REPORT OF THE COMMISSION

TO STUDY THE

JUDICIAL BRANCH OF GOVERNMENT

ANNAPOLIS, MARYLAND

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The Honorable Harry R. Hughes
Governor of Maryland

The Honorable James Clark, Jr.
President of the Senate

The Honorable Benjamin R. Cardin
Speaker of the House of Delegates

The Honorable Members of the General
Assembly of Maryland

Gentlemen:

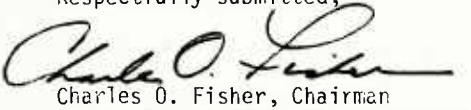
The Commission to Study the Judicial Branch of Government, created by Resolution No. 25 of the 1981 Session of the General Assembly, has completed its study as directed by the Resolution and it is our privilege to report to you the Commission's findings and recommendations which are hereby transmitted to the 1983 Session of the General Assembly.

The Commission conducted 20 public meetings between August 10, 1981, and November 15, 1982. Its meetings were held at various locations in the state and involved a myriad of issues affecting the four levels of Maryland's court system. The testimony from 69 witnesses was considered in reaching the decisions concerning the administration of justice in this state. Recommendations of the Commission are found within the report.

The members of the Commission appreciate the opportunity afforded them to serve, and trust that the results of their efforts will be of benefit to the General Assembly, the judicial system and the citizens of this state.

We will be pleased to meet with you and members of the General Assembly to discuss the Commission's work and its proposals.

Respectfully submitted,



Charles O. Fisher, Chairman
Commission to Study the Judicial
Branch of Government

COMMISSION TO STUDY THE JUDICIAL BRANCH OF GOVERNMENT
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William H. Adkins, II, Esq., State Court Administrator (Nonvoting Member)

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ACKNOWLEDGMENTS

The Commission to Study the Judicial Branch of Government involved the assistance of many people.

Honorable William H. Adkins, II, who until his appointment as a Judge to the Court of Special Appeals was the State Court Administrator and an ex-officio member of the Commission. His contribution to the work of the Commission including the sharing of his expertise on the operations of the judicial branch, the supervision of its research and calendar, and his work on its report were extraordinary and merit our sincere appreciation.

In addition, the following individuals deserve recognition:

Richard W. Friedman, Peter J. Lally, and Michael V. O'Malley for serving as staff to the Commission.

Claudine W. Allen and Alan Tanenbaum for their legal research and drafts of proposed legislation.

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Deborah A. Unitus for staff assistance and editing the final report.

Robert W. McKeever, Deputy State Court Administrator; circuit administrators; and the clerks of the courts for their continued efforts in providing information throughout the study.

The personal staff of the members of the Commission to Study the Judicial Branch of Government.

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I

INTRODUCTION

On January 28, 1981, Chief Judge Robert C. Murphy delivered a State of the Judiciary Address to a joint session of the General Assembly of Maryland. In the course of his remarks he observed:

> Solutions to fundamental judicial branch problems are anything but simple, nor are they exclusively a matter for judges and judicial administrators. To achieve the effective administration of justice under the conditions of the 1980's, within the finite limits of available fiscal resources, requires a thorough study to determine whether modifications of our existing judicial system are needed to make it work more efficiently.[1]

He proposed "the creation, by joint resolution, of ... a commission, with broad-based representation from the three branches of government and from the private sector" which would conduct "an educated, objective review" of "court operations and long- and short-range judicial plans" in order to "serve the public interest."[2]

Following the Chief Judge's Address, Senator J. Joseph Curran, Jr., chairman of the Senate Judicial Proceedings Committee, introduced SJR 67 and Delegate Joseph E. Owens, chairman of the House Judiciary Committee, introduced HJR 91, each designed to provide for the establishment of a Commission to Study the Judicial Branch of Government. The latter was adopted as Resolution No. 25 (See Appendix), and in due course sixteen

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[1] Annual Report of the Maryland Judiciary, 1980-81, p. 32, at 36.

[2] Id.

members were appointed three judges, three senators, three delegates, three members of the Bar, three members of the public, and the State Court Administrator, ex officio (see page v for roster of members). Chaired by Charles O. Fisher, Sr., Esq., then immediate past-president of the Maryland State Bar Association, Inc., the Commission held its organizational meeting on August 10, 1981.

As both the Chief Judge and the Commission members were aware, distinguished commissions have studied the judicial branch over the past four decades. In 1941-42, the Commission on the Judiciary Article of the Constitution of Maryland (the Bond Commission) produced recommendations that resulted in restructuring of the Court of Appeals, the adoption of statewide rules of practice and procedure, and the establishment of a basis for statewide judicial administration. Unsuccessful recommendations of that Commission included a change in the method of electing judges and the consolidation of the six courts of the Supreme Bench of Baltimore City a reform finally adopted in 1980, effective January 1, 1983.[3]

Some ten years after the Bond Commission came the Commission to Study the Judiciary of Maryland (the Burke Commission). Like its predecessor, the Burke Commission proposed Supreme Bench consolidation. It also proposed increases in judicial salaries and pensions, improvements in the juvenile justice system, a family court, and a traffic court in Baltimore City. It listed as subjects for further study the creation of a State Court Administrator (accomplished in 1955), the integration of courts of limited jurisdiction into a general system of state courts (accomplished in 1971),

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[3]See Interim and Final Reports of the Commission to Study the Judiciary Article of the Maryland Constitution (1942).

the establishment of a statewide juvenile court system and a family court, and the abolition of the Orphans' Courts.[4]

From 1965-1967, the Constitutional Convention Commission, chaired by the late H. Vernon Eney, Esq., conducted its studies.[5] It, like the Constitutional Convention of 1967, proposed a complete revision of the Maryland Constitution. With respect to the judiciary, provision was made for four tiers of courts, all fully State-funded and consolidated at each level, merit selection and retention of all judges, and the abolition of Orphans' Courts. Although the proposed constitution was rejected by the voters in May 1968, some of its proposals have since been achieved. These include judicial nominating commissions (1970), the establishment of the District Court with judges who face no election (1971), Supreme Bench consolidation (effective 1983), and the elimination of contested judicial elections for appellate judges (1976).

The Commission on Judicial Reform (the Russell Commission) operated from 1972-1974.[6] Its recommendations as to jurisdiction of the Court of Appeals and the Court of Special Appeals were adopted, as were its proposals as to improvements in the judicial pension system and the operations of the Commission on Judicial Disabilities. Other recommendations failed, such as those to change the names of the appellate courts, and to consolidate and provide State funding for the circuit courts.

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[4] Report of the Commission to Study the Judiciary of Maryland (1953).

[5] Report of the Constitutional Convention Commission (King Brothers 1967).

[6] Final Report of the Commission on Judicial Reform (1974).

This recital demonstrates, as will further appear in subsequent portions of this report, the recurring nature of many issues of judicial reform, the importance of periodic review of important issues affecting the administration of justice in the courts, and the need for persistence in working towards the goal of improvement of the judicial system.

In the tradition of those earlier commissions,[7] Resolution No. 25 has directed us

> to study all aspects of the operations of the Judicial Branch of government, including, but not limited to, consolidation and funding of the circuit courts of the several counties and Baltimore City; the allocation of civil, juvenile and criminal jurisdiction between the circuit courts and the District Court of Maryland; expanded use of masters; the feasibility of a family court; the use of six-member juries in the District Court and in the circuit courts; the decriminalization of nonincarcerable motor vehicle offenses; alternative methods of dispute resolution; the problems of de novo appeals from and demands for jury trials in the District Court; the structure of the appellate courts; and the allocation of appellate jurisdictions....

Some of these issues have been before earlier commissions, and we have drawn upon their work as well as more current information, although we have not always agreed with their conclusions. Others have not been studied by major Maryland commissions, but require review in the light of modern developments in the field of court administration, and the ever-changing political, social, and economic factors that affect the operations of our

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[7]The preceding brief review of the work of some of the more recent major commissions in the field is not intended to detract from the valuable efforts of the Maryland Judicial Conference, Bar Association Committees and sections, the former Legislative Council and other legislative bodies, or special commissions established to study specific topics and issues. There simply is not space to review them all.

courts. Before proceeding to a discussion of these matters, however, we think it useful to outline the structure of Maryland's present court system. It is against this background, as well as against the backdrop of history, that our recommendations have been formulated.

The highest court in Maryland is the Court of Appeals, which celebrated its two-hundredth anniversary in 1978. The court consists of seven judges, sits in Annapolis, and is fully funded by the State. The judges are appointed by the Governor from nominating commission lists, subject to confirmation by the Senate, and stand for ten-year terms in noncompetitive elections. The Chief Judge is the administrative head of the judicial system. He is assisted in the performance of his statewide administrative duties by the State Court Administrator and the Administrative Office of the Courts.

The Court of Appeals has appellate jurisdiction which, except for capital cases, is almost entirely discretionary with it. Through the use of writs of certiorari, it decides which cases it will review. In general, these cases are those of considerable public importance and complexity. It may decide to review a case in the Court of Special Appeals either before or after decision in that court. It may also review certain circuit court decisions by certiorari, when the circuit court has been acting as an appellate court vis a vis the District Court. The Court of Appeals is also responsible for admissions to the bar (through the Board of Law Examiners), for lawyer discipline (through the Attorney Grievance Commission) and for judicial discipline (through the Judicial Disabilities Commission). And it possesses the power to make rules of practice, procedure, and judicial administration which have the effect of law a power it shares with the General Assembly.

At its 1981 Term (September 1981 - August 1982) 175 cases were docketed in the Court of Appeals. During Fiscal 1982, the court disposed of 170 cases and 642 petitions for certiorari.[8]

The intermediate appellate court is the Court of Special Appeals, a court of thirteen judges which, like the Court of Appeals, sits in Annapolis and is fully State-funded. It began operations in 1967. The Chief Judge and associate judges of this court are selected and retained in office in the same manner and for the same terms as are judges of the Court of Appeals.

This intermediate appellate court, with its judges sitting in panels of three, hears appeals as of right from final decisions of the circuit courts and has discretionary jurisdiction over certain prisoner petitions and similar matters. During Fiscal 1982 1,839 appeals were docketed in the court and 1,618 were disposed of, 1,161 of them through either reported or unreported written opinions. In addition, 134 applications for leave to appeal were handled.

Turning now to the trial courts, which produce the grist for the mills of the appellate courts, we first examine the circuit courts. Their present structure derives, essentially, from the Constitution of 1867. There is one such court in each county and, as of January 1983, there will be one in Baltimore City. The circuit courts are staffed by 104 judges, allocated in numbers ranging from 23 in Baltimore City to one in each of the smaller counties. The circuit courts have no chief judge, are basically local county courts, and are funded by a mixture of State and political

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[8] All statistics in this portion of the report are taken from the Annual Report of the Maryland Judiciary, 1981-82.

subdivision appropriations. The judges are appointed by the Governor from nominating commission lists, and subsequently must run in elections, which may be contested, for fifteen-year terms.

These are "the highest common law and equity courts of record exercising original jurisdiction in the State" and each "has full common law and equity powers and jurisdiction in all civil and criminal cases within its counties, and all the additional powers and jurisdiction conferred by the Constitution and by law, except where by law jurisdiction has been limiteo or conferred exclusively upon another tribunal."[9] In short, they are trial courts of general jurisdiction, handling major law, equity, and criminal cases, and juvenile matters in all counties except Montgomery, where juvenile jurisdiction is in the District Court. They act as appellate courts with respect to appeals from the District Court and from administrative agencies. Only in the circuit courts are jury trials available.

In Fiscal 1982, the following filings and terminations were recorded in the circuit courts:

	Law	Equity	Criminal	Juvenile	Total
Filings	21,852	59,781	30,575	26,481	138,689
Terminations	18,810	52,170	28,923	25,074	124,977

The District Court began operations in 1971, replacing a hodge podge of trial magistrates, people's courts, and the Municipal Court of Baltimore. It is a consolidated statewide, State-funded court of limited jurisdiction, with a Chief Judge and 86 associate judges. There is at least one judge in each county and 22 in Baltimore City. The judges are appointed by the

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[9] Courts Article, § 1-501.

Governor from nominating commission lists and, after Senate confirmation, serve for ten-year terms.

In Fiscal 1982, cases filed or processed in the District Court were as follows:

Motor Vehicle	636,427
Criminal	135,447
Civil	509,254
Total	1,281,128

In addition, in Montgomery County, the District Court received 3,269 juvenile case filings and terminated 3,434 juvenile matters.

In each county except Harford and Montgomery there is also an Orphans' Court, consisting of three part-time judges, who may be lawyers or lay people.[10] They are elected for four-year terms in the regular election process. These courts, of relatively ancient lineage, and frequent targets of abolitionist efforts, deal with matters relating to the probate of wills and the administration of decedents' estates. In Harford and Montgomery Counties, this jurisdiction is vested in the circuit court.

The Chief Judge of the Court of Appeals has the power to assign a judge of any court (except an Orphans' Court) to sit in any other court (except an Orphans' Court), thereby permitting him to address problems of congestion of business, illness and disqualification of judges.[11] Also, certain retired judges may be temporarily recalled to active service.[12] These functions are covered by the Maryland Rules of Procedure.[13]

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[10]Md. Const. Art. IV, § 40.

[11]Md. Const. Art. IV, § 18(b).

[12]Md. Const. Art. IV, § 3A.

[13]See Md. Rules 1200-1202.

All of the judges of the State courts, except the judges of the Orphans' Courts, are members of the Maryland Judicial Conference, the chief function of which is "to exchange ideas with respect to the improvement of the administration of justice in Maryland and the judicial system in Maryland."[14]

Aside from the Orphans' Court, costs to support the operations of the judicial branch of government in Maryland approximated $71 million in Fiscal 1982. This includes monies from various sources of funding at both the State and local levels. Through the Judiciary budget, the State expended about $33.3 million (47 percent of the entire judicial branch funding). This involved the salaries of all judges within the State and nonjudicial personnel in the appellate courts, the District Court, the Administrative Office of the Courts, and various court-related agencies. It is interesting to note that $33.3 million represents about six-tenths of one percent of the total State operating budget for Fiscal 1982.

