem to bother Venable. His main concern was that he had a client who would continue the suit under any circumstances. Holt paraphrased Venable's words: "You know this could be a long-range thing. It is not like going to court

tomorrow and getting a decision next month. We don't do things like that. It might be a long-range thing. Are you prepared?"[76]

Holt thought Venable was talking about money. But what Venable wanted was an assurance that Holt would not drop a case that he had put much money and time into fighting. So, according to Holt, legal agreements were signed between the two. As long as Venable would fight Holt's case, Holt would never drop the case. Likewise, as long as Holt had a case, Venable would serve as his attorney.[77]

There are implications from this agreement, although factual evidence is not available. First, Holt's description of Venable's acceptance of the case might cause an observer to wonder if Venable had been looking for someone in whose name he could fight such a case. Venable would not admit this, although Griffin of the South Richmond Council of Civic Associations indicated they had approached Venable about fighting the annexation on racial grounds. Venable had indicated the county was not the aggrieved party and had no case on racial grounds. Holt was directed to Venable by another lawyer, adding to a possibility that Venable's interest in the case was more than just a lawyer-client relationship. Concensus seemed to indicate Venable took the case as an image-builder. Indeed, the publicity that continues to come out of the case would make any lawyer well-known.

Loomer, of the Civic Association, indicated that Venable has received legal business from several residents in the annexed area as a result of his endeavors for de-annexation. This certainly has not repaid Venable for his activities in the legal proceedings; but it has

gained recognition for him, a black lawyer, in the suburban communities.

Such intentions cannot be ethically admitted by a lawyer. Also, Venable is serving as Holt's lawyer with any monetary reward. If de-annexation is awarded, the court will order the city to compensate him for his services; but victory is no certainty.

Holt is a relatively destitute individual living on a small monthly income. Venable's insistence that Holt sign an agreement not to drop his case seems to indicate Venable was worried that Holt might succumb to a payoff scheme or be intimidated by threats. Holt said he was offered great sums of money by the "power structure" in Richmond to drop his suit. When he refused bribes, he was bombarded with threatening telephone calls day and night for about 15 months, Holt said.

With Curtis Holt the client, and Cavert Venable the attorney, and the citizens of the annexed area footing much of the expenses of Holt and Venable, a case began to form.

The crux of the first Holt suit was that the plaintiff's constitutional rights had been violated under the XV amendment, resulting in the abridgement of his right to vote. The dilution of the black vote was the major motive behind the 1969 "Horner-Bagley Compromise," so Venable contended. With this suit almost ready to go to federal district court, a landmark U. S. Supreme Court opinion was handed down. The decision was to play a key role in the future de-annexation suit.

On January 14, 1971, the highest court in the land ruled that all localities covered by the 1965 Voting Rights Act must have federal approval to expand corporate boundaries. Virginia is one of seven

states covered under the 1965 Voting Rights Act, and Richmond did not get prior approval before attempting to annex Chesterfield in November 1965.

Sections four and five of the Voting Rights Act are concerned with changes in the voting procedure within a state. Section four forbids the denial or abridgement of voting on account of race or color in any federal, state, or local election.

> Section 5 precludes a state or political subdivision covered by the act from administering any voting qualification or prerequisite to voting, or standard, practice as procedure with respect to voting different from that in force or effect on November 1, 1964, without first submitting the change to the U. S. Attorney General or securing a declaratory judgement from the District Court for the District of Columbia that the change does not have a racially discriminatory purpose or effect.[78]

In the case of *Perkins* v. *Mattews*, the Supreme Court upheld the claims of the plaintiff against the city of Canton, Mississippi. According to the Supreme Court opinion, there were two questions to be asked. First, did the city of Canton's action cause or constitute a voting qualification or prerequisite to voting or standard, practice or procedure with respect to voting within the meaning of Section 5 of the Voting Rights Act of 1965, which changed the situation that existed as of November 1, 1964.[79] The second question asked whether the city of Canton filed for a "declaratory judgement" with the U. S. District Court for the District of Columbia or asked approval of its action from the Attorney General's office regarding Canton's voting change.

The opinion of the court delivered by Justice Brennan claimed

Congress had included the consent provision in the Voting Rights Act, preventing a locality from abridging the right to vote because of race or color, because the Congress meant to reach the subtle as well as obvious state law violations.

The section of the decision that had direct relation to the Richmond annexation referred to the changing of boundary lines through annexation. Here the Supreme Court ruled that changing boundary lines to enlarge the city's number of votes qualifies as a change of a "standard, practice or procedure with respect to voting" as stated in the Voting Rights Act. The court defends its judgement by claiming that changing boundary lines allows a city to determine who may vote in municipal elections and who may not. The point most pertinent to Richmond suggests that annexation dilutes the weight of voters who were in the city before the annexation. In Richmond the inclusion of the annexed area citizens changes the election of at least one candidate. One black candidate for council finished ninth in the "old city" but twentieth in the "new city." Quoting a phrase from the *Reynolds* v. *Simms* decision, the court stated that "the right of suffrage can be denied by a debasement or dilution by the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."

After laying a basis for including annexation under the Voting Rights Act as a voting change, the Supreme Court makes the basic point that it is not the court's job to decide whether racial imbalance has taken place but rather to determine if the Voting Rights Act was

obeyed with regard to the procedure for legalizing annexation. This need for getting prior approval before initiating annexation seems evident with respect to the following point. In an 18-month study of the Voting Rights Act in operation by the U. S. Civil Rights Commission, it was proven that boundary change was one of the prime methods for discrimination against blacks.[80]

Finding Canton, Mississippi, in violation of the Voting Rights Act for not asking prior approval before initiating annexation shocked Richmond's government. John Davenport, one of the city's annexation attorneys, claimed Richmond had initiated its suit against Chesterfield in 1961 before the Voting Rights Act. However, that suit lay dormant until November 1965 after the completion of the Henrico case. Secondly, Davenport claimed there was no knowledge that annexation was covered under the Voting Rights Act.