An additional source of funding, fees, court costs, and commissions collected by circuit court clerks, goes to support the operation of those offices. This in Fiscal 1982 amounted to $13.5 million which was not sufficient to cover expenditures of the clerks' offices totaling $16.5 million (or about 23 percent of the entire judicial branch funding). As a result, a gross deficiency of over $3 million materialized, requiring an additional appropriation by the General Assembly. (Note: The actual appropriation was about $2.3 million after taking into consideration surpluses from a few clerks' offices.) Finally, at the local level, nearly $21 million was appropriated by the political subdivisions to support the

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[14]See Md. Rule 1226.

staffs of the circuit courts. This includes a variety of positions, such as masters, secretaries, court reporters, and the like.

In terms of revenues, the State produced through the judicial budget agencies approximately $27.4 million in gross revenues, most of which was derived from motor vehicle cases in the District Court. This does not include approximately $91,656 returned to the local subdivisions for revenues collected on parking violations. In all, the judicial branch employs some 2,858 personnel throughout the State: 735 positions funded at the local level, 895 employees in the circuit court clerks' offices, and 1,228 judicial and nonjudicial personnel funded in the State's judicial budget (including 211 judges).

Noting the general structure of the Maryland judicial system, the work done by earlier study groups, the demands of today's society on the courts, and the charge given to us by Resolution No. 25, we now turn to some of the specific issues raised by that Resolution.

II

THE APPELLATE COURTS

A. Background

Resolution No. 25 (1981) included among the topics to be studied by this Commission "the structure of the appellate courts; and the allocation of appellate jurisdictions." Why these subjects were referred to us, and how we have addressed them, can best be understood in historical context.

Maryland entered the contemporary era of appellate court organization in 1944, with the ratification of the so-called "Bond Amendment" (Ch. 772, Acts of 1943). So far as pertinent to our discussion, that Act amended the Maryland Constitution to provide for a Court of Appeals of five, full-time appellate judges in place of the former eight-judge court, seven of whose judges were trial court judges who served only part-time in their appellate roles.

The Commission on the Judiciary Article of the Constitution of Maryland (the Bond Commission) in explaining why it proposed this change, observed that "Maryland is virtually the only state in which judges of the highest court have regular trial duties." Because of the increasingly complex nature of appellate jurisprudence, the "ever growing mass of decisions, statutes and other ... literature and data with which appellate judges must have ... familiarity," and the need for those judges to be "given ample time to study and reflect" the Commission thought it essential that the judges of

Maryland's highest court devote full time to their appellate duties.[15] The Commission believed that five full-time judges would be "an ample number" to handle the workload of the court.[16]

However, a little more than a decade later, it appeared that this projection had proved inaccurate. In 1957, concerned by what appeared to be an inordinately heavy workload in the Court of Appeals (caused largely by a great increase in criminal appeals) the Maryland State Bar Association appointed a Committee to Study the Caseload of the Court of Appeals. In 1958, that Committee recommended the creation of a four-judge intermediate appellate court, to be known as the Court of Special Appeals.[17] It would have had the jurisdiction prescribed by law, but its initial jurisdiction would have included personal injury and negligence cases, and workmen's compensation cases, in addition to criminal matters.

These recommendations were not adopted; instead, two judges were added to the Court of Appeals, increasing it to its present size of seven (Ch. 11, Acts of 1960). But the caseload problems continued to increase, and in 1965 the State Bar Association approved the report of its Committee on Judicial Administration, which recommended the creation of a five-judge Court of Special Appeals with initial jurisdiction limited to criminal matters.[18]

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[15] Interim Report of the Commission on the Judiciary Article of the Constitution of Maryland (1942) at 3.

[16] Id. at 5.

[17] Report of the Committee to Study the Caseload of the Court of Appeals, 64 Trans. MSBA 393, 410 (1959).

[18] 70 Trans. MSBA 134 (1965). The Committee report is printed beginning at p. 242.

The necessary constitutional amendments (Ch. 10, Acts of 1966) were duly ratified and the Court of Special Appeals began operating in 1967.

As noted in the Report of the Commission on Judicial Reform,[19] the Court's jurisdiction was steadily increased. By January 1, 1975, virtually all cases appealable as of right to an appellate court went to the Court of Special Appeals. With the expansion of jurisdiction, there was an increase in the number of judges, to the present number of thirteen.[20]

These changes had the intended effect of reducing the number of cases filed in the Court of Appeals. However, the caseload of the Court of Special Appeals grew beyond the expectations of its founders the Maryland manifestation of a nationwide increase in appellate litigation.[21] By 1981, Chief Judge Robert C. Murphy characterized the workload of the Court of Special Appeals as "an avalanche of cases."[22] This was one of the problems that persuaded the Chief Judge to urge the legislature to create this commission, subsequently established by Resolution No. 25 of that year.

B. The Nature of the Present Problem

It is beyond dispute that the workload of the Court of Special Appeals is heavy. Since its first full year of operation through the 1981 Term its filings (appeals) have increased from 500 to 1,742 (248 percent). During the same period, the number of judges has increased from 5 to 13

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[19] Final Report of the Commission on Judicial Reform (1974), pp. 15-23.

[20] The thirteenth judgeship was added by Ch. 252, Acts of 1977.

[21] See, generally, Wasby et al., Volume and Delay in State Appellate Courts, (National Center for State Courts 1979).

[22] State of the Judiciary Address, January 28, 1981; Annual Report of the Maryland Judiciary 1980-1981, 32, 35.

(160 percent). Since the creation of the thirteenth judgeship in 1977, filings have gone up by about 23 percent. Table 1 shows some of the details.[23] And while the rapid filing increase recorded from the 1978 to the 1979 Terms seemed to reach its peak in the latter year, we have now been advised that there was a 17.0 percent increase in case filings during the first seven months of the September 1982 Term of the Court of Special Appeals. Filings are not in themselves a precise measure of workload, but they do shed some light on the growth of business before the court.

Moreover, trial court filings and terminations also appear to be on the increase. Even in some areas, such as criminal, where FY 1982 overall filings in the circuit courts appear to have dropped,[24] the more serious cases (felonies) seem to be on the increase. These are ominous data for the circuit courts, because these cases tend to demand more judicial time at the trial level. They are ominous data for the Court of Special Appeals as well, because such cases are more likely to reach that court than are less serious matters.

The nature of the major problem at the appellate level, therefore, is the workload of the Court of Special Appeals. It is a serious problem because unduly heavy workload can (1) tend to affect the quality of decision making in an appellate court and (2) produce delays that are adverse to the interests of both litigants and the general public.

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[23]These data, and much of the other Maryland statistical information contained in this report, are extracted from the Annual Reports of the Maryland Judiciary and their predecessor Annual Reports of the Administrative Office of the Courts.

[24]Apparently, largely as a result of Ch. 608, Acts of 1981, which had the effect of reducing the number of criminal cases transferred from the District to the circuit courts via demand for jury trial.

With respect to the Court of Appeals, the problem appears to be the elapsed time from argument to decision. In the 1981 Term this average elapsed time was 3.1 months. It was 3.7 months in the 1980 Term, having increased from 1.6 months in the 1976 Term. The complex nature of the cases coming before the Court of Appeals as discussed in subsequent portions of this Report may be the primary cause for this delay.

C. Possible Solutions

We have given careful attention to a number of proposals advanced as possible full or partial solutions to the workload problem. These fall into three main areas: structural changes; jurisdictional changes; and procedural and administrative changes. We review them in that order.

1. Structural Changes

a. Merger of the Appellate Courts

The most radical suggestion we have considered is that the Court of Appeals and Court of Special Appeals be merged into a single court (see HB's 1289 and 1995 (1981)).

This notion appears to have been the creature of former Chief Judge Hall Hammond,[25] although it has been espoused by others, most notably the present Chief Judge of the Court of Special Appeals.[26] The outline of this concept has an almost Doric simplicity although not, as we shall show,

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[25]Hammond, "Commemoration of the Two Hundredth Anniversary of the Court of Appeals: A Short History," 38 Md. L. Rev. 229, 241 (1978).

[26]See Gilbert, "Where Do We Go From Here?" Md. Bar J. 18 (Fall 1980). See also Chief Judge Gilbert's testimony before the Commission on August 31, 1981, and that of e.g. Anne Arundel County State's Attorney Warren Duckett, October 5, 1981; and Bernard F. Goldberg, Esq., of Howard County on November 2, 1981.

an equally Doric beauty. The argument has some variations but a typical version may be stated thus:

In the Court of Special Appeals in FY 1981 the ratio of judges to cases terminated was about 1:148. In the Court of Appeals it was about 1:22. If the two courts were merged into a massive twenty-judge court, and if all the cases had been handled there in FY 1981, the ratio of judges to terminations would have been about 1:104. To state it another way, in the Court of Appeals in FY 1981 the average number of opinions per judge was about 21. In the Court of Special Appeals, during the same period, and including unreported opinions, it was about 104. If the two courts were merged into a massive twenty-judge court, and all the cases had been handled there in FY 1981, the average number of opinions per judge would have been only about 75.

This statistical analysis makes it appear that merger solves the workload problem. Unfortunately, the assumption underlying this reasoning is fatally flawed. The assumption is that all cases are fungible. If this is so, then the Court of Appeals, with so many fewer cases than the Court of Special Appeals, must be as underworked as the latter is overburdened. And the unbalanced workload can be eliminated by putting both courts into one large judicial pot and stirring well.

But the assumption is incorrect. All cases are not alike. They vary markedly in difficulty and complexity. Ano the fact that the number of cases handled annually in the Court of Appeals is substantially less than that disposed of by the Court of Special Appeals does not prove that the former Court is underworked.

We do not question the importance of the Court of Special Appeals, or the fact that some of its cases are novel and difficult. The fact remains

that it is intended to be essentially an error-correcting court, while the Court of Appeals is intended as something rather different. As the Committee to Study the Caseload of the Court of Appeals put it, the Court of Appeals has a public as well as a private function. The former is designed "to settle and give authoritative expression to the developing body of the law." To do this:

> The judges of the Court of Appeals should have sufficient time to study thoroughly the cases presented to them; to give full consideration to the briefs and arguments; to reflect upon and consider the legal questions presented, not only from the point of view of the litigants but from the point of view of the law as a logical, coherent and consistent whole; to confer among themselves; to give calm and deliberate judgment; and to write opinions which will "give authoritative expression to the developing body of the law."[27]

Thus, in the Court of Appeals, the widespread use of unreported opinions drafted by central professional staff does not occur. Capital cases, legislative redistricting cases, questions certified from the federal courts, and other matters affecting the jurisprudential development of the laws of the State require extensive study, extensive deliberation, and extensive debate. As the Committee on Judicial Administration said in 1965:

> The judges of the Court of Appeals must be afforded sufficient time to study thoroughly the cases presented to them so that, while maintaining high quality in their work, they can meet their dual responsibility: dispensing justice to individual litigants, and molding the body of the law in Maryland.[28]

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[27] Report of the Commission to Study the Workload of the Court of Appeals, 64 Trans. MSBA 393, 400 (1959).

[28] 70 Trans. MSBA 247 (1965).

In addition to the need to give full and careful attention to the cases actually on its docket, the judges of the Court of Appeals must also review petitions for writs of certiorari, of which 627 were filed in FY 1982. The number of these petitions has grown substantially over the years, far exceeding the applications for leave to appeal filed in the Court of Special Appeals (152 in FY 1982).

And in addition to their adjudicatory responsibilities, the judges of the Court of Appeals devote considerable time and effort to the rule-making activities of that court as well as to such matters as bar admissions and lawyer and judicial discipline. Furthermore, the Court exercises general supervision over agencies such as the Board of Law Examiners, the Attorney Grievance Commission, and the Clients' Security Trust Fund.

We think that the workload of the Court of Appeals is substantial. We agree with the Commission on Judicial Reform that Maryland's highest court should remain essentially a certiorari court.[29] We emphatically reject the view that such a court is somehow a "luxury" that the State cannot afford. Maryland needs a permanent, collegial court of last resort to concentrate "on institutional decisions of major significance"[30] as well as to perform the rule-making and other supervisory functions now vested in the Court of Appeals. Merger of the two appellate courts might provide some statistical relief for the Court of Special Appeals, but the accompanying

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[29] Others supporting this position include, e.g., the present Chief Judge of Court of Appeals, the Maryland Judicial Conference, and the Section of Judicial Administration of the Maryland State Bar Association, Inc.

[30] Klein (Ed.) The Improvement of the Administration of Justice (ABA 6th Ed. 1981). p. 18. See also ABA Standards Relating to Appellate Courts, § 3.00, Commentary. p. 4 (1977).

damage to the administration of justice in Maryland would far outweigh any benefits.[31]

Therefore, we oppose merger of the appellate courts.

b. Divisions of the Court of Special Appeals

Consideration of divisions of the Court of Special Appeals involves two quite different potential approaches. One is the use of geographical divisions, or even separate geographical-based intermediate appellate courts, such as in California, Florida, and New York. The other is the use of subject-matter divisions (e.g., civil and criminal) within the court as it now exists.

The use of geographical divisions would eliminate the element of collegiality as a characteristic of the Court of Special Appeals. It would increase the likelihood of conflicts between the divisions. And there would probably be an increase in the cost of physical facilities and supporting staff. But the major cost element would be produced by the need for additional judges. For geographical divisions, whatever value they may have from the perspective of accessibility of the court to bar and litigants, would do nothing to reduce workload unless more judges were provided.

The same is true of use subject-matter divisions, such as those proposed by former Judge Alfred C. Scanlan.[32] Such divisions could now be established administratively or by rule, and might provide some flexibility,

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[31]The advocates for the merger concept have never satisfactorily explained how their twenty-judge court with its many shifting panels would handle "institutional decisions of major significance," conflicts between panels, or matters such as rule-making. Nor have they paid adequate attention to the administrative problems, both internal and external that a merged court would engender.

[32]Scanlan, "Comments and a Suggestion for Relief of the Staggering Caseload of the Court of Special Appeals," Md. Bar J. 28 (Fall 1980).

and other administrative benefits. But, as Judge Scanlan himself seems to concede, the real effect on reduction of workload would occur only if the creation of divisions were accompanied by the creation of additional judgeships.

We believe that, despite its heavy workload, the Court of Special Appeals now operates effectively, with a maximum of collegiality and a minimum of internal conflict and inconsistency. We think that moving to geographical divisions would be highly undesirable, costly, and counter-productive with respect to the workload problem. The use of subject-matter divisions may have some advantages as an internal administrative device, but would not address the workload issue without the addition of judges.

2. Additional Judges

The traditional way to respond to heavy workload in a court is one that has often been followed in Maryland in the past: addition of judges. In the setting of an appellate court, this approach may have its drawbacks.

First, judgeships are very expensive commodities. At current salary, the cost of adding an associate judge of the Court cf Special Appeals approximates $156,150[33] most of which is an annual expense, increasing as salaries increase.

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	Fiscal 1983
Salary	$60,000
Fringes (pension, health plan, etc.)	35,055
Travel	2,000
Law Clerk Salary	21,100
Law Clerk Fringes	2,766
Secretary Salary (Grade 12 base)	14,666
Secretary Fringes	3,813
Supplies and Equipment for judge and staff (one time initial expense)	6,450
Approx. Annual Cost of Chambers	10,300
	$156,150

Second, there are limits to the size an appellate court can reach without substantially changing the character of its operations. More judges mean increased responsibilities, administrative and otherwise, for the chief judge. More panels produce the problem of more potential conflict between panels, while at the same time the difficulty of resolving conflicts through en banc hearings is increased. More judges also require more physical facilities. At some point, collegiality is overcome by unwieldiness, and thus must be abandoned (e.g., by institution of geographical or other divisions).[34]

There are various measures of the number of judges appropriate to an appellate court. One of the most carefully constructed is explained in the treatise, Justice on Appeal.[35] The standard there proposed contemplates an intermediate appellate court with a structure, caseload, central professional staff, and modus operandi very much like those of the Court of Special Appeals. The standard suggested by the authors of Justice on Appeal is one hundred opinions per judge per year: 25 reported and 75 per curiams.

Table 3 offers data that bear on the application of this standard to the Court of Special Appeals. It displays historical information for FYs 1974-1982 and projections for FYs 1983-1985, produced through linear regression analysis. Since the number of opinions per judge is the focus of our analysis, it is worth noting that the proportion of opinions to appeals filed has declined from a high of 79 percent in FY 1974 to 63 percent in FY 1982. The decline is largely explained by increases in the proportion of

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[34]Note the concerns expressed by the Commission on Judicial Reform, Final Report, pp. 22-23.

[35]Carrington et al., Justice on Appeal (West 1976), pp. 143-146.

dismissals prior to argument (roughly 11 percent in FY 1974 and close to 20 percent in FY 1982) and of cases transferred to the Court of Appeals prior to argument (some 2 percent in FY 1974 and approximately 5 percent in FY 1982). There has also been an increase in the proportion of unreported (per curiam) opinions to total opinions, no doubt reflecting the existence of central professional staff in more recent years, as well as the routine and repetitive nature of many of the issues presented to the Court.

The FY 1982 figures show the Court of Special Appeals to be within the one hundred opinions per judge per year standard. The projections suggest that this standard will be exceeded in FY 1984 and will be more substantially exceeded in FY 1985. These projections, however, take no account of the dramatic increase in filings at the intermediate appellate court level in its present term.[36] But these projections do not take account of the reduction in workload that should be produced by our recommendations as to the treatment of review of convictions following a guilty plea (p. 28, infra). Nor do they reflect the benefits that may accrue from the provision of a second law clerk for each judge (pp. 30-31, infra) or from the expedited appeal process (p. 35, infra). Finally, the projections based on the FY 1982 figures do not consider the reduction in workload that would occur should our recommendation as to juvenile causes be adopted. At pages 49-54, infra, we propose that juvenile jurisdiction be transferred to the District Court, with an on-the-record appeal to the circuit court, followed by discretionary review by the Court of Appeals. Enactment of this recommendation would eliminate juvenile causes from the docket of the Court

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[36] In the first seven months of the September 1982 Term, the Court of Special Appeals experienced an approximate 17 percent increase in filings.

of Special Appeals.[37] It must be recognized, however, that our recommendations can only take effect if they are accepted by the legislature and the Governor. Such acceptance cannot occur immediately and, while legislative and budgetary measures take shape, the intermediate appellate caseload, as recent figures demonstrate, continues to expand.

We cannot ignore the recent dramatic jump in filings in the Court of Special Appeals. The one hundred opinions per judge standard appears likely to be breached in this court term. This development causes us to believe that the creation of an additional judgeship or judgeships appears to be imminent. This addition to the Court of Special Appeals would not mandate, we believe, geographical or subject-matter divisions, and while administrative complexity would be increased, collegiality would not necessarily be destroyed.

3. Jurisdictional Changes

If a court is overburdened with work, one possible response is to reduce intake, either by transferring some of the work to another forum, by creating obstacles to access to the courts, or by preventing access altogether, in some circumstances. We have reviewed all three approaches.

a. Reallocation of Jurisdiction Between the Appellate Courts

As noted earlier in this section of our Report (pp. 12-13), by 1975, virtually all "as of right" appellate jurisdiction had been vested in the Court of Special Appeals, with further review being within the discretion of the Court of Appeals. With the subsequent growth of caseload of the former court have come suggestions that there should be efforts towards equalizing

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[37] In Fiscal 1982, 65 such cases were disposed of by that Court, and 11 others were pending at the end of the year - an annual total of 76 cases.

the burdens on the courts by shifting back some cases to the Court of Appeals. HB 237 of 1981, for example, would have given direct initial appellate jurisdiction to the Court of Appeals in injunction, declaratory judgment, contract and many administrative appeal cases by removing such cases from the jurisdiction of the Court of Special Appeals.

The drafting of this proposal (like the drafting of Title 12 of the Courts Article prior to January 1, 1975) presents its own problems. The attempt is to give the Court of Appeals general jurisdiction of appellate matters except for those specifically listed as being within the jurisdiction of the Court of Special Appeals. While this approach may have been acceptable as a transitional technique pending full transfer of initial jurisdiction to the intermediate appellate court, it is confusing and dangerous as a permanent method of allocating appellate jurisdiction.[38] A few examples will suffice to illustrate some of the problems.

Under HB 237, the Court of Special Appeals would have jurisdiction in breach of warranty cases. Breach of warranty claims are often joined with other contract claims. As to the latter, the Court of Appeals would have jurisdiction. Which court hears a case in which both types of claims appear?

Similarly, HB 237 would give the Court of Special Appeals jurisdiction over a case claiming damages from a nuisance, but the Court of Appeals would have jurisdiction over a case requesting that the nuisance be enjoined. And the Court of Special Appeals would have jurisdiction over tortious interference with the person, but the Court of Appeals would have jurisdiction

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[38] It is also inconsistent with the American Bar Association Standards of Court Organization which urge that "the jurisdictional divisions between courts in a system should be simple." American Bar Association, Standards Relating to Court Organization, § 1.11(b) (1974).

over any claim of damages because of negligent injury to property. Once again, these types of claims are often joined. In such a case, which court would have jurisdiction?

But there are more fundamental objections to the reallocation of jurisdiction as a claimed solution to the problem of workload in the Court of Special Appeals. Such a proposal involves the transfer of one or more categories of cases from the Court of Special Appeals to the Court of Appeals. It assumes, simplistically, that all cases are equal; thus the Court of Appeals is underworked and the Court of Special Appeals overworked.

As we have demonstrated in our discussion of merger of the two courts, this assumption is false. Cases are different, some presenting complex or novel issues of great public importance, others routine issues that can be disposed of by the application of well-established rules of law. Cases in the former class, although few in number, require more time and effort to decide. They are the cases that the highest court of a state should review.

Cases of this type do not necessarily occur within identifiable legal topical areas, such as administrative law, contracts, criminal law, or torts. They must be identified on an individual basis. This is why blanket category transfers, while certainly reducing the work of the Court of Special Appeals, would unnecessarily and undesirably increase the work of the Court of Appeals, making it impossible for that court to consider adequately and expeditiously the institutional and jurisprudential issues most appropriate for its review.

As we have said earlier, we do not believe the Court of Appeals to be underworked and we do not agree that its status as a largely certiorari court is a "luxury." We, therefore, support maintenance of the status quo with respect to allocation of appellate jurisdiction between the two courts.

b. Limiting Access to the Court of Special Appeals

Blanket reallocation of jurisdiction is unacceptable because of the adverse impact it would have on the concept and functioning of the Court of Appeals as an essentially certiorari court. But are there ways in which access to the Court of Special Appeals could be restricted to some degree, without undesirable impact on the Court of Appeals?

Our appellate system presently provides at least one appeal as of right in virtually every finally determined case. In general, we support this principle.[39] In at least one category of case, however, Maryland provides for multiple appeals as of right in many instances. This category is administrative law appeals. In addition to several levels of review in the administrative arena, the final determination in almost every administrative law matter is usually appealable as of right to the circuit court tier of the judicial system. Almost invariably, there is a further appeal as of right to the Court of Special Appeals.

Without violating the "one appeal-as-of-right" principle, it would be possible to make further review of administrative law decisions at the circuit court level discretionary with either the Court of Special Appeals or the Court of Appeals.[40] This could affect an estimated 5-10 percent of the caseload of the Court of Special Appeals. Similar provisions now exist

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[39]This was one of the fundamental principles enunciated by the Commission to Study the Caseload of the Court of Appeals in 1958; see f.n. 27, supra. See Also American Bar Association, Standards Relating to Appellate Courts, § 3.10 (1977).

[40]The latter approach was embodied in SB 379/HB 647 of 19B1, endorseó by the Judicial Conference. See also the First Interim Report of the Committee to Study the Caseload of the Court of Appeals, 63 Trans. MSBA at 314 (1958).

as to further review of District Court cases initially appealed to the circuit court level.[41]

Some administrative law cases are of great public importance; others are of importance chiefly to the litigants. A discretionary review process could distinguish between the two, and keep out of the appellate courts matters already reviewed by several administrative and at least one judicial tribunal. But questions have been raised by the Bar about the adequacy of some of these reviews. Particularly at the Commission meeting of May 10, 1982, these concerns were raised, and the need for appeal to the Court of Special Appeals was urged.

While we see some merit in the limitation of administrative "as-of-right" appeals, when we balance the important economic and individual interests implicated in many of these matters against the rather modest reduction in caseload that would be achieved, we conclude that this proposal should not be adopted. Moreover, there is some benefit in fostering the development of a statewide body of administrative case law - particularly as a guide to the hearing officers and boards which decide administrative law matters in the first instance.

Of course, other ways of limiting access to the Court of Special Appeals may be imagined. For example, review of all cases by that court could be made discretionary. That court could then control its caseload as the Court of Appeals substantially controls its. This proposal, however, seems to cut too deeply, and to vest too much discretion in an intermediate appellate court, the main function of which is error correction.

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[41] Courts Art. §§ 12-302 and 12-305.

Nevertheless, we think there is one narrow area which is appropriate for the addition of discretionary review by the Court of Special Appeals.

Presently, the court exercises discretionary review through an application for leave to appeal procedure, in post conviction, habeas corpus, and Inmate Grievance Commission cases.[42] These are all criminal-law related and for the most part involve collateral attacks on the criminal process, rather than the basic issues of guilt or innocence. We believe that review of a conviction following a plea of guilty should be placed in this same category, and made discretionary. Such a proposal was made by the Judicial Conference in 1979.[43]

A guilty plea is an admission of guilt. When sentence is imposed following such a plea, the factual details of the criminal offense and the issues of guilt or innocence are usually no longer issues for appellate review. Generally, the only appellate issues are whether the plea was knowingly and voluntarily entered with full appreciation of the potential consequences, whether a particular plea bargain was followed, and whether the sentence was lawful. These issues can readily and properly be handled through the application for leave to appeal process. Adoption of this recommendation would affect an estimated 100 cases annually (about 5.8 percent of the courts' 1981 Term filings).[44]

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[42]Art. 27, § 645-I; Courts Art. § 3-707; Art. 41, § 204F(1) and Courts Art. § 12-202.

[43]SB 326 (1979).

[44]At pp. 49-54, infra, we propose that juvenile jurisdiction be transferred to the District Court, with on-the-record appeals to the circuit courts. Subsequent review would be discretionary with the Court of Appeals. Based on FY 1982 figures, this would reduce the Court of Special Appeals workload by an estimated additional 76 cases.

c. Denial of Access to the Court of Special Appeals

It would be legally possible to eliminate the right to appeal (or to apply for leave to appeal) in various categories of cases. For example, there is no constitutional right to appeal in any criminal case.[45] The right of appeals could be denied in other cases involving less than a specified amount of damages. We do not favor such proposals. However meritless some criminal appeals may appear, there are those that have merit. Defining what is frivolous in this context is difficult and as a matter of policy, the general availability of an appeal in a case involving denial of liberty is important. As to denial of access based on dollar amounts or similar categories, the importance of the issues in a case is not always or necessarily indicated by the monetary claims.

Except for the limitation of access in the area of review following guilty pleas, and the areas presently covered by application for leave to appeal procedures, we believe the public interest is well served by adherence to the principle of one appeal as of right in each case.

4. Procedural and Administrative Changes

If there is a theme running through the preceding portions of this discussion, it is (although perhaps not expressly stated) a recognition of the remarkable fashion in which the Court of Special Appeals has maintained both the high quality of its opinions and a notably expeditious handling of its calendar. The summary docket, use of unreported opinions, addition of law clerks, the prehearing conference, and use of central professional staff, have all played a part, and the court and its Chief Judge deserve the

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[45] See letter of Feb. 24, 1982, from Asst. Atty. General Handel to Commissioner Adkins.

highest credit for their innovative and imaginative approaches to the problems of heavy workload. We believe that continued use, and in some cases, expansion of these measures, will go far to address our concerns with the workload of the Court of Special Appeals. We also make one recommendation which relates to additional law clerks in the Court of Appeals.

a. Law Clerks

For many years, each appellate judge has had the assistance of a law clerk. The Chief Judge of each appellate court has had two. The clerk is a law school graduate who normally serves for a single year, assisting the judge for whom he works in reviewing briefs and researching the law. These clerks render material assistance to the busy judge in connection with legal research, the review of petitions for application to leave to appeal (or petitions for certiorari in the Court of Appeals) and the like.