It seems difficult to believe that the city's legal staff did not know they were supposed to submit annexation proposals to the Justice Department in light of information presented in the *Perkins* v. *Mattews* Supreme Court decision. The Justice Department presented a table showing all changes that had been submitted by the states covered by the Voting Rights Act. The table showed that South Carolina had submitted all annexation proposals to the Justice Department. Georgia had submitted one annexation proposal. Thus, there was a precedent for submitting annexation proposals to the Attorney General, even before the *Perkins* v. *Mattews* decision.

There was much criticism of this Supreme Court opinion. Richmond's

conservative evening newspaper swung out against the Supreme Court decision with these editorial words: "The South has suffered much, but as the Supreme Court made clear yesterday, an end to the Second Reconstruction is not yet in sight."[81] The decision meant federal courts throughout the states affected by the Voting Rights Act would be flooded by challenges to annexation proceedings which had not gotten federal approval before initiation. The Richmond News Leader also maintained that the decision meant all local annexation in the future would be argued on the question of race.[82] However, the Supreme Court decision stated that if the Attorney General or the U. S. District Court for the District of Columbia declared there was no racial motivation, the issue should then be laid to rest. A third party's opinion, such as the Justice Department, would seem to do much to disspell the doubts many would have regarding the motives for annexation.

The sequence of events relating to the de-annexation took two paths after the *Perkins* v. *Mattews* ruling. Several events occurred as a result of the ruling regarding the necessity of propr approval for annexation. The first of two suits had been filed by Curtis Holt. Holt's first suit was prepared without the Voting Rights Act violation as a basis for de-annexation. The first suit was solely based on the racial motives behind the 1969 "compromise annexation." Holt contended that the annexation diluted his vote and diverted his voting power, thus violating the XV amendment to the U. S. Constitution. Testimony in this trial is the best source of evidence relating to the racial motives for the annexation. The testimony of the first Holt

trial was entered in the record of a later trial as the city sought to gain approval of the 1969 annexation. Because the implications drawn from this trial are so important, I will analyze some of the testimony given and present the memorandum opinion of the presiding judge. Upon review of this case, I will go back in time and trace the factors relating the city's violation of the 1965 Voting Rights Act.

The burden of proof was on the appellate, Curtis Holt, to prove racial motives the basis of his charges. The suit was filed before U. S. District Judge Robert Merhige on February 25, 1971; and the testimony was heard for five days beginning May 8, 1971. Presenting its case, the city cited annexation court statistics justifying the annexation. The city held that the compromise agreement could not be evidence of racial motives for an early 1969 settlement. The city reminded the court that it was not the compromise settlement which determined the annexation but the decree of the three-judge annexation court. The city lawyers contended that the compromise settlement was not binding on the annexation court and was merely an additional item of evidence.

The city's second major contention was that no evidence supported the conclusion that a majority of City Council was unconstitutionally motivated in their support of the annexation. Thirdly, the city rejected the contention that the compromise agreement between the city and county was unconstitutionally motivated. And, fourthly, the city claimed the motivation behind the City Council's action was the same

as all cities which want more territory. The city claimed Richmond needed room for its population to grow. The city stated it needed new sources of taxation. Richmond claimed that since many of the middle-income individuals left the city for the suburbs, the economic base had declined; and the need to reclaim some of these people was necessary. Richmond claimed that if its motive had been to dilute the black vote, the city would have accepted the Henrico award. This would be logical until it is remembered that Richmond was financially unable to accept the Henrico annexation because the city was not allowed to borrow money for annexation purposes.

Curtis Holt, through his attorney W.H.C. Venable, attempted to refute these city arguments point by point. Regarding the city's claim that the motives of the compromise had not effect on the outcome because the final decision was made by the annexation court, Venable gave the following argument. Although the annexation court issued a decree, the decree was taken verbatim from the "compromise settlement." Venable cited the judges' chambers testimony, where the court agreed to accept the compromise even before the trial was concluded. Once the court had agreed to accept the "compromise" during the chamber session, the following dialogue expressed the court's interest in the remaining public testimony:

> Judge Marshall: How interested do you think the court is going to be in these witnesses that you have?
>
> Mr. Thornton: Not a bit, sir, not a bit...[83]

The city's contention that the compromise was not binding on the court is very true. However, previous testimony within the judges'

chambers concerning the compromise seems to indicate the court was more than willing to accept agreement of the two parties. Holt's counsel, Venable, made the comment that the U. S. Constitution nullifies the sophisticated as well as the simple mode of discrimination. In this statement Venable was indicating that unconstitutional motivations can be issued by judicial decree as well as by other methods.

Did the Richmond City Council act with unconstitutional motives, and did the participants in the compromise settlement use these same motives? These were questions explored at the *Holt* v. *City of Richmond* trial. After hearing five days of testimony in April 1971, Judge Robert R. Merhige delivered his opinion on November 22, 1971.

The judge made note of the steadily changing character of the Richmond electorate which had led to the "compromise." He did not question the valid motivations behind the merger proposal with Henrico or the 1962 annexation ordinances filed against Henrico and Chesterfield. With the merger failure and the unacceptability of the Henrico annexation award, concern began to grow in Richmond's political establishment. The judge said testimony indicated that Negro political power was not a major concern in the early sixties; but with organized registration of blacks by the Crusade and the elimination of the poll tax in 1966, their numbers began to grow steadily.

The judge made reference to the lengthy legal problems which had bogged down the Richmond-Chesterfield annexation trail begun in 1965 and not concluded until 1969. Testimony before the court indicated great concern by city and state leaders "that the city of Richmond

not become a city of the old, the poor and the blacks." A member of the General Assembly testified that one of the city officials designated to encourage state action to expand the city's boundaries (Aldhizer Amendment) asserted prompt action was necessary by the Assembly because the 1970 councilmanic elections were approaching, and he expressed fear that the Negroes would prevail.

Councilman James Carpenter testified to a conversation he had had with Mayor Bagley following the "compromise settlement." Carpenter relates Bagley's words:

> I had to do what I had to do concerning annexation, that I just did not believe the niggers were qualified to run the city, and then he added, 'I just don't believe the Negroes are qualified to do that and ought not to be in that position.
>
> Q. Did he use the word 'niggers'?
>
> A. Yes, sir.[84]

Leland Basset, a member of the executive committee of the Team of Progress, successor to Richmond Forward, testified of a similar exchange with Mayor Bagley. Basset said Bagley had referred to the racial trends in Washington and feared the same trends were developing in Richmond.