The law clerk issue is important because it bears on effective handling of large numbers of cases (particularly in the Court of Special Appeals) and of complex cases (particularly in the Court of Appeals). The assistance given by law clerks can assist in reducing delay. Consider, first, the situation in the Court of Special Appeals.

Over the period FY 1979-FY 1982 reported opinions in the Court of Special Appeals averaged 206 per year and unreported opinions 913 (See Table 3). These figures produce an average of 16 reported opinions per judge per year and 70 unreported opinions per judge per year. The benefits to be gained through additional law clerk support to handle this work are clear and the cost is modest (annual salary of $21,100 for FY 1983).[46]

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[46] In some jurisdictions the ratio of signed opinions per judge of an intermediate appellate court is much higher for example, 363 in Arizona. 14 IJA Report 5 (Spring 1982).

The addition of law clerks should assist the Court of Special Appeals in maintaining its remarkable disposition rate (average of .87 months from argument to decision in 1981 Term) while at the same time sustaining the quality of the opinions.

At the 1982 session, the General Assembly authorized three additional law clerks for the Court of Special Appeals, as the beginning of a program to provide two clerks for each judge of that court. We strongly recommend the full implementation of this program, so that two clerks for each judge may be provided as soon as feasible. We urge that the necessary nine additional clerk positions be included in the Fiscal 1984 Judiciary budget.

The law clerk problem also affects the Court of Appeals. There, as we have noted, the issue is not so much volume as complexity. The difficult issues the Court of Appeals is required to consider have produced considerable delay in the filing of opinions. At our June 21, 1982, meeting, Chief Judge Murphy advised us that as of that date opinions in 36 percent of the September 1981 Term cases had not been filed. With respect to the September 1980 Term, there was an average time lapse of 3.7 months from argument to decision.

The 1982 General Assembly also authorized three additional law clerks for the Court of Appeals. As a means of reducing the delay we have just noted, we recommend that the 1983 General Assembly provide for three additional law clerks for the Court of Appeals, thereby establishing two clerk positions for each judge by Fiscal 1984.[47]

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[47] A 1979 survey revealed that of the twenty-eight State Supreme Courts above intermediate appellate courts, six authorized two or more law clerks per judge; Marvell et al., "Appellate Courts Facts and Figures" 4 State Court Journal 9, 37 (Spring 1980). The number of such jurisdictions has since increased. This approach is supported by text authorities; see, e.g., Carrington et al., Justice on Appeal (West 1976) at 142.

b. Central Professional Staff

For six years, the Court of Special Appeals has employed central professional staff, as do at least eighteen of the nation's thirty-two state intermediate appellate courts.[48] That staff in the Court of Special Appeals now consists of three lawyers plus secretarial support.

Unlike law clerks, the central professional staff members are not assigned to individual judges, and they are employed on a career basis. They serve as a pool of legal talent, which reviews briefs and records (mainly in routine criminal cases on the summary docket) and which drafts proposed unreported per curiam opinions. This entire process of review, research and drafting is under supervision by and subject to approval of judges of the Court. Chief Judge Gilbert estimates that 36.8 percent of the criminal appeals (as to which there were 870 filed in the 1981 Term, with 46 reported opinions, and 510 unreported opinions) were substantially handled through the professional staff, with consequent reduction of the burden on judges. Other data show that in FY 1982, memoranda were prepared by central professional staff in connection with 321 out of 1,337 opinions filed (24 percent). In addition, this staff prepared memoranda in connection with 112 out of 114 applications for leave to appeal (98 percent).

We support the use of central professional staff in the Court of Special Appeals. Some preliminary activity in the Court of Special Appeals suggests that it may also be of value in some civil as well as many criminal cases. Nevertheless, we recognize that expanding this staff may produce some problems, particularly concerns that cases are being finally decided by persons other than the judges of the court. Therefore, we recommend that

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[48] IJA Report, f.n. 46, supra.

the use of central professional staff be continued and that its involvement in civil matters continue to be explored. We recommend increase in its size only if the court concludes that such an increase would be more beneficial than detrimental to the administration of justice.

c. The Prehearing Conference

In 1980, the Court of Appeals adopted Rules 1022-1024 (and amended certain other Rules) to provide for a prehearing conference procedure in the Court of Special Appeals, on an experimental basis. This procedure applies in civil cases. It offers a mechanism whereby the issues in civil appeals may be reviewed and, when appropriate, placed on a prehearing conference track. When a case is so placed, a judge holds a conference with counsel at an early stage (before briefs and records are filed) "to discuss agreements by the parties as to settlement, dismissal of the appeal, limitation of the issues, contents of the record ... and other pertinent matters."[49]

In the 1981 Term (March 1, 1981 February 28, 1982) 1,082 prehearing information reports were received. Of these, 315 cases (29 percent) were scheduled for conference. In turn, 94 of those cases (almost 30 percent) were fully disposed of as a result of the conference while an additional 11 (105 cases in all) were dismissed or remanded after the conference, although possibly not as a direct result of it. In another 15 cases, the issues were limited. The effect on the workload of the court, without addition of judicial or supporting staff, is obvious. There is also some cost-reduction and delay-reduction advantage for the litigants, when the conference is held.

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[49]Maryland Rule 1024.b. For a valuable discussion of the procedure during its early stages, see Couch, "The New Maryland Appellate Pre-Argument Conference" Md. Bar J. 7 (April 1981).

By Rules Order dated May 7, 1982, the Court of Appeals made the prehearing conference rules permanent. We fully support the addition of this valuable procedural mechanism to the arsenal of the Court of Special Appeals.

d. Oral Argument

Oral argument surely has an important place in the operations of an appellate court. However, not all cases are alike, and in some this process (which is rather consuming of judicial time) may appropriately be limited or even eliminated. Thanks to the adoption of summary calendar procedures (Rule 1038) the Court of Special Appeals has moved appropriately in this direction. We recommend that the Court of Special Appeals continue to review its procedures to reduce further the number of oral arguments, so that such arguments will be scheduled only when useful to the proper disposition of a case.

e. Other Matters

We have reviewed other administrative and procedural proposals designed to assist the appellate courts in handling their business. These include use of oral opinions, "immediate" statement of results with opinion to follow, and shorter opinions with more per curiams.

The use of oral opinions does not seem designed to produce much savings, in time or effort, and could result in careless or confusing statements of the law. Likewise, an "immediate" statement of results, without the benefit of conference and review of an opinion, could be more harmful than helpful in many cases.

Shorter opinions and the use of more per curiams may be helpful, but this can scarcely be legislated or even mandated by a court. It is a matter for individual judgment and effort.

We are pleased to note that the Court of Special Appeals has adopted "Rules for Expedited Appeals" in certain cases, effective September 1, 1982.[50] Like the use of unreported opinions, central professional staff, the summary calendars and the prehearing conference, these procedures recognize that not all appeals are the same, and that some may be processed differently from others. By providing a "fast track" procedure, like that used in such states as California and Colorado, the court will permit the parties to elect a less expensive, more rapid way in which appeals may be handled. This innovation should be beneficial to both the litigants and the court.

A final suggestion with respect to the workload of the Court of Special Appeals has to do with the by-pass authority of the Court of Appeals. As we have indicated, there are two procedures by means of which a case may be transferred to the Court of Appeals prior to full consideration in the Court of Special Appeals. Section 12-101 of the Courts Article permits the Court of Appeals to "issue the writ of certiorari on its own motion." Maryland Rule 1015 permits the Court of Special Appeals to "certify a question of law or the entire matter in controversy to the Court of Appeals to be considered by that Court pursuant to the authority of the Court of Appeals to issue a writ of certiorari on its own motion"; see also Rule 815. Whether the Court of Appeals brings a case up by virtue of its own review or pursuant to certification from the Court of Special Appeals, these mechanisms lie within the control of the appellate courts.

In addition, Rule 812.a. permits a party to file a petition for certiorari in the Court of Appeals after an order for appeal has been filed

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[50] See 9 Md. R. 13 at 1337 (June 25, 1982).

in the Court of Special Appeals, but before decision by the latter court. This procedure lies within the control of the parties. Its exercise in proper cases may reduce delay and expense to the litigants.

We urge the Court of Appeals to exercise its by-pass authority vigorously, and the Court of Special Appeals to expand use of the certification procedure available since 1981 pursuant to Rules 815 and 1015. We also call to the attention of the Bar the desirability of invoking Rule 812.a. at an early point in time in appropriate cases - those that might well eventually come to the Court of Appeals in any event.

5. The Names of the Appellate Courts

When the Court of Special Appeals began operations in 1967, its name was appropriate; the appeals it heard were essentially limited to criminal matters and were, therefore, "special." But the increases in jurisdiction traced in earlier sections of this report have rendered this name non-descriptive of what is clearly Maryland's court of general appellate jurisdiction. Various suggestions have been made as to a more appropriate name.

The Constitutional Convention of 1967 early recognized this problem, and proposed the title "The Intermediate Appellate Court".[51] The Commission on Judicial Reform proposed changing the name of the Court of Special Appeals to the Appellate Court of Maryland and the name of the Court of Appeals to the Supreme Court of Appeals.[52] We feel that both of the name changes make sense and we urge their adoption.

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[51] Proposed Constitution of 1968, Art. 5, § 5.01.

[52] Final Report of the Commission on Judicial Reform (1974) at 25. Legislation to achieve this change was unsuccessful; see SB 683/HB 1155 (1974).

D. Conclusion

We find that the present structural and jurisdictional arrangements for Maryland appellate courts are basically sound and are functioning relatively well. We believe that the system can continue to operate efficiently and can be improved so as to address problems effectively through the adoption of measures we have recommended. We do not favor fundamental changes in the structure or jurisdiction of our appellate courts.

III

THE TRIAL COURTS

A. Background - Bijurisdictional Issues

Resolution No. 25 of 1981 referred to this Commission a number of issues involving the trial courts. Some of these issues can be considered separately with relation either to the circuit courts or the District Court. Others, because they have impact on both levels of trial courts, must be viewed from a bijurisdictional perspective. These include: Reallocation of jurisdiction between the two courts; the treatment of nonincarcerable motor vehicle offenses; and the problems of de novo appeals and demands for jury trial. Why we treat these matters on a bijurisdictional basis will become apparent when we consider the nature of the problem involved.

B. Nature of the Problem

As we see it, the basic issues here are volume and delay. While these same issues were central to our discussion of the appellate courts,[53] they take on a somewhat different form when seen in a trial court context. The problems appear to be more severe at the circuit court level. Although, as we will show, volume (in terms of mere numbers) is much greater in the District Court, the delay problem is much more severe at the circuit court level. Factors that produce this situation no doubt include the greater complexity of many cases handled by the circuit courts, the availability of jury trial, and the apparently inherent time lags involved in domestic relations cases.

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[53] See pp. 13-15, supra.

At our August 31, 1981, meeting, the Hon. Ernest A. Loveless, Jr., chairman of the Conference of Circuit Judges, commented on dragging civil and domestic relations dockets. Similar concerns were noted at other meetings, and related both to delay in bringing matters to trial and delay in reaching decisions.[54]

What has occurred in Maryland with respect to delay is no doubt similar to the experience in other states.[55] Turning specifically to Maryland's circuit courts, we find that in 1955-1956, the longest average lapse from filing a case to trial was 18.7 months, in jury cases in Baltimore City. In the same jurisdiction, the average span from filing to trial was 15.3 months in nonjury law cases, 7 months in equity cases, and 21 days in criminal cases. In the rest of the State, except for the Third Judicial Circuit, where some averages exceeded 13 months, and the Sixth, in which equity cases required 16 months, the average times from filing to trial were less than 12 months.[56]

By 1971-1972, the picture had changed somewhat. For that year, the average filing-to-trial time in law actions statewide was 13.8 months, with a 20.8 month average in Baltimore City. However, in the counties, the average elapsed time in law actions remained at less than a year 9.9 months. While no figures were computed for equity cases, in the criminal area, the statewide average from filing to trial was 5.2 months in jury

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[54]See e.g., Andrew J. Graham, Esq., October 5, 1981; Robert E. Cahill, Esq., and E. Stephen Derby, Esq., November 2, 1981; Commissioner Adkins and Richard Talkin, Esq., November 16, 1981.

[55]See, generally, Church et al., Justice Delayed (National Center for State Courts 1978).

[56]Administrative Office of the Courts, First Annual Report of the Administrative Office of the Courts, 1955-56, pp. 31-38.

cases and 4.4 months in nonjury cases. In Baltimore City, the figures had risen to 7 months in jury cases and 4.9 months in nonjury cases.[57]

Review of the most recent available figures shows an increase in the problem of delay. In Fiscal 1982, the average time from filing to disposition in law actions, statewide, was approximately 15 months, ranging from a high of about 39 months in Allegany County to a low of some 5 months in Talbot County. In equity (other than juvenile) the statewide average was about 9 months, running from a high of 19 months in Allegany County to a low of almost 5 months in Dorchester. Statewide, the average time lapse from filing to disposition in criminal cases was about 5 months, with a high of almost 10 months in Harford County and a low of about 4 months in Baltimore County. In the juvenile area, the statewide average was a relatively quick 3.7 months, but the average elapsed time varied from almost 8 months in Montgomery County to just under a month in Allegany County.[58]

Thus, by way of illustration, in 1955-56, a litigant in a law action could anticipate trial within, at most, an average of a year and one-half after the case was filed. In most of the State, he could assume that trial would take place in less than a year. But some 26 years later, that litigant would have to count on average time lag of over a year, and perhaps as long as more than 3 years, from filing to disposition.