> Q. Did the Mayor tell you what was going to happen in Richmond?
>
> A. Well, he made one statement, what I guess more or less would answer that question. His statement to me shortly after the conversation about the Washington aspect of our conversation, he made a statement as best as I can remember, something to the effect, 'As long as I am the Mayor of the City of Richmond, the niggers won't take over this town.
>
> Q. Did he use the (word) 'nigger'?
>
> A. Yes he did, I specifically remember that.[85]

The judge concluded that city officials were willing to agree to a speedy compromise even if it meant not receiving as much territory as the annexation court might award. John Davenport, one of the city's annexation lawyers, was very disappointed when he heard of the compromise. He believed the city would have gotten a majority of what it was asking if the case had been fought to conclusion in the annexation court.[86] The judge concluded that the request to the county not to appeal the annexation award as a term of the "compromise" further indicates the city was mainly interested in a quick settlement.

The judge saw racial motives in the secrecy of the Horner-Bagley meetings. The three Crusade-backed councilmen were excluded from compromise discussion and only learned of the settlement through the newspapers. Merhige also commented on the specifics surrounding the "compromise settlement." The mayor did not have specific knowledge of the boundaries of the area agreed upon. Chesterfield Supervisor Horner indicated he drew the boundary for the compromised territory with the only criteria that it include at least 44,000 people.[87] The only factor that the mayor checked before accepting the compromise was that the are include 44,000 people.

The following excerpts from the trial transcript clearly indicate that the main concern was the population factor.

Q. Did they have in mind where they should come at this first meeting?

A. (Horner) If they had it in mind they did not reveal it to us.

Q. Did they reveal to you how much vacant land they wanted?

A. No sir.

Q. Did they reveal how many schools they wanted?

A. No sir.

Q. Or how many utility facilities they wanted?

A. No.

Q. The whole basis was people?

A. We pressed them for where the people should come from. They apparently were not prepared to answer it.[88]

The record makes it abundantly clear that the only information to the mayor and white majority on council during the negotiations in the compromise settlement was the number of people they wanted to receive. To add substance to this charge, it should be noted that the city official responsible for all detailed information about the annexation suit was not notified of settlement until 11 days after the tentative agreement had been reached. The physical aspects such as taxable properties, vacant lands, schools, capital facilities, etc., were of little importance to the city in the compromise negotiations.

> The court finds that at least one of the factors leading to the city's acquiescence to compromise was a motivation to thwart any potential threat created by the rapidly growing voting strength of the Negro segment of the population, that would have resulted in the election of a sufficient number of councilmen whose attitudes would create further frustrations toward expansion of the city's boundaries, as the then majority deemed necessary.[89]

A voting analysis introduced into the court record indicated that 50 per cent of the registered Negroes voted, compared to approximately 30 per cent of the white registered voters in 1968.[90] In the last election before the annexed area became part of the city, a black was

elected to the Virginia State Senate, outpolling both of his white, conservative rivals.

Thus, the court found the "compromise" annexation had intentionally violated the XV amendment rights of the plaintiff, Curtis Holt. The XV amendment forbids deprivation of a citizen's vote by reason of race and Judge Merhige concluded that intentional dilution of voting power had so done this. While the judge ruled clearly in favor of the plaintiff, the de-annexation that Holt requested was not ordered.

Judge Merhige simply could not bring himself to order a de-annexation. He noted that it had been almost two years since the annexation became effective; and, consequently, the city had spent millions in the annexed area. He agreed with the City Manager that de-annexation was a task that would "boggle the mind." On the other hand, the chief administrative officer of the county testified the county was willing, financially able, and desirous of having the annexed territory and its population returned. Many sources believed Judge Merhige sincerely thought the city needed the "annexed area" to avoid economic disaster.[91]

To right the racial motives of the annexation, the judge proposed a piecemeal approach.

Rejecting de-annexation at that point in time, Judge Merhige offered a change in the councilmanic electoral system to remedy racial intent in the 1969 annexation "compromise." The court-ordered remedy provided for a two-ward structure for council elections that would replace the then-existent at-large system of council election. The

annexed area was to be one ward and the "old city" the other ward. Two councilmen were to be elected from the annexed area, and seven were to be elected from the "old city." The electoral revision order was popularly known as the "7-2" plan. The theory behind this remedy was that divorcing the annexed citizens from voting for councilmen in the "old city" would lessen the dilution of black voting strength that was the result of the annexation.

The plan originated with a black Richmond lawyer, Je Royd Greene. The proposal was brought to the Merhige court through a "friend of the court" brief. To comply with this court order, Judge Merhige ordered a special councilmanic election for January 25, 1972.

The solution certainly was not logical. If the annexation had damaged the rights of black voters, this solution would only make their vote less diluted. It certainly would not give them the same voting power they had before the annexation. The ruling satisfied neither side. Holt said he was suing for de-annexation, and there was no other remedy for de-annexation. Mayor Bliley, the mayor as of the 1970 election, was relieved that there had been no de-annexation but disliked the "7-2" plan because, "the people in the annexed area would, in my opinion, never be homogenized into the rest of the city."[92]

Both Holt's attorney Venable and the city attorneys filed appeals to the U. S. Fourth Circuit Court of Appeals. The "7-2" plan would allow city blacks to elect several councilmen in the old city; however, gaining control of the council under this plan seemed remote. The two councilmen elected from the annexed area would most assuredly be

white, middle-class supporters of the present city council establishment. Electing five of the seven councilmen to the "old city" district would have been extremely difficult, even with the increased black voting power.

The dominant, white political voice in the city probably could have lived with the "7-2," but implications of the district court's ruling were a threat. Richmond was facing Justice Department charges for violation of the 1965 Voting Rights Act, and having been charged with racial motives by the District Court would not help their position. The District Court's special election order was "stayed" as the Fourth Circuit Court took the *Holt* v. *Richmond* case on appeal. The appeal was argued before the appeals court on February 10, 1972, with the decision coming three months later on May 3, 1972. The reversal of the District Court's "7-2" plan surprised no one. The Fourth Circuit was considered conservative in philosophy. Thus, its interpretation of the constitution was very literal.

The majority (4-2) decision of the Fourth Circuit Court was given by Chief Judge, Clement Haynesworth, whose fame had resulted from his rejection as a Nixon appointee to the U. S. Supreme Court. A significant characteristic of the Fourth Circuit's decision was the contrasting difference between the majority and minority opinions.

Chief Judge Haynesworth said: "We think the 'unconstitutional motivation' too remote from the judicial annexation decree, which firmly rested on non-racial grounds, to warrant a grant of any relief."[93] The majority opinion said there was nothing "sinister"

about evidence showing concern on the part of officials of Richmond, Chesterfield or the state, "that the city of Richmond not become a city of the old, the poor and the black."[94] Secondly, the court noted that some of the concern revolves around the fear that there would be a shift in the control of City Council.

Elaborating on this second point, the court recognized that three of the nine council members were elected with Crusade endorsement. These three councilmen were openly against any annexation. Therefore, the Haynesworth court concluded that, as in any political atmosphere, the party in power (Richmond Forward) would justly be concerned about the upcoming councilmanic election in 1970.

> When the legislative purpose is not both obvious and constitutionally impermissible, the cases uniformly hold that facially constitutional legislation may not be stricken because of suspect legislative motivation.[95]

The Fourth Circuit Court was saying that constitutional acts such as annexation cannot be held unconstitutional in violation of equal protection of the laws because of the motivations of those persons who use it. This strict interpretation was judging only the legality of the annexation process, not the motives for its use. The Haynesworth court claimed it is difficult if not impossible to determine the "dominant" motives behind a legislator's choices. The opinion did not dispute the evidence from which the District Court had based its ruling concerning racial motives.

One of the two dissenting opinions strongly challenged the legal philosophy of the majority. He cited past Supreme Court precedent which made lawful acts unlawful if the acts were used to bring about

an unlawful end. This judge maintained that the issue does not concern the constitutionality of Virginia's annexation laws, but whether Richmond purposely used the laws to dilute the votes of city blacks.

Statistics establishing dilution of black votes through annexation are not enough to cause the plaintiff to prevail. But the plaintiff established evidence regarding the motives he charged. Uncontradicted evidence established the secrecy of the compromise, emphasis on people in the "compromise," and fear among city leaders that blacks would take over. The two dissenting judges rejected the District Court's "7-2" re-election plan and called for de-annexation as the only equitable solution.

Significant statistics regarding the amount of vacant land were pointed out by Judge Butzner, one of the dissenters. While the city claimed Richmond needed vacant land very badly, it settled for only .74 of a square mile or 475 acres of potential development land and 729 acres or 1.1 square miles of possible commercial land. Present development on the land contained only 312 acres of industrial and 351 acres of commercial land, while there were 12,536 acres of residential land or 19.5 acres of the total 23 square miles annexed. Chesterfield contained some highly industrialized land, but this land was not negotiable in a compromise so the city was not interested. The concensus was, certainly among city lawyers, that the annexation court would have awarded some of this industrial county territory if the annexation trial had completed its course.

Moving back in time somewhat, the second path that the

de-annexation battle has followed will now be explored. The path includes not only Curtis Holt and citizens of the annexed area, but the federal Justice Department which also joined as foes of the city.

The Justice Department's involvement in Richmond annexation came in the way of a letter addressed to City Attorney Mattox. The letter informed the city attorney that in compliance with the *Perkins* v. *Mattews* Supreme Court decision, the Justice Department found the annexation of 23 square miles of Chesterfield in violation of terms of the 1965 Voting Rights Act. Charging that the annexation had diluted the black vote, the letter stated that annexation had brought Richmond 48,000 new citizens, very few of whom were black.

> In the circumstances of Richmond where representatives are elected at large, substantially increasing the number of eligible white voters inevitably tends to dilute the voting strength of black voters.[96]

Before annexation, 51.5 per cent of the city had been black; but after the annexation award, the blacks were decreased to 42.3 per cent of the city's population.[97] According to the Justice Department, Richmond had effected a voting rights change (dilution of the black vote) without first asking approval of its annexation intentions.

Following the *Perkins* v. *Mattews* decision, the Richmond Crusade had written the Justice Department requesting that the 1969 annexation be disapproved because it violated the 1965 Voting Rights Act. Rivalry between black interests seemed to flare as Thornton, president of the Crusade, claimed the Crusade played a larger role in the Justice Department involvement than the Holt I suit.[98] The Crusade's action was

spurred by the hope of forcing an all-ward system in Richmond, while Holt's objective was de-annexation.

In conference, the Justice Department told the city that the annexation would stand unchanged until the federal district court ruled. However, in June 1971 the Justice Department further conceded that it might be willing to approve the annexation award if an all-ward representation system is instituted for City Council. With charges having been filed by the Justice Department and his first suit still pending before the Fourth Circuit Court, Curtis Holt filed another suit in the Richmond federal district court. This suit became popularly known as "Holt II" in the press. In this suit, Holt was using the basis of the *Perkins* v. *Mattews* ruling as his legal grounds. In Holt II the grounds were clearly evident. The city had violated the 1965 Voting Rights Act by not asking for prior approval from the Justice Department or the U. S. District Court of the District of Columbia. In this case the burden of proof would rest on the city. It would be the city which had to prove that the 1969 annexation was not racially motivated. This suit used new legal weapons that were not known when the first Holt suit was prepared. Clearly, city officials, members of the annexed area and city blacks felt Holt's chances of winning de-annexation had greatly improved thanks to the 1965 Voting Rights Act.

Meanwhile, the city continued to examine ways to have the 1969 annexation approved by the Justice Department. The city showed the Justice Department a combination ward-at-large plan, but the department still held that an all-ward plan would be the only acceptable solution.

When the reversal of Holt's first suit by the Fourth Circuit came on May 1972, the city saw this ruling as a basis for seeking approval from the U. S. District Court for the District of Columbia. However, the Voting Rights Act of 1965, according to the Supreme Court opinion, required prior approval before annexation could be accomplished. Richmond was asking for approval after the fact, although the city was willing to change its electoral system if necessary.