These figures do not place Maryland at the bottom of the list nationally. In Thomas Church's 1978 study he and his colleagues found the

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[57]Administrative Office of the Courts, Seventeenth Annual Report of the Administrative Office of the Courts, 1971-72, pp. 37-41.

[58]Administrative Office of the Courts, Sixth Annual Report of the Maryland Judiciary, 1981-82, Vol. 2, pp. 56.

median time from filing to disposition in civil cases in the Trial Judicial Circuit Court in Detroit to be 61 months.[59] Moreover, it is important to remember that the Maryland figures are averages. Some cases move more quickly, but others take longer. There are, obviously, variations between jurisdictions, although it is not necessarily true that the jurisdictions with the smallest caseloads are always faster than the larger ones. Nevertheless, the data support those witnesses who appeared before us and expressed concern about delay at the circuit court level.

Accompanying the increase in delay outlined above has been a growth in the numbers of cases filed in the circuit courts. In 1955-56, these filings aggregated 42,670.[60] By 1971-72, they had increased to 71,137.[61] And over the next ten years, filings almost doubled, to 141,958.[62] The data, including information as to population and filings per circuit court judge, are displayed in Table 4.

There is not necessarily a straight-line cause and effect relationship between volume and delay.[63] Nevertheless, the reduction of congestion at the circuit court level is a measure that should have some effect on improving the movement of cases in those courts, especially if accompanied by other measures, some of which we discuss below.[64]

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[59] Church, f.n. 55, supra, p. 94.

[60] AOC, First Annual Report, f.n. 56, supra, pp. 15-27.

[61] AOC, Sixteenth Annual Report, f.n. 57, supra, p. 31.

[62] AOC, Sixth Annual Report of the Maryland Judiciary, f.n. 58, supra, pp. 46 and 51.

[63] See, e.g., Church, f.n. 55, supra, pp. 5 and 49.

[64] See pp. 87-89, infra.

We view reduction of caseload as an approach superior to the endless creation of new judgeships as a means of coping with increased caseload. As we have pointed out earlier[65] the conventional approach to dealing with increased workload and increased delay has been the addition of judges.[66] Maryland has added judges over the years, as Table 4 demonstrates. But this is a costly process[67] and its effectiveness in reducing delay may be questioned.[68] One reason for this may be that caseload tends to increase more rapidly, proportionately, than does the number of judges. For example, from FY 1976 through FY 1980, the number of circuit court judgeships increased by just over 14 percent, whereas the number of circuit court

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[65] Pp. 19-20, supra.

[66] See, e.g., Zeisel et al., Delay in the Court (Little-Brown 1959), p. 8.

[67]

	FY 1983	Local Jurisdiction Expenditures
SALARIES		
Judge	58,000	
Secretary		16,350 (average)
Law Clerk		13,625 (average)
Court Reporter		19,620 (average)
Total Salaries	58,000	49,595
OPERATING EXPENSES		
Fringe Benefits	34,001	12,895 (26%)
Communications	75	2,200
Travel	2,110	
Contractual Services	400	1,300
Supplies		1,400
Equipment		7,000
Total Operating Expenses	36,586	24,795
Total Salaries and Operating Expenses	94,586	74,390
Total State plus Local	168,976	(no allowance for physical facilities)

[68] Church, f.n. 55, supra, p. 5.

filings increased by over 23 percent.[69] However, a review of three Maryland counties of varying sizes in which judgeships were increased in 1979 shows little if any reduction in average time from filing to disposition between FY 1979 and FY 1982, even though caseloads in those counties did not increase materially during that period. The data are shown in Table 5.

C. Possible Solutions

If, then, we are to focus on reduction of caseload rather than addition of judges, where do we turn? In our present bijurisdictional context, our first recourse is the District Court.

Table 4 gives overview information as to District Court filings and judgeships, and relates the latter to both filings and population. It is immediately apparent that the load of over 1.28 million cases in FY 1982 (almost 15,000 cases per judge) is massive. But it is handled with remarkable effectiveness by the judges of the District Court. Although detailed time-lapse data like that given for the circuit courts are not available, during our Commission hearings, we heard almost no complaints of undue delay in the District Court.

We thought about the possibility of developing a single level trial court (i.e., merging the circuit and the District Courts together) but that choice did not lend itself to any significant reduction of workload. We next turned to the question of change in jurisdiction. Obviously, a substantial shift of circuit court cases from circuit to District Court could not be accomplished, given present District Court workload, without

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[69] Administrative Office of the Courts, Fourth Annual Report of the Maryland Judiciary 1979-80, Vol. 2, p. 97.

adding District Court judges, supporting staff, and, quite possibly, facilities. Those courses of action would be very costly.[70] As a means of balancing the workload, we believe that nonincarcerable motor vehicle jurisdiction should be removed from the District Court, thereby making room for transfer of all juvenile jurisdiction from the circuit courts to the District Court. In addition, we support the abolition of de novo criminal appeals from the District to the circuit courts. A detailed discussion of our proposals follows.

1. Nonincarcerable Traffic Offenses

Title 21 of the Transportation Article of the Maryland Code sets forth the "rules of the road" for vehicles operating on Maryland's streets and highways. Titles 22 and 23 deal with vehicle equipment. Title 24 covers vehicle size, weight, and load. Title 25 allocates regulatory power between State and local authorities. And Title 27 makes violation of most of the

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[70] District Court judgeships are also costly.

	FY 1983	
SALARIES		
Judge	50,500	
Clerk (Grade 7, Base)	10,491	
Bailiff (Grade 7, Base)	10,491	
Total Salaries		71,482
OPERATING EXPENSES		
Fringe Benefits		
Judge	30,052	
Clerk (26%)	2,728	
Bailiff (26%)	2,728	
Total Fringe Benefits		35,508
Communications	750	
Travel	750	
Contractual Services	1,500	
Supplies and Materials	700	
Equipment Additional	3,000	
Fixed Charges	3,500	
Total Operating Expenses		10,200
Total Salaries and and Operating Expenses		117,190 (includes allowance for physical facilities)

provisions of Titles 21-23 misdemeanors, to be charged and prosecuted pursuant to the provisions of Title 26. With respect to most of the statutes, violation is punishable only by a fine.

Most people do not believe those who violate routine "rules of the road" are criminals. Yet Maryland law characterizes such transgressors as criminals. Why should this be? Criminal sanctions are not appropriate for the violation of minor motor vehicle laws, the purpose of which is not so much to punish the offender, but "to identify the errant driver and to take corrective action designed to prevent the driver from causing injury or damage to himself or others."[71] Noncriminal administrative adjudication of nonincarcerable vehicle offenses offers the potential of expedited and informal procedures and the prompt and flexible imposition of administrative penalties. In addition, by removing a large volume of minor matters from crowded court dockets, it enables judges to concentrate on the disposition of more serious matters of a truly criminal nature.[72] As Chief Judge Sweeney has observed, "[i]t is difficult to contemplate any reasonable argument against the decriminalization of nonjailable motor vehicle offenses."[73]

New York pioneered with decriminalization and administrative adjudication in 1970. Among other jurisdictions that have followed are Rhode Island, the District of Columbia, the City of Seattle, Washington, and three

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[71]Hugel, "Administrative Adjudication, An Idea Whose Time Has Come," University of Baltimore Law Forum (Fall 1982).

[72]Hugel, f.n. 71, supra.

[73]Letter from District Court Chief Judge Robert F. Sweeney to Commission Chairman Charles O. Fisher, Sr., July 15, 1982.

California counties.[74] In 1973, such a proposal was made by a committee of the Bar Association's Section of Judicial Administration.[75] The concept was endorsed by the Section Council and adopted by the State Bar Association in January 1974.[76] In the past several sessions of the General Assembly, a number of bills have been introduced to implement this approach.[77] And a number of those who appeared before our Commission have advocated such a procedure.[78]

We are convinced, and recommend that nonincarcerable vehicle offenses be decriminalized, and be given the status of civil infractions. Adoption of this recommendation will retain as criminal offenses the more serious vehicle matters defined in the Transportation Article; for example, transportation of dangerous substances (§ 21-1411), second or subsequent offense of driving without a license or while ability impaired (§§ 16-101 and 21-902(b)), driving intoxicated (§ 21-902(a)), driving while privilege cancelled, suspended, refused, or revoked (§ 16-303), and fleeing or eluding police (§ 21-904). Of course, the vehicle-related offenses proscribed by Article 27 of the Code, such as unauthorized use (§ 349), manslaughter by automobile (§ 388), and homicide by motor vehicle while intoxicated (§ 388A) would remain in the criminal category.

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[74] Hugel, f.n. 71, supra.

[75] MSBA Report of Minor Traffic Offenses Committee to the Council of the Section of Judicial Administration, (March 1973).

[76] 79 Trans. MSBA No. 2 (1974), p. 145.

[77] HB 1920 (1976), HB 1763 (1978), HJR 65 (1980), HB 1168 (1982).

[78] In addition to Chief Judge Sweeney, these include State's Attorneys Cobb and Duckett (meetings of September 21 and October 5, 1981) and Attorneys Graham, Cahill, and Goldberg (meetings of October 5 and November 2, 1981).

It is, perhaps, easier to decide that nonincarcerable vehicle offenses should be decriminalized and subject to administrative adjudication than to decide within which branch of government the administrative adjudication should occur. Chief Judge Sweeney argues strongly that administrative adjudication should be handled by hearing officers within the District Court. He reasons that because of "the deadly importance of such cases" they should be "dealt with within the judicial branch of government, with appropriate judicial safeguards, by individuals trained in the law, trained in every aspect of due process, and bound by an oath of office and the Canons of Judicial Ethics."[79] This is also the position of the Maryland Judicial Conference[80] and that of the Maryland State Bar Association in 1974.[81]

We believe that administrative adjudication authority should be vested in the executive branch. If minor traffic cases rise to the level of importance perceived by Chief Judge Sweeney, they should be handled by judges, but we do not think that necessary or desirable. There is no reason to assume that hearing officers employed in the District Court would be better qualified and trained and more responsible than those who would be employed by the executive branch. If the executive branch has respect for these matters, it should be able to assure simplicity of administration, cost effectiveness, and the advantages of "a consolidated administrative adjudication system."

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[79]Letter of July 15, 1982, f.n. 73, supra.

[80]Executive Committee Minutes of June 10, 1982.

[81]F.n. 76, supra. It is of some interest that the initial committee report to the Judicial Administration Council (f.n. 75, supra) proposed administrative adjudication in the Motor Vehicle Administration. However, this position was rejected by the Section Council.

We propose, in sum, decriminalization of nonincarcerable traffic offenses, that these matters be treated like municipal infractions so far as financial penalties are concerned, and that these infractions be administratively adjudicated by hearing officers in the executive branch. We recommend that hearings in parking cases be similarly treated. We further recommend that appeals from administrative decisions lie to the District Court and that appeal be on the record, with no further right of appeal. To implement the changes we have proposed will not be simple. Therefore, we suggest that legislation embodying those changes should not take effect until July 1, 1984.

What will the impact of these changes be?

On the basis of information supplied by the District Court, however, it appears that the equivalent of 17 District Court judges are used to handle minor traffic. About 74 clerical personnel are similarly involved. A county by county breakdown is shown in Table 6. The clerical positions could be transferred to the executive branch, should that be desirable.

Revenues provided in the District Court by way of motor vehicle cases amounted to almost $21 million in Fiscal 1982. This figure was approximately 80 percent of District Court revenues in that year. The figure includes all traffic, not just nonincarcerable traffic, and no better breakdown is presently available. (See Table 7.)

2. Juvenile Jurisdiction

The conventional wisdom of court structure favors placing juvenile jurisdiction in the highest trial court level of the State. Reasons asserted include "more status and prestige; higher salaries; better

facilities; attraction and retention of better judges...."[82] This arrangement generally now prevails in Maryland, where the circuit courts have juvenile jurisdiction, except in Montgomery County, where jurisdiction is vested in the District Court; see §§ 3-801(i), 3-804, and 4-403 of the Courts Article.

It has not always been thus here. In addition to the long-standing Montgomery County provisions for handling juvenile causes in a court of limited jurisdiction, Ch. 323, Acts of 1931, provided for a statewide system of magistrates for juvenile causes.[83] And our sister states present a varied picture. Excluding the District of Columbia and the seven states that (in 1980) had or purported to have single-level trial courts, twenty-one of the remaining forty-three gave juvenile matters wholly or partially to courts of limited jurisdiction.[84]

In 1976, pursuant to Ch. 544 of the Acts of that year, Art. IV, § 41A of the Maryland Constitution was amended tc permit the legislature to grant juvenile jurisdiction to the District Court of any county or Baltimore City. Although some bills have been introduced to accomplish this,[85] the General Assembly has not yet accepted the invitation, possibly because the workload of the District Court made such a transfer seem unfeasible. Our recommendation as to the removal of nonincarcerable motor vehicle offenses from the District Court (see the preceding section of this report) addresses that

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[82] Final Report, Maryland Commission on Juvenile Justice (1977), p. 7.

[83] This law was repealed by Ch. 797, Acts of 1945, but even after that date, some juvenile matters were handled at other than circuit court levels.

[84] NCSC State Court Organization 1980 (1982), pp. 134 ff.

[85] For example, HB 299 (1975), HB 619 and HB 1367 (1976), SB 6 (1981), and SB 30 (1982).

problem. If that recommendation is adopted, we see no major obstacle to the transfer of all juvenile jurisdiction to the District Court - an action that, if taken as of July 1, 1981, would have removed over 26,000 juvenile matters from the dockets of the circuit courts.[86]

We do not consider the transfer of juvenile jurisdiction desirable merely because it will relieve congestion in the circuit courts. The prime factor in effective handling of juvenile cases is the interest, concern, and ability of the judge involved. The high reputation of the juvenile court conducted by the District Court in Montgomery County attests to the fact that such judges are available in the District Court. Further evidence is furnished by the competent work done by District Court judges in Cecil, Talbot, and Wicomico Counties, where most juvenile matters are handled by District Court judges, sitting by designation as circuit court judges. Moreover, the supporting services provided by the Juvenile Services Administration and the Department of Human Resources are just as readily available to the District Court as to the circuit courts. The matter was well summarized by the Commission on Juvenile Justice:

> The District Court ... is not an inferior court in terms of quality. This recently-organized, state-funded court has newer equipment, facilities, and mode of operation than many of the locally funded and administered Circuit Courts. It retains assets of the people's courts and trial magistrates it replaced accessibility, speed and a closeness to the community it serves. The statewide administrative structure and funding ensures uniformity in resources, practice and interpretation....
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> The unfortunate connotations of the words "superior" and "inferior" should not be

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[86] Annual Report of the Maryland Judiciary, 1981-82, Vol. 2, p. 79.