The year that elapsed between the declaration of disapproval by the Justice Department and the filing for annexation approval in the D. C. District Court deeply angered many of the annexed citizens. First, they maintained the Justice Department should have carried out the law and ordered de-annexation since the city was clearly in violation of the 1965 Voting Rights Act. Secondly, since the city did not seek formal approval of the annexation until May 1972, would not the annexed territory remain de-annexed until approval was obtained?

Representatives of the annexed area had meetings with Attorney General John N. Mitchell and other Justice Department officials as well as with members of Congress. They tried to persuade these federal officials that the annexation was clearly motivated by racial factors. One resident of the annexed area attempted to register and vote in Chesterfield County because he considered the annexation void after the Justice Department ruling. Other residents threatened to withhold their taxes from the city and force a court suit to determine the legality of the annexation.[99]

The legal battles regarding the racial implications of Richmond's

annexation took a two-front attack. The city, as of May 1972, was asking for approval of the annexation in the Washington court; and Curtis Holt was seeking de-annexation before a three-judge specially composed district court in Richmond. A legal argument centered around which of these federal courts should take the next step.

W.H.C. Venable, Holt's attorney, maintained that the three-judge court in Richmond should immediately grant his client a favorable judgement because of the obvious violation of the 1965 Voting Rights Act by the city. On the other hand, Horace Edwards, former city manager and then special counsel to the city, contended that any action by the Richmond District Court should be "stayed" pending the ruling of the Washington District Court regarding Richmond's bid for annexation approval. Venable indicated that the District Court in Richmond would be catering to the delaying game of the city if it granted a "stay." Venable claimed the Richmond court had jurisdiction to rule on Holt's second suit. He said non-action would allow the city to continue control over an area that had been claimed by the U. S. Justice Department to be in violation of the Voting Rights Act.

Edwards claimed that Holt's arguments had been greatly damaged by the ruling of the Fourth U. S. Circuit Court of Appeals, which established that the boundary expansion had not been tied to any violation of the Constitutional rights of blacks. Edwards' argument maintained that the Voting Rights Act was only an extension of the rights that are guaranteed by the XV amendment.

The Fourth Circuit Court did not specifically deny racial motives

but said such motives cannot be considered in the regard to the constitutionality of the annexation process. On the other hand, the Voting Rights Act requirement of prior approval for annexation allows the Attorney General or District of Columbia District Court to make a value judgement as to whether racial motives are present. The Fourth Circuit majority opinion made it quite clear that the case before them had no relation to the Voting Rights Act:

> We have no jurisdiction to consider any problem arising under that act and what we have said reflects no opinion as to the appropriateness of the Attorney General's objection.[100]

Racial motives based upon violation of the statute's prior approval regulation would seem to present legal basis for de-annexation.

Holt's position was given a boost in late October 1972 when he was granted permission by the U. S. District Court for the District of Columbia to intervene in opposition to Richmond's suit requesting approval of the 1970 annexation. Holt claimed he was not adequately represented by the federal government and intervention was necessary to insure that his interest would be protected.[101] Allowing Holt to enter the Washington case as an intervenor was a significant indication that the court felt Holt's de-annexation claims were valid. However, by intervening in the Washington case, Holt's hopes of having his second suit heard in the Richmond District Court grew dim.

Responding from an appeal by Holt's lawyer Venable, the U. S. Supreme Court put a ban on further Richmond councilmanic elections until the legal issues surrounding the annexation are settled. This ban came in Spring 1972 while the political machinery for the upcoming

election was readying for the every-two-year councilmanic elections. Referring to the dilution of black voting strength, in the elections of 1971, the Richmond Afro-American newspaper made this observation:

> Tuesday's election drove home the political facts of life for black voters in Richmond since the annexation of some 47,000 predominantly white voters in 1970. No black candidate was elected to the five House of Delegates seats from a city that is 42 per cent black, once again underscoring how annexation serves to keep blacks voiceless in government.[102]

With Holt an intervenor in the Washington case, the Crusade for Voters asked to be made intervenors in the case also. Holt felt that he represented blacks' interest in the case, and he called the Crusade's action "playing late politics." The Crusade was made an intervenor through the efforts of black Vice Mayor Henry L. Marsh.

On October 31, 1972, the Justice Department asked the U. S. District Court for the District of Columbia to dismiss the Richmond suit requesting annexation approval. Later the department modified that statement saying it would be willing to approve the annexation if the method of electing city council was shifted from an at-large system to single-member districts. A short time later, the Justice Department asked the three-judge federal court in Richmond to delay its decision in the Holt II suit. It was felt the Washington court should have precedent over the Richmond court; and, realizing that actions in the two courts would be an unwise judicial move, the Richmond District Court ordered a "stay" in the Holt II suit until a decision was reached by the Washington Court. Venable disliked this move; but by being an intervenor in the city suit in Washington, perhaps his argument had been weakened.

In Petersburg, Virginia, a recent annexation was approved by the Justice Department after the city agreed to elect its councilmen on a ward basis. Richmond charged that its situation was the same as that found in Petersburg. The city had earlier rejected the "7-2" selection plan presented the District Court. City attorneys advised the city that since the Voting Rights Act had entered the picture, the prospect of de-annexation was real, even with the acceptance of an all-ward system.

The city's willingness to accept an all-ward system in return for annexation approval may not be a major concession. Unless renewed by Congress, the Voting Rights Act will expire in 1975. If this act expires, the city would not be compelled to continue an all-ward councilmanic electoral plan. The federal court authority to order an all-ward plan to remedy the city's violation of the Voting Rights Act's prior approval provision would no longer exist. Realizing the possibility, attorneys Horace Edwards and John Davenport have stated, according to press accounts, that it would be foolish for the city to take a chance of losing 23 square miles through de-annexation if a ward system can be established to meet the federal requirement in the meantime.[103]

In a deposition given on October of 1973, Richmond Mayor Thomas J. Bliley was asked if he favored a referendum after the Voting Rights Act expires to decide if the city should go back to an at-large system.

> Answer--We have had three forms of government in Richmond since its inception. Every time there has been a change, the people decided and I feel that the people -- I understand

> in Voting Rights Act, you cannot now, but as soon as they are given an opportunity, they ought to be able to say whether they want this or not. After all, it is their government, not mine.[104]

Holt's opposition to any compromise is more realistic under these circumstances. The thinking of the city indicates that in 1975 the city can revert back to an at-large election system when the Voting Rights Act expires. Unless the District Court in Washington can permanently order a ward system for Richmond councilmanic elections, Curtis Holt could find the Richmond situation in the same position as when he initiated his first suit in 1971.

While Holt maintains de-annexation is the only answer, several variations of ward plans have been presented to the District Court in Washington. The Justice Department told the court it will accept any ward plan, although this seems inadvisable. Ward systems can be gerrymandered for racial purposes very easily.

The city favored a ward plan that would allow four black majority wards and five white majority wards. Likewise, the Crusade for Voters would rather have a ward system that they approve than de-annexation. Councilman Marsh, the only black on City Council, said the Crusade demanded a majority black population in five wards or they, like Holt, would rather see de-annexation.

W.H.C. Venable took a sworn deposition from Dr. William S. Thornton, former Crusade president. Thornton, like Vice Mayor Henry Marsh, prefers a ward plan to de-annexation. He said a ward plan would allow persons in poor neighborhoods to campaign more effectively because it would not take as much money. When asked if he would accept

a system containing four black wards, four white wards and one swing ward, Thornton said yes.

After several delays during the week of October 15, 1973, testimony was given before Lawrence S. Margolis, U. S. magistrate who had been selected by the Washington court to take testimony and report to the U. S. District Court for the District of Columbia. The entire transcript of the Holt I trial was introduced into the record. Witnesses and legal defenses were presented by the four parties involved, the U. S. Justice Department, the City of Richmond, the Richmond Crusade and Curtis Holt, Sr.

In summary, at this writing, positions stand as follows. The city is seeking approval of the 1970 annexation of a portion of Chesterfield. Richmond is willing to accept an all-ward system in return for approval. The U. S. Justice Department charged that Richmond was in violation of the 1965 Voting Rights Act for not seeking prior approval before proceeding with its annexation. According to the Voting Rights Act, should there be racial motives behind the annexation attempt, the U. S. Attorney General or the District Court of Columbia are legally empowered to deny the annexation request. The Justice Department first disapproved the annexation but later altered its position, stating the department would approve the annexation if an all-ward system was adopted.

Curtis Holt, Sr. through his lawyer W.H.C. Venable, became an intervenor in the case claiming his interests were not represented by the U. S. Justice Department. Using the Holt I testimony as basic evidence, Holt contends the 1970 "compromise" annexation was agreed

upon because the city feared black takeover in the next election if more whites were not brought into the city. Therefore, Holt contends that the only remedy is de-annexation. He maintains the annexation would never have been approved had Richmond asked approval before the annexing process began. The Richmond Crusade for Voters was the last party to enter the suit. The Crusade claimed it represented the black viewpoint in the city, but Holt claimed his Grass Roots organization represented a majority of the poor blacks within the city. The Crusade is asking the District of Columbia Court to order a ward system that will favor the black population by at least a "5-4" majority. Otherwise, the Crusade would rather see de-annexation.

Meanwhile, the various parties await the decision of the Washington Court. It is the feeling a decision here will be the final word, since the Supreme Court established the constitutionality of the 1965 Voting Rights Act in the *Perkins* v. *Mattews* decision. The decision that comes will significantly affect the political power structure in Richmond. The decision will decide whether 23 square miles of land will be kept by the city or returned to Chesterfield County. If the annexation is approved, the "status quo" will be maintained. De-annexation would bring blacks back to majority status in Richmond. If this occurs, for the first time in the history of Richmond, blacks will have a chance to call the shots. Whatever the decision, it seems certain that blacks will have gained. If de-annexation is not ordered, a ward system will have to be instituted. Blacks stand to gain more representation in either event.

ENDNOTES

[46]"Merger Campaign Continues," Richmond Times-Dispatch, October 21, 1961, Sec. C, p. 1.

[47]"Reasons for Merger Failure," Richmond News Leader, December 15, 1961, Sec. B, p. 2.

[48]*Ibid.*

[49]Interview with John S. Davenport, Special Counsel to the City of Richmond, Richmond, Virginia, October 26, 1973.

[50]"Court Claims Independence," Richmond Times-Dispatch, July 14, 1963, Sec. B, p. 1.

[51]"Testimony Becomes Sharp," Richmond Times-Dispatch, July 28, 1963, Sec. B, p. 2.

[52]"Ruling Pushes Henrico More to 'Bedroom Area'," Richmond Times-Dispatch, April 28, 1964, Sec. A, p. 3.

[53]Editorial, Richmond Times-Dispatch, April 28, 1964, Sec. A, p. 24.

[54]Interview with Horner, *op. cit.*

[55]*Holt* v. *City of Richmond*, 334 F. Supp. 230-31 (1971)

[56]*Ibid*, p. 233.

[57]Interview with William T. Thornton, Former Chairman of Richmond Crusade for Voters, Richmond, Virginia, October 18, 1973.

[58]*Holt* v. *City of Richmond*, 334 F. Supp. 235 (1971).

[59]*Ibid.*

[60]Interview with Horner, *op. cit.*

[61]Interview with James E. Davis, Reporter, Richmond Times-Dispatch, Richmond, Virginia, October 24, 1973.

[62]*Holt* v. *City of Richmond*, 334 F. Supp. 237 (1971).

[63]Interview with Horner, *op. cit.*

[64]Brief for Appellee, p.32, *Holt* v. *City of Richmond*, 459 F. 2d. 1093 (1972).

[65]*Ibid.*, pp. 32-3.

[66]"Text of City-County Annexation Ruling Given," *loc. cit.*

[67]U. S. Bureau of the Census, Nineteenth Census of the United States, 1970: Detailed Characteristics Virginia, 48-909.

[68]Interview with Charles G. Loomer, President, Fernleigh Civic Association, Richmond, Virginia, October 23, 1973.

[69]Interview with Horner, *op. cit.*

[70]Roger C. Griffin, Jr., "The Case for Repeal of Virginia Annexation Laws," (unpublished, Report to Virginia General Assembly, 1972), p. 6.