> applied to the content [sic] of Maryland's District and Circuit Courts. The fact that an excellent juvenile court now exists on the District Court level ... argues well that no diminution of excellence would necessarily result in a carefully planned District Court for juvenile causes. A good court is not determined by its level, but by the quality of its personnel and supportive services.[87]

We recommend, therefore, that juvenile jurisdiction be transferred to the District Court, effective July 1, 1984,[88] although we think that for ease of administration, juvenile matters pending in the circuit courts on that date should remain there. For the convenience of those involved in juvenile matters, we recommend that the District Court should conduct its juvenile business at a single central location in each political subdivision. And we propose that appeals should be handled like civil appeals from the District Court - to the circuit courts, on-the-record. This allows for further review by petition to the Court of Appeals for certiorari.

As an important adjunct to this change, we further recommend the abolition of the use of masters in juvenile causes. These officers perform much like equity masters, and are used in juvenile cases in Baltimore City and Anne Arundel, Baltimore, Carroll, Harford, Howard, Prince George's and St. Mary's Counties. Some serve on a full-time and some on a part-time basis. In either event, the master's tentative findings and recommendations must be approved by a judge, and if exceptions are taken to a master's report, additional proceedings must be had before a judge.

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[87] Final Report of the Maryland Commission on Juvenile Services, f.n. 82, supra, pp. 8-9.

[88] Although State's Attorney Duckett and Professor Rees opposed this change at our October 9, 1981, and February 1, 1982, meetings, it was supported by Judges Moore and Silver (October 19, 1981) and by Attorney Cahill (November 2, 1981).

There is a degree of duplication of effort involved in the use of masters, but more serious problems involve the use of these officers in quasi-criminal cases, instead of judges. For these and other reasons, the Maryland Judicial Conference, in 1976,[89] and the Commission on Juvenile Justice, in 1977,[90] proposed the abolition of masters in juvenile cases. Most of those who discussed the matter before our Commission favored the elimination of masters, and the trial of juvenile matters before judges only.[91]

Bills to accomplish this purpose have been introduced in the past.[92] Many of the bills were strongly opposed by incumbent juvenile masters, but there were also problems with the fiscal impact, since the earlier bills, particularly, proposed adding circuit court judges to replace some of the masters. This latter difficulty will at least be reduced by transfer of jurisdiction to the District Court, if the workload of that court is cut by our recommendation as to nonincarcerable traffic offenses. Nevertheless, we carefully reviewed the implementation and impact of both the transfer of juvenile jurisdiction and the abolition of juvenile masters, to demonstrate that the recommendations we have adopted in principle are feasible in practice.

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[89] Report of the Juvenile and Family Law Committee to the 1976 Maryland Judicial Conference; see p. 18 of the transcript of the Conference's April 25, 1976, business meeting.

[90] Final Report of the Maryland Commission on Juvenile Justice, f.n. 82, supra, pp. 12-16.

[91] In addition to Professor Rees and Judge Silver, f.n. 88, supra, see the testimony of Judges Karwacki and Woods at our June 7, 1982, meeting; but see the testimony of Judge Weant at the same meeting.

[92] See, e.g. SB 802, HB 691 and HB 1588 (1977); SB 662 and HB 1180 (1978); SB 257 and HB 430 (1980); SB 370 (1981) and SB 29 (1982).

Statewide, it appears that about 18 judges and masters devote their time to juvenile matters. While this is close to the number of judges whose time would be freed by the transfer of nonincarcerable traffic cases to the executive branch (17) on a county by county basis, the equivalent does not always occur. (See Table 6.)

In addition, there are some 57 positions in the circuit court clerks' offices assigned to juvenile work, with about half of them (27) in Baltimore City. These positions could be transferred to the District Court at relatively slight cost. There are also 55-56 locally funded positions (30 in Baltimore City) involved in juvenile work. The cost (or necessity) of transferring these to the District Court has not yet been determined.

In looking at the judicial positions, masters and judges are counted equally. This probably exaggerates to some degree the number of judicial positions needed, and this method of counting should be reexamined. Also appropriate for consideration is the use of circuit-riding District Court judges for juvenile matters in areas like the Eastern Shore and some parts of Western and Southern Maryland (and perhaps other areas) where it is apparent that a county does not require the services of a full-time juvenile judge. This might help resolve the judicial manpower problem, and might also permit a higher degree of selectivity in designating juvenile judges.

3. Trial De Novo

Trial de novo is a mechanism for handling an "appeal" from a court of limited jurisdiction. It is, in fact, not really an appeal, because under the de novo concept, the judgment of the lower court is not reviewed on a record and reversed only for errors of law. Rather, it is a totally new trial in which the proceedings in and judgment of the lower court are effectively treated for most purposes, as nonexistent. When there is

de novo review, the parties, witnesses, and counsel must appear for a full-scale second trial of a matter that has previously been tried and decided by another court. The second court determines the case on the basis of the evidence and law presented to it, which may or may not be the same as that presented at the first trial.[93]

When judges of courts of limited jurisdiction or justices of the peace were often untrained laymen, and when there frequently was no feasible way of making a record in the lower court, de novo appeals were fairly said to be essential ingredients of the judicial system. Now, however, the judges of the lower court are fully qualified and the District Court possesses the capability of making a record subject to review. These present features of the system undercut the rationale for the inconvenience, delay, and expense of the de novo appeal process.

In Maryland, section 12-401(d) of the Courts Article provides for de novo review of District Court judgments in all criminal cases and in cases involving municipal infractions. It also calls for de novo appeals in civil cases where the amount in controversy does not exceed $1,000, unless the parties agree to an on-the-record appeal. In other civil cases, the appeal must be on the record. In a criminal case, the "appellate" court is generally prohibited from imposing a sentence more severe than that imposed in the District Court,[94] but otherwise the de novo "appeal" is in fact a totally new trial. Let us focus, for a moment, on what this means in a criminal case.

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[93]See Hardy v. State, 279 Md. 489, 493 (1977).

[94]Courts Article, § 12-702(c).

A person is charged with a crime in the District Court. An assistant state's attorney, a public defender, the witnesses for the State (including police officers, the victim, and others), and the defendant and defense witnesses appear before a District Court judge. This may be their second or third appearance in the District Court, if continuances have been granted previously. The case is tried and the defendant is convicted and fined. If the defendant appeals, the case is set for a second trial in the circuit court, perhaps months later. The same cast of characters reassembles (if they are all still available) and, perhaps after several more continuances, the case is tried again, de novo. The defendant, if reconvicted, may be subjected to a fine no greater than that levied by the District Court, but the defendant will have delayed the ultimate imposition of the penalty, and the imposition of points (if the case involves a traffic offense). For the defense, the de novo system provides benefits other than delay. Prosecution witnesses may not appear or their memories may fail. New defense witnesses may be produced. The defendant may obtain a lesser punishment or even acquittal. If the defendant is represented by the public defender, he can achieve all this without cost to himself. In short, the defendant has a no-risk, no-cost second full trial.

It is difficult for victims and other members of the public to understand why, after one trial and conviction, and after lengthy delay, there must be a complete second trial, at public expense, in which all the risks are assumed by the prosecution. It is particularly difficult to understand why such procedures are required for relatively minor offenses, whereas a single trial (followed by review on the record) suffices when the charge is murder, rape, robbery, or burglary. If the strongest deterrent to

crime is prompt conviction of the guilty, followed by speedy punishment, the trial de novo system in criminal cases seems especially undesirable.

For reasons such as these, the de novo "appeal in criminal cases" has been strongly criticized. When the State Bar Association Committee on Judicial Administration first proposed the creation of the District Court, it said:

> This [the de novo appeal] means that often the original trial is hardly more than an expensive, time-consuming discovery procedure.... If the district courts [sic] are to become dignified tribunals, some finality ought to be accorded to the decisions of the judges of the courts.[95]

Later, another Committee observed that:

> The American Bar Association, the Maryland State Bar Association and every other organization interested in the administration of justice advocates the abolition of the trial de novo.... There is very little point in ... going to the length of establishing a unified and improved lower court system if two trials will still be necessary to determine a man's guilt or innocence, and two trials will still be necessary to determine the right or wrong of a civil dispute.[96]

Chief Judge Murphy summarized the issue well in his 1977 State of the Judiciary Address to the General Assembly:

> Symbolic of the stagnation which exists in our laws and which fosters delay in the ultimate disposition of criminal cases of unwarranted public expense, and at the same time causes great hardship to victims of crime and those called to appear in court as witnesses, is the so-called de novo appeal in

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[95] MSBA, Report of the Committee on Judicial Administration (1966), p. 19.

[96] MSBA, Report of the Committee on Judicial Administration (1968), p. 14.

> criminal cases from the District Court to the trial courts of general jurisdiction. In these cases, an accused person is found guilty in the District Court and enters an appeal. The guilty verdict is, in effect, expunged and he is given a second full-blown trial, this time before a jury if he wishes, and the victim and all witnesses are required to appear again and go through the entire process a second time. This happened over 5,000 times last year, and that figure promises to be exceeded this year. No wonder the public at large, and particularly the victims of crime, become exasperated with a system which affords, for no sensible reason, two separate and complete trials to an accused person.[97]

To this chorus of voices from the past, we add a reprise by judges and lawyers who made presentations to this Commission. Of the twelve who dealt with the issue of trial de novo, ten favored its abolition.[98] This is also the position of the Maryland Judicial Conference.[99] Only two took positions in favor of retention of trial de novo.[100]

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[97] Annual Report of the Maryland Judiciary, 1976-77, p. 26, at 29. See also Adkins, "The District Court: Past, Present, Future," 3 Md. Bar J., No. 4 (July 1971) 6, 50-51, and Governor's Commission on Law Enforcement and the Administration of Justice, Court Standards and Goals in Maryland (1976) Standard 5-1(a).

[98] Chief Judge Murphy, meeting of June 21, 1982; Chief Judge Sweeney, meeting of August 31, 1981, and letter of July 15, 1982; Judge Loveless, meeting of August 31, 1981; Judge McCullough, meeting of October 19, 1981; Judge Rasin, paper presented at the June 7, 1982, meeting; Judge Fisher, paper presented at the July 17, 1982, meeting; Dean Kelly, paper presented at the October 5, 1981, meeting; State's Attorney Cobb, meeting of September 21, 1981; Attorneys Graham and Goldberg, meetings of October 5, 1981, and November 2, 1981.

[99] Minutes of June 10, 1982, meeting of the Conference's Executive Committee.

[100] Attorney Joseph Murphy, meeting of September 21, 1981, and Delegate Steven Sklar, meeting of May 10, 1982.

While the General Assembly, in creating the District Court, followed urgings like those summarized above by substantially abolishing trial de novo in civil appeals from the District Court, it refused to do so in the criminal area. We now recommend that trial de novo be abolished in criminal cases and in appeals in municipal infraction cases, and that such appeals be heard on the record.[101]

Our principal reasons are based in the public interest in prompt and certain disposition of criminal cases, as well as avoiding the public inconvenience and expense produced by full second trials in certain criminal cases. In Fiscal 1982 there were over 4,000 de novo appeals from the District Court in criminal and motor vehicle cases.[102] Abolition of de novo appeals might have the effect of reducing these numbers somewhat.[103] But in any event, the workload of the circuit courts should be reduced, since the time required to review a record and hear oral argument on an appeal should normally be less than the time required for a full-dress second criminal trial. And even if the abolition of de novo appeals produces lengthier trials in District Court, the overall time required for one trial plus on-the-record review should generally be less than the time required for two full trials. The cost involved in preparing records in

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[101] We think that small claims civil appeals (those involving amounts not exceeding $1,000) should continue to be de novo. The public interest is less implicated in these cases, and in many of them, the parties appear pro se. In such matters, simplicity and avoidance of legal technicalities are important, and are promoted by the present system. In any event, the number of such appeals is small. The Annual Report of the Maryland Judiciary, 1981-82, lists only 556 in the entire State filed in FY 1982.

[102] Annual Report of the Maryland Judiciary, 1981-82, Vol. 2, p. 62.

[103] In Colorado, when de novo appeals were abolished, the number of appeals dropped 55-65 percent, despite an increase in the caseload of the courts of limited jurisdiction in that state; Adkins, f.n. 97, supra, at 51.

criminal and municipal infraction cases should be offset by the elimination of the costs of a second full trial. And, finally, we think the recording equipment now used in the District Court is adequate to preserve records. It has proved sufficient in civil cases, in most instances. If better equipment is needed, it would be desirable to procure it, rather than to perpetuate de novo appeals.[104]

The major argument made by those who would retain de novo appeals is that their abolition will result in increased demands for jury trials in the District Court, thereby causing the circuit courts more work. In past years, the impact on the circuit courts of demands for jury trials filed in the District Court has been serious. However, as the result of a new law which was passed in 1981 (the "Gerstung" bill), jury trial prayers dropped by over 6,000 case filings in Fiscal 1982 (Chapter 608, Acts of 1981).[105] Opponents of change in the de novo system vigorously add other arguments against change. The cost to the Public Defender's Office, in terms of transcripts will be staggering, they suggest. Additionally, they argue that the constitutional underpinning of the "Gerstung" rule will be eliminated if trial de novo is abolished. The opponents further countered that the alleged inconvenience to the public is overdrawn and that a system which may encourage jury prayer demands will also cause witnesses and victims to make multiple court appearances.