[71]Interview with Griffin, *op. cit.*

[72]James E. Davis, "Tuttle Gets Top Post," Richmond Times-Dispatch, February 28, 1970, Sec. B, p. 1.

[73]Interview with Curtis Holt, Sr., Annexation opponent, Richmond Virginia, October 24, 1973.

[74]U. S. Bureau of the Census, Ninteenth Census of the United States, 1970: Population, II, 67.

[75]"TOP Majority of Six Elected, Carwile Leads," Richmond Times-Dispatch, July 10, 1970, Sec. B, p. 1.

[76]Interview with Holt, *op. cit.*

[77]*Ibid.*

[78]*Perkins* v. *Mattews*, 400 U. S. 370, 91 S. Ct. 433 (1971).

[79]*Ibid.*, p. 435.

[80]*Ibid.*, p. 437.

[81]Editorial, Richmond News Leader, January 15, 1972, Sec. A, p. 12.

[82]*Ibid.*

[83]Brief for Appellee, p. 31, *Holt* v. *City of Richmond*, 459 F. 2d. 1093 (1972).

[84]*Ibid.*, p. 39.

[85]*Ibid.*, p. 38.

[86]Interview with Davis, *op.cit.*

[87]Interview with Horner, *op. cit.*

[88]Brief for Appellee, p. 40, *Holt* v. *City of Richmond*, 459 F. 2d. 1093 (1973)

[89]*Holt* v. *City of Richmond*, 334 F. Supp. 233 (1971).

[90]*Ibid.*, p. 235.

[91]Interviews with Griffin, Loomer, and Holt, *op. cit.*

[92]Stewart Jones, "Split-City Voting Ordered to Remedy Annex 'Taint'," 'Taint'," Richmond News Leader, November 22, 1971, Sec. B, p. 1.

[93]*Holt* v. *City of Richmond*, 459 F. 2d. 1094 (1972).

[94]*Ibid.*, p. 1096.

[95]*Ibid.*, p. 1098.

[96]Letter from David L. Norman, Acting Assistant Attorney General, Civil Rights Division, May 7, 1971.

[97]"Justice Department Disapproves Annexation," Richmond Afro American, May 15, 1971, Sec. A, p. 1.

[98]*Ibid.*

[99]Interview with Griffin, *op. cit.*

[100]*Holt* v. *City of Richmond*, 459 F. 2d. 1100 (1972).

[101]Interview with Holt, *op. cit.*

[102]"Annexed Voters Dilute Our Power But Dr. Reid Wins, Carwile Loses," Richmond Afro American, November 6, 1972, Sec. A, p. 1.

[103]Stewart Jones, "Judges to Rule 'Soon' in Annexation Challenge," Richmond News Leader, October 26, 1972, Sec. B, p. 2.

[104]Thomas J. Bliley, sworn deposition taken at office of Venable and McCarthy, October 3, 1973.

CHAPTER V

CONCLUSIONS AND RECOMMENDATIONS

Virginia's annexation system does create great adversity between cities and counties. The complete independence of cities and counties sparks much of this friction. However, Richmond's method of using the annexation statute has contributed to this tension.

Annexation does not need the approval of those to be annexed; therefore, the city does not feel obligated to make entry into the city attractive for newly acquired citizens. Taking the attempted 1961 merger of Richmond and Henrico as an example, the city would not compromise its positions enough to gain county voter approval. Henricans wanted to keep their ward system of county supervisor representation, but the city would not agree to it. Richmond used the threat of annexation as a major weapon for urging county approval of merger. The city was not willing to "bargain in good faith" or concede any major points to the county because Richmond could use annexation if merger failed.

Richmond has relied on annexation for many of the wrong reasons. Richmond's present power base, "The Team of Progress," professes to believe that the core city must expand or die. This is simply not true. A case in point is Norfolk, Virginia, which is surrounded by cities and forbidden to annex. Richmond has not been forced to look to internal improvement of the existing structure as Norfolk has done. Richmond has attempted to use annexation to maintain the "status quo."

Richmond has almost reached the legal limit of its bonded indebtedness. The city is attempting to provide a high standard of services within a city which has a declining tax base. It seems evident that the city should attempt to find ways to economize or analyze its service delivery systems. Richmond has a growing majority of economically underprivileged citizens who need aid through localized job training programs and other economic lifters. Annexation is a means to pacify trouble: it is not an attack on the root causes of urban crisis. Annexation is a piecemeal approach or crutch for a mismanaged municipal government.

Metropolitan government or merger presents a viable alternative to urban problems, but only if all sides are represented in meaningful discussion. If city blacks, suburbanites, and city and county leaders all realize that they all have a stake in a healthy metropolitan area, possibly the problems each face can be tackled. The use of annexation by Richmond City Council was to perpetuate its own special interests, with little regard for the attitudes or problems faced by city blacks or the annexed suburbanites. If the annexation weapon were removed, the superior position of the ruling establishment would be removed.

The 1970 annexation of Chesterfield clearly focused on the changing basis for use of annexation. There was no longer a suburban population needing the city's services and administration, but a city needing the county citizens.

In 1969, annexation was used as a discriminatory weapon just as "Jim Crow laws," the poll tax, gerrymandering and voter registration

had been used in the past. If annexation is used for the purpose of maintaining a particular group in power, it simply cannot be condoned. The evidence seems clear on this point.

Richmond did lose population and tax base during the sixties. The city is losing its most lucrative, middle-class-white homeowner, while gaining a substantial number of less affluent black citizens. Neither Richmond's economic distress nor its need for additional vacant territory can be denied. Indeed, the "community of interest" argument explaining that annexed citizens, by and large, depend on the city for their employment and personal services cannot be denied.

However, author's investigations lead to the conclusion that the annexation agreed upon in 1969 was for political necessity rather than physical considerations. Richmond settled for less than one-sixth the territory and about half the people it had filed suit to receive. Virtually no vacant land or industrial or commercial base was gained. Fine industrial and commercial resources that would have made excellent tax sources were available. However, these sources were not available through compromise.

Personal conversations with Chesterfield's chief negotiator, Irvin Horner, impressed this author that the only compromise issue was people. Fear of black dominance in the city was a legitimate concern of Mayor Bagley, as the court testimony established.

Several witnesses in the "Holt I" trial substantiated the mayor's attitude. The city gave major concessions to the county when within one or two months of completing a costly annexation trial. But had

the trial run to its normal conclusion, including appeals, the annexation would have come in 1971 (January 1) rather than January 1, 1970, since all annexation becomes effective on the first day of the year. This seems the key point. City leaders were simply not willing to risk the possibility of the 1970 councilmanic elections producing four or five members sympathetic to black positions. Four councilmanic sympathetic with blacks could have commanded appropriations power in a council that needed six votes out of the possible nine to pass any appropriations measure. Accepting a lesser award seemed the only responsible move, considering the circumstances.

This was the first time Richmond accepted an annexation settlement when racial fear was the main reason for doing so. Most significantly, this seems to be the first successful annexation in which those citizens affected actually took a massive role to counteract what had taken place. The black efforts were largely marshalled by a poor, city resident named Curtis Holt and a city lawyer named Cavert Venable, who was willing to fight a lengthy suit without compensation. Likewise, a concerted effort by white, annexed citizens was fighting what they thought was an ill-conceived annexation.

The annexation produced a unique Virginia situation, where middle-class-white suburbanites were raising funds and aiding inner-city blacks in a common effort to gain de-annexation. For the blacks, de-annexation would mean possible leadership in their city; and for the suburbanites it would mean return to the rural, suburban atmosphere which they had originally chosen. Both parties may have seemed to be

working toward polarization; but, in so doing, at least an understanding and respect for the thinking of each group appears to have been achieved.

The developments surrounding the 1969 annexation award indicated that no longer can people and territory be awarded to a city on physical motives alone. The annexation system has to be sensitive to its impact, socially and politically, on the people affected. The 1969 annexation court did not consider the social or political effects the annexation would have on Richmond blacks; but, judging from testimony and opinion, it considered the effect the blacks had on the city. The court seemed to understand and accommodate the city in its request for a speedy settlement following the "compromise" agreement. Annexation courts must be able to consider the complexities of urban problems; and to do this, some expertise is necessary.

The polarized atmosphere in Richmond makes merger a remote possibility at this time. Inter-city busing to achieve a racial balance has completely turned county residents against metropolitan consolidation. Prospects of controlling the city have disspelled any merger talk within the black communities. In light of these attitudes, some method of annexation will probably continue even after the five-year moratorium on it is lifted by the General Assembly.

However, the complexity of present metropolitan government has made the Virginia annexation structure outmoded. The Virginia statute has to provide a mechanism to protect the voting power of various groups against the effects of annexation. When an annexation suit is

filed, cities should possibly submit a ward electoral plan which will show how the proposed annexation will affect votes of the original city residents. The annexation court should have the power to change the electoral system as a condition for annexation, if political motives are behind the annexation. If the main basis of annexation is found to be to dilute present city voters, then this should be made a condition for annexation denial.

One of the major flaws in Virginia's present annexation process is the need for creating a new court to hear each suit. Annexation proceedings move very slowly because judges must familiarize themselves with the area to be annexed and then establish how the city's claims relate to the annexation law. Many annexation judges simply have not had much experience in such proceedings. The special annexation courts are temporary agencies which do not accumulate and use a sustained body of information and knowledge regarding annexation.

Discussing annexation judges in his book, Annexation in Virginia, Chester Bain has said: "It is hard to accept the judgment that these are types of judicial determinations that courts of law are normally called upon to make."[105] Virginia circuit court judges do not have the legal expertise to calculate fair compensation in settlements. These judges must depend on information supplied them by the city and county and make an educated guess as to who is most correct.

Virginia's present system is very cumbersome and expensive. Cities such as Richmond have had to employ expensive legal counsel and expert witnesses to prepare and present their cases, as have the

counties to present their side. Through a series of legal delays, the Chesterfield annexation suit was prolonged for four years. If annexation is to continue, perhaps a state administrative agency possessing quasi-judicial powers and the final word on annexation, except on questions of law, should be instituted.[106] Having administrators trained in annexation procedure as arbiters, the process would move much faster; and these professionals could have the experience and findings of previous trials to help in their judgments.

A quasi-judicial agency would be relieved of the legalistic procedures and be permitted to function on an informal basis. Although an agency, it would still have the power to summon witnesses and require reports and opinions helpful in their decisions. Lastly, a quasi-judicial agency should affix values for public improvements and loss of county taxable revenues that the city is to pay the county and apply the values consistently in all cases heard.

The racial motives behind Richmond's 1969 annexation of a section of Chesterfield seem to be documented. If there were no federal Voting Rights Act, these racial motives would not have hampered the growth plans of Richmond City Council. The Washington Court will definitely ask for either a ward system as a remedy for vote dilution or order outright de-annexation. In any event, Richmond will have paid a price for its racial intent.

RECOMMENDATIONS

In summary, the proposed changes in Virginia's annexation system as a result of this study are as follows:

(1) A state annexation "agency" is proposed to reduce the expensive and cumbersome judicial procedure that is now characteristic of the Virginia system.

(2) Professionally trained annexation arbiters are recommended to replace the use of Virginia circuit judges in annexation proceedings.

(3) This annexation "agency" should not only examine the physical aspects of boundary expansion in determining "necessity and expediency" but also should consider the social and political effects annexation will have on all groups affected.

(4) It is recommended that annexation arbiters have the legal authority to require changes in the city electoral structure in return for annexation awards, if political or racial considerations require such changes.

(5) The annexation "agency" should have the power to deny annexation on racial grounds, if the evidence establishes that the territory is being sought solely or mainly on racial grounds.

If these recommendations are implemented by Virginia's General Assembly, it is anticipated that the consequences of annexation in the 1960s will not be a liability related to the use of annexation in the future.

ENDNOTES

[105]Bain, *op. cit.*, p. 93.

[106]T. Marshall Hahn, Jr., Chairman, The Report of the Virginia Metropolitan Areas Study Commission, Report to the Governor of Virginia, Members of the General Assembly, and Citizens of the Commonwealth, November 15, 1967, p. 17.

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