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[104] In a recent report, the General Accounting Office has concluded that "[e]lectronic recording systems are a proven alternative to the traditional practice of using court reporters to record judicial proceedings"; GAO, Federal Court Reporting System: Outdated and Loosely Supervised (1982).

[105] Annual Report of the Maryland Judiciary, 1981-82, Vol. I, supra, p. 11.

To reverse the trend, which developed in the wake of the "Gerstung" bill, would be counterproductive from the viewpoint of our interest in reducing circuit court workload. And while the prediction of great increases in jury trial demands is necessarily speculative, we cannot say with certainty that it would not occur. Although the exercise of a demand for jury trial (like a de novo appeal) may more often involve an interest in delay and plea bargaining leverage, rather than a real desire to have a jury trial,[106] it is at least possible that defendants who do not come within the provisions of Ch. 608 but who do not now file jury trial demands in District Court might use different tactics if there were no de novo appeals. Given this possibility, as well as the historically demonstrated difficulties in achieving full abolition of trial de novo and the vigor of opponents of change, we think it useful to explore some possible alternatives to full abolition.[107]

First, one might eliminate de novo appeals (and hence jury trials) in all nonincarcerable criminal cases. But should our recommendations (p. 47, supra) as to decriminalization and administrative handling of nonincarcerable motor vehicle cases be adopted, most nonincarcerable criminal offenses would in any event be removed from the court system. In any event,

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[106] Report of Special Committee to Study Supreme Bench Caseload Increase of District Court Warrant Cases and De Novo Appeals (1978).

[107] SB 6 of 1970, one of the bills to establish the District Court, proposed abolition of de novo appeals, but was amended to eliminate that provision in criminal cases. The same was true of SB 310 and HB 512 of 1971. The former passed the Senate, but the latter, amended to retain de novo appeals in criminal cases, was enacted as Ch. 423 of that year. Since then, abolition of de novo criminal appeals has been proposed by HB 826 (1972), SB 97 (1977), SB 351 (1979) (partial), SB 248 (election of routes) and SB 247 and HB 1815 (1980), SB 66 and HB 119 (1982) (contempt cases), none of which were successful.

the right to jury trial on de novo appeal in nonincarcerable criminal cases was eliminated by Chapter 298, Acts of 1980 (§ 12-401(e) of the Courts Article). Thus, if the purpose of a de novo criminal appeal is to obtain a jury trial, or the plea bargaining leverage that a right to jury trial entails, this result has already been achieved as to nonincarcerable cases.

Another approach might be to eliminate the de novo appeal (and hence the right to jury trial) in any case in which judgment was entered after a plea of guilty in the District Court.[108] We have earlier discussed the lack of necessity for appellate review as of right following guilty pleas in the circuit courts.[109] The undesirability of a full trial in a circuit court for a defendant who has not contested but rather admitted his guilt in the District Court seems equally apparent. We lack data, however, as to the number of cases of this sort.

A third proposal, which might be combined with that just outlined, would be to deny the de novo appeal in any case in which incarceration was not in fact imposed in the District Court. As we have already noted, by virtue of § 12-702(c) of the Courts Article, when there is such a disposition in the District Court, the likelihood of a sentence of incarceration in the circuit court is effectively eliminated. If one of the reasons for providing de novo appeals is to afford the right to jury when imprisonment is a possibility, that reason disappears in cases of this type.

Yet a fourth possibility, which might also be combined with the second and third approaches, would be to deny the de novo appeal if the District

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[108] Such a recommendation was made in 1977 by the MSBA Section of Judicial Administration; Committee on Appeals and Removals; MSBA Section of Judicial Administration Committee Reports (1977), pp. 36-37.

[109] P. 28, supra.

Court has imposed a sentence of no more than ninety days' incarceration.[110] The effect of such a provision would be to define an offense in which no more than ninety days' incarceration has been imposed as a petty offense, as to which there is no right to jury trial.[111] So far as the Federal Constitution is concerned, there is no right to a jury trial for a petty offense.[112] It appears that the result might be the same under the Maryland Constitution.[113]

Maryland now prohibits the filing of a demand for jury trial in the District Court if an offense carries a possible penalty of not more than ninety days' incarceration, and also if the court agrees not to impose punishment of more than ninety days' incarceration.[114] Of course, in cases of this kind, a jury trial is now available on de novo appeal, unless the offense does not carry a penalty of incarceration.[115] To deny trial de novo, and hence a jury, in such petty cases would be but a small extension of existing law.

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[110]This proposal was also advanced in 1977 by the Section of Judicial Administration's Committee on Appeals and Removals; see f.n. 108, supra. As the Committee Report notes, the recommendation is in accord with one made by the Maryland Judicial Conference.

[111]For federal purposes, a petty offense is defined as one punishable by no more than six months in prison and a $500 fine; 18 U.S.C. § 1.

[112]Duncan v. Louisiana, 391 U.S. 145 (1968); see also Smith v. State, 17 Md. App. 217, cert. den. 269 Md. 766 (1973).

[113]Thompson v. State, 278 Md. 41, 52-53 (1976); see also Danner v. State, 89 Md. 220 (1899) and State v. Glenn, 54 Md. 572 (1880).

[114]Section 4-302(d)(2) of the Courts Article.

[115]Hardy v. State, f.n. 93, supra; Thompson v. State, f.n. 113, supra; § 4-401(e) of the Courts Article.

D. Circuit Court Issues

1. Structure and Funding of the Circuit Courts

Among the four tiers of Maryland's courts (Court of Appeals, Court of Special Appeals, circuit courts and District Court), the circuit courts are unique in their organization and funding. At each other court level, centralized management is provided through a chief judge and supporting staff and funding is fully provided through the State Judiciary budget. But at the circuit court level - Maryland's trial courts of general jurisdiction the picture is quite different.

There is a circuit court for each of Maryland's twenty-three counties, and, as of January 1, 1983, there will be one for Baltimore City.[116] The judges of these courts are elected locally, but the number of judgeships is established by the General Assembly.[117] There is no chief judge of the circuit courts. They are administered through circuit administrative judges appointed by the Chief Judge of the Court of Appeals (a circuit administrative judge for each of the eight judicial circuits) and by county administrative judges appointed by each circuit administrative judge with the approval of the Chief Judge of the Court of Appeals.[118] Practice and procedure in these courts are prescribed by rule adopted by the Court of Appeals.

In Fiscal 1983, one hundred four circuit court judgeships are provided. The salaries of these judges are appropriated in the State budget, as are such fringe benefits as pension and health plans, certain travel expenses,

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[116] Const., Art. IV, § 20, as ratified in November 1980.

[117] Const., Art. IV, § 21.

[118] Maryland Rule 1200.

and money for education, and training. FY 1983 State appropriations for the circuit courts (including pension and health benefits) are $9,481,542.[119]

Each circuit court is supported by a clerk's office, headed by a clerk who is an elected, constitutional officer. The personnel of these offices are State employees. Salaries and operating costs are derived from revenues produced by charges imposed by the clerks, and by deficiency appropriations provided by the General Assembly. In FY 1982, there were approximately 900 people staffing the clerk's offices. Revenues were $13,501,327 and expenditures were $16,536,713. The FY 1982 State budget includes a supplemental appropriation of $3,040,000 to support these offices.

The remaining employees at the circuit court level (in excess of 800 including judges' secretaries, law clerks, bailiffs, court reporters and the like) are for the most part county and Baltimore City employees, funded out of the budgets of the political subdivisions. For FY 1982, the appropriations were $20,986,549. The political subdivisions also provide the capital facilities (chiefly courthouses) for the circuit courts.[120]

From the funding point of view, about half of the salaries and operating costs for the Judiciary are regular appropriations in the State budget, while approximately a quarter involves the clerks' offices and another quarter is produced through county appropriations (excluding capital items). Excluding the cost to operate the circuit court clerks' offices,

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[119]See Ch. 125, Acts of 1982 (the Budget Bill).

[120]See, generally, Adkins, "Court Funding and Administration in Maryland" (a paper presented to the Commission on January 4, 1982) and the testimony of William S. Ratchford, II, director of the State Department of Fiscal Services, who appeared before the Commission on July 19, 1982.

the State Judicial budget provides directly only about 20 percent of the funds necessary to operate the circuit courts.[121]

This unusual mixture of organizational, administrative, personnel, and funding arrangements at the circuit court level has produced various proposals for reform, all designed to produce for Maryland a "unified" court system like that visualized by the American Bar Association Standards Relating to Court Organization (1974). The characteristics of such a system are said to be: (1) consolidation and simplification of court structure; (2) centralized management; (3) centralized rule-making; and (4) centralized budgeting.[122] As appears from the preceding discussion, it is at the circuit court level that the Maryland system tends to deviate from these goals.

In Maryland, the Constitutional Convention of 1967 proposed a unified trial court of general jurisdiction fully funded by the State.[123] The Commission on Judicial Reform made a similar recommendation in 1974.[124] The Governor's Commission on Law Enforcement and the Administration of Justice took a similar position in 1976.[125] In 1980, the Task Force to Study State-Local Fiscal Relations urged full State funding of the circuit

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[121]Adkins, f.n. 120, supra.

[122]Berkson et al., Court Unification: History, Politics and Implementation (National Institute of Law Enforcement and Criminal Justice, 1978).

[123]Proposed Constitution of 1968, Art. 5, §§ 5.08 and 5.12.

[124]Final Report of the Commission on Judicial Reform (1974), pp. 65-89.

[125]Court Standards and Goals in Maryland (Governor's Commission on Law Enforcement and the Administration of Justice, 1976), Standard 1-1.

courts.[126] Similar suggestions have been made by a number of witnesses who appeared before this Commission.[127]

No doubt because of the frequency with which this reform has been recommended, Resolution No. 25 of 1981 specifically directed us to study "consolidation and funding of the circuit courts...." Regardless of the frequency of the recommendation for State funding, the idea is not one which has found acceptance in the General Assembly or within the judiciary.

Let us review the arguments presented by the proponents of circuit court consolidation and full State funding.

We are told that the circuit courts are in fact State courts, and thus should be financially supported by the State. The State, it is said, is a more reliable funding source than the several political subdivisions, with their limited (mainly property tax) revenue-raising abilities. Centralized budgeting could produce a more equitable allocation of money, making it possible for the courts in the less wealthy subdivisions to operate with a more substantial level of support.

State funding would also bring with it a State personnel system for court employees, reducing salary differentiation and providing administrative efficiency and flexibility. In addition, savings would be achieved through a central State procurement system.

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[126] See 1979-1980 Report of the Subcommittee on Revenue Structure and Expenditure Patterns, pp. 49-51.

[127] See, e.g., Hon. Robert F. Sweeney, Chief Judge of the District Court, meetings of August 31, 1981, and January 4, 1982; Dean Richard Bartlett, Albany (N.Y.) Law School, meeting of January 4, 1982; the Maryland Association of Counties, meeting of June 7, 1982; and Hon. Robert C. Murphy, Chief Judge of the Court of Appeals, meeting of June 21, 1982.

It is also urged that centralized administration will enhance docket control and delay reduction, as well as establish accountability and responsibility for the administration of the court system.[128]

The issue, however, is not whether consolidation and State funding will produce a more symmetrical organizational chart for the Maryland judiciary. The issue is whether such change would produce a better judicial system in a reasonably cost-effective fashion. At this time in this State, we do not believe that it is politically or practicably feasible to adopt the State funding/consolidation approach. A better case must be made for that approach before it can be successful.

Problems, such as calendar control and delay, are often local in nature. They are caused by factors that arise from differing local circumstances. Many of them can be better resolved by the exercise of local initiative and innovation, rather than by the imposition of theoretical solutions from a distant state capital. County circuit court judges are familiar with conditions in their counties, with the concerns of the public, with the local bar, and with other local officials, such as sheriffs and state's attorneys, whose cooperation is essential to the operation of the courts. They are in a position to present the needs of their courts effectively to local government. As professionals, they tend to work well in a local collegial mode, and to resist the intervention of external hierarchical authority.[129]

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[128]For a fuller discussion of arguments supporting consolidation and State funding, see Standards of Court Organization (ABA 1974); Adkins, f.n. 120 supra, pp. 25; and Berkson et al., f.n. 122, supra.

[129]See, generally, G. Gallas "The Conventional Wisdom of State Court Administration: A Critical Assessment and An Alternative Approach," 2/1 The Justice System Journal 35 (1976).

A State personnel system for court employees would not, necessarily in our view, add efficiency. Again, we are concerned with centralized control, the stifling of local initiative, and the expansion of State bureaucracy. Nor are we convinced that allocation of State funds through the State budget is necessarily a more reliable source of funding for the circuit courts, or a more generous one. While some subdivisions are more able (and perhaps more willing) to support the courts than others, we again assert the value of interaction between local judges and local government, and the lack of evidence of major funding problems in most areas. Moreover, funding through the doctrine of inherent powers is a tool more readily available at the local level.

The doctrine of inherent powers holds that courts are a constitutionally created branch of government whose effective functioning is indispensable. The responsibility of seeing that this function is performed is vested in the courts. Therefore, the courts have implied authority to raise money to sustain their essential functions.[130]

As the Supreme Judicial Court of Massachusetts has put it:

> ... every judge [has] the power to protect his court from impairment resulting from inadequate facilities or a lack of supplies or supporting personnel. To correct such an impairment, a judge may ... obtain the goods and services by appropriate means, including ... ordering the responsible executive official to make payment.[131]

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[130] Hazard, et al., Court Finance and Unitary Budgeting (ABA 1973). See also Carrington, Inherent Powers of the Courts (National College of the State Judiciary, 1973).

[131] O'Coins, Inc. v. Treasurer of County of Worcester, 287 N.E.2d. 608, 612 (Mass. 1972).

The Supreme Court of Pennsylvania has formulated the rule thus: "... the Judiciary must possess [emphasis in original] the inherent power to determine and compel payment of those sums of money which are reasonable and necessary to carry out its mandated responsibilities ...."[132]

The doctrine has been recognized in Maryland, although in a somewhat different context.[133]

The cases applying this doctrine have involved adding positions within a court, setting salaries of court personnel, and furnishing equipment and facilities. It is noteworthy, however, that they almost invariably involve a controversy between a local trial court and a local government. The use of the doctrine against the legislative or executive branches at the State level is rare, probably because of the substantial political risks involved.[134]

We believe that such fiscal problems, as do exist may be addressed (as we will explain below) by an approach less drastic than full State funding. We recognize that in recent years the offices of the circuit court clerks have suffered fiscal problems.[135] However, these offices are not locally funded and their difficulties do not stem from that source. Moreover, at the 1982 session of the General Assembly, a number of bills were enacted to

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[132]Commonwealth ex rel. Carroll v. Tate, 442 Pa. 45, 52, 274 A.2d. 193 197 (1971). See also, e.g. Judges for the Third Judicial Circuit v. County of Wayne, 383 Mich. 10, 172 N.W. 2d. 436 (1969), modified on rehearing, 386 Mich. 1, 190 N.W. 2d. 228 (1971), and Beckert et al. v. Warren et al., 429 A.2d. 776 (Pa. Comm. Ct. 1981).

[133]Atty. Gen. v. Waldron, 289 Md. 683, 690-691 (1981); but cf. Peter v. Prettyman, 62 Md. 566 (1884).

[134]Hazard, f.n. 130, supra, at 3-5.

[135]See the testimony of Chief Deputy Comptroller J. Basil Wisner at our June 7, 1982, meeting.

address these concerns.[136] We think it advisable that consideration of problems of the clerks' offices be deferred until there has been an opportunity to gauge the effects of this legislation.

Nor do we believe that creation of the office of chief judge of the circuit courts, a proposal offered to resolve assumed administrative shortcomings, as an alternative to consolidation,[137] is necessary or desirable.

In sum, we agree with the Conference of Circuit Judges that the circuit courts are operating reasonably well.[138] This is also the position of the Maryland Judicial Conference, which opposes circuit court consolidation, full funding, and the creation of a chief judge for the circuit courts.[139] Existing administrative and rule-making procedures seem to be functioning reasonably well, and provide a sensible balance between central control and local autonomy.

Although we are not persuaded of the need for centralized-budgeting and full State funding for the circuit courts, we are aware that some subdivisions are facing real difficulties in supporting these courts adequately. According to information presented by Director of the Department of Fiscal Services, William S. Ratchford, II, at our July 19, 1982, meeting, in

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[136]Chapters 861, 863, 906, 907, and 915, Acts of 1982.

[137]See Adkins, f.n. 120, supra, pp. 17-18.

[138]See testimony of the Conference's Chairman, Hon. Ernest A. Loveless, Jr., at our August 31, 1981, and June 7, 1982, meetings; see also the testimony of County Administrative Judge William H. McCullough at the October 19, 1981, meeting, and of Hon. J. Dudley Digges, retired associate judge of the Court of Appeals, at the June 7, 1982, meeting.

[139]See minutes of June 2, 1982, meeting of the Executive Committee of the Judicial Conference.

FY 1981, local fiscal support for the circuit courts ranged from a low of 90 cents per capita (population) in Allegany County to a high of $6.38 per capita in Baltimore City. Some of the difficulties were discussed in a statement presented to us on June 7, 1982, on behalf of Mayor William Donald Schaefer, of Baltimore.

One way of preserving a substantial degree of local judicial autonomy, avoiding undue centralization and bureaucratic growth, and at the same time affording aid to needy subdivisions, is the use of state grants. A bill proposing such an approach (HB 1397) was unsuccessful at the 1982 legislative session.

We, too, have reservations about the broad grant proposal contained in HB 1397. However, at our June 7, 1982, meeting, Mr. Ratchford explored with us a number of other grant possibilities. We conclude that one of these should be adopted. It is a grant system based on the per diem juror expense reimbursement now paid by each political subdivision. The amount of this reimbursement in each county (except in Baltimore County) is now set by State law (§ 8-106 of the Courts Article) and is thus subject to reasonable control by the General Assembly. Since the number of jurors called annually in each subdivision is dictated by caseload requirements, there is little likelihood of manipulation at the local level. And the reimbursement of these costs to the subdivisions will provide them with a measure of fiscal relief (something in excess of $2 million in Fiscal 1981 for petit jurors, according to Mr. Ratchford).[140]

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[140]Section 8-106 of the Courts Article provides for per diem expense money for jurors ranging from $20 in Calvert County to $10 in Baltimore City, Prince George's County and Talbot County. All other jurisdictions have a $15 figure. There are many local variations as to supplemental pay for overtime, reimbursement for travel, and the like.

For ease of administration, we recommend that per diem juror expense money be set at a minimum of $15 statewide in all jurisdictions for both petit and grand jurors. We further recommend that legislation be enacted during the 1983 legislative session (and that funds be included in the State Judiciary budget for Fiscal 1984) to provide State reimbursement to each political subdivision in an amount equivalent to $15 per diem per juror. We recognize that each jurisdiction may want to pay an additional expense money (over the $15 State reimbursement rate), travel reimbursement, overtime pay, meal allotments, and the like, but we believe this should depend upon local circumstances and local support. We recommend, therefore, that the State reimburse only at the rate of $15 per juror per day. We estimate this amount to be $3,202,200 for FY 1984, assuming a $15 per diem paid to both grand and petit jurors. If our recommendation as to use of six-member juries in the circuit court is adopted, this estimated cost would be reduced to approximately $2,946,000. A breakdown of both figures by subdivision is shown in Table 8.

2. Six-Member Juries in the Circuit Courts

In many states and in the federal courts, juries of less than twelve are used in certain categories of cases.[141] In 1981, the Maryland Judicial Conference proposed six-person juries in misdemeanor and civil cases, with provision for a twelve-person jury to be provided on petition of

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[141] See ABA, Standards Relating to Juror Use and Management (Tentative Draft, July 1982) at 150.

a party for good cause shown. The proposal contemplated retention of twelve-member juries in felony cases.[142]

The proponents of smaller juries cite cost and time savings and reduced public inconvenience. They also argue that community representation, the decision-making process, and results of trials do not differ materially when smaller juries are used. Opponents, while generally conceding some cost and time benefits, raise serious question about community representation and the quality of decision making.[143]

We have concerns about moving immediately to the use of six-member juries in criminal cases. The liberty values at issue in such cases, and the need for a clearly representative jury to judge between the State and the accused, argue for retention of our traditional juries, at least until more definitive studies are made. However, in the civil area, we think that the advantages of cost and delay reduction as well as the lessening of public inconvenience outweigh the possible drawbacks. The experience with such juries in civil cases in federal courts appears to have been good. Moreover, the information gained through use of smaller juries in this area may shed additional light on their feasibility in criminal cases.

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[142]Transcript, proceedings of the 36th Annual Maryland Judicial Conference (May 7, 1981) at 106, see also the Report of the Conference's Jury Study Committee.

[143]The extensive literature is reviewed in H. Smith "Reducing the Size of Juries in Maryland," a paper prepared for the Courts Administration Seminar at the University of Maryland School of Law (Fall 1981).

We recommend, therefore, that juries of six be required for civil cases in which the parties are entitled to and demand trial by jury.[144] We do not favor the right of a party to petition for a larger jury. The problems of defining good cause would be difficult and the administrative delays would offset some of the benefits. We estimate that this proposal, if implemented in FY 1984, could save approximately $256,200 in juror expense payments.

A question arises, however, as to whether this recommendation may be implemented by statute, or whether an authorizing constitutional amendment is required. With respect to six-member civil juries in the federal courts, the Supreme Court has held that there is no violation of the Seventh Amendment; Colgrove v. Battin.[145] That amendment provides that: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved...." The Court said that this does no more than identify the kinds of cases (suits at common law) in which there is a right to jury trial; it does not speak to jury characteristics, such as size.

But the Maryland Constitution may be read differently by Maryland courts. It has two relevant provisions. Article 5 of the Declaration of Rights says that the inhabitants of this State "are entitled to the Common Law of England and the trial by Jury, according to the course of that Law...." And Article 23 provides that: "The right of trial by Jury of all

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[144]This position is consistent with those of the ABA Standards Relating to Jury Studies, f.n. 141, supra and the MSBA Section of Judicial Administration; see testimony of the Hon. Howard S. Chasanow at the Commission's June 7, 1982, meeting.

[145]413 U.S. 149 (1973).

issues of fact in civil proceedings in the several Courts of Law in this State, where the amount in controversy exceeds the sum of five hundred dollars, shall be inviolably preserved."

The Article 23 provision (formerly Art. XV, § 6 of the Maryland Constitution) is not unlike the language of the Seventh Amendment, except for the use of the adverb "inviolably" before "preserved". The Article 5 provision has no counterpart in the United States Constitution.

The Supreme Court decision in Colgrove was based upon its reasoning in Williams v. Florida[146] in which it held that the Sixth Amendment, as applied to the states through the Fourteenth, did not prohibit six-member juries in state criminal cases, but state court decisions since Williams and in one case since Colgrove have not always found the Supreme Court reasoning persuasive in interpreting state constitutional provision.[147]

While Massachusetts applied the Williams rationale in a case involving a criminal jury,[148] Rhode Island rejected it under a Rhode Island constitutional provision to the effect that the right to jury trial shall remain "inviolate".[149] And Alabama, in Gilbreath v. Wallace concluded that an Alabama constitutional provision providing that "[t]he right to trial by jury shall remain inviolate" prohibited the use of six-person juries in civil cases in that state.[150]

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[146] 399 U.S. 78 (1970).

[147] See Annot. "Statute Reducing Number of Jurors as Violative of Right to Trial by Jury" 47 ALR 3d. 895 (1973).

[148] Opinion of the Justices, 271 N.E.2d. 335 (Mass. 1971).

[149] Advisory Opinion to the Senate, 278 A.2d. 852 (R.I. 1971).

[150] 292 Ala. 267, 292 So.2d., 651 (1974).

Maryland authority is sparse and not particularly in point. Alfred Niles, in his Maryland Constitutional Law, says that: "The trial by jury, to which the inhabitants of Maryland are entitled, is the system of jury trial as recognized by the common law; and reasonable rules and regulations are not within the inhibition of the provision [Art. 5 of the Declaration of Rights]."[151] The principal case cited in support of this statement is Knee v. Baltimore City Passenger Railway[152] in which the Court of Appeals said (87 Md. at 624) that Article 5 of the Declaration of Rights preserves "the historical trial by jury, as it existed when the Constitution of the State was first adopted...." Later, citing with favor certain Pennsylvania cases, (at 633) the court seems to indicate that so long as the right to jury trial is preserved, it may be appropriate to regulate the mode by which it is exercised.

The actual holding in Knee found constitutional a statute requiring payment of costs prior to retrial after an appellate remand. The court found this to be a mere regulation, and, apparently, one that existed at common law. Thus Knee does not tell us much about whether the number of jurors is an essential ingredient of the right to jury trial in civil cases, under the Maryland Constitution.

No other Maryland case is more enlightening, with the possible exception of State v. McKay.[153] That case dealt with the requirement of a

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[151]Niles, Maryland Constitutional Law (1915) p. 18. Niles also suggests, at p. 343, that Art. 5 and the portion of Art. 23 of the Declaration that was formerly Art. XV, § 6 of the Constitution, mean essentially the same thing; therefore, one or the other is surplusage, so far as the right to jury trial is concerned.

[152]87 Md. 623 (1898).

[153]280 Md. 558 (1977).

unanimous jury in a criminal case. The Court of Appeals held that neither Art. 5 nor Art. 21 of the Declaration of Rights provides that unanimity is an essential, unwaivable ingredient of a jury trial. It may be waived. This holding is not particularly surprising or, in our case, helpful. We are not concerned with waiver of a twelve-person jury in civil cases, but with its elimination.

However, the court did refer to the Supreme Court decision in Williams, pointing out that it had raised doubts as to a number of assumptions about what was fundamental to the right to trial by jury. Even more interesting, the court discusses early Maryland practices, pointing out instances of juries of less than twelve (ten and eleven) in Seventeenth Century Maryland. It observes (280 Md. at 568): "Thus, by 1776, Maryland had long since departed from the English common law, by judicial decision or legislative enactment, in permitting waiver of not only trial by jury but also of at least one of its traditional elements, the twelve-man jury."

Here, again, the court is writing in the context of waiver, but there is at least the statement that the jury of less than twelve was known to Maryland jurisprudence prior to 1776. Thus, to use Knee's language, "the historical trial by jury as it existed when the Constitution of the State was first adopted" may not have included a jury of twelve as a fundamental, essential ingredient.

However, to avoid an uncertainty in this area, we recommend that the authority for juries of less than twelve in civil cases be authorized by amendment to Articles 5 and 23 of the Declaration of Rights, and be implemented by statute.

3. Family Court

Stated in basic outline, the notion of a family court comprehends a separate court or a separate division of a court in which all family matters are handled, including matters now processed, in Maryland, sometimes in juvenile court, sometimes in domestic relations court, sometimes in criminal court, and sometimes, perhaps, elsewhere. The ideal is "one family/one judge," as opposed to the present system which may relegate a family with varied problems to diverse courts and judges, each of which may not be aware of all the issues and which, therefore, may sometimes work at cross-purposes. Family unity, administrative convenience, and the need for extensive support staff and agencies, are all cited by family court proponents.[154]

The concept is not unknown in Maryland. It has received legislative consideration,[155] has been studied by the Maryland Judicial Conference[156] and was the subject of an experimental program in the Circuit Court for Prince George's County from June 1977 through June 1979.[157]

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[154]An excellent general overview of the family court concept and its operation in a number of states is found in Hurwitz, "Maryland Family Court," a paper prepared for the Courts Administration Seminar at the University of Maryland School of Law (Fall Semester 1981).

[155]See e.g. HJR 2 and HB 212, both introduced in 1981.

[156]In April 1976, the Maryland Judicial Conference considered and studied the concept of a family court. The Conference supported legislation the following year (SB 455 1977) which called for a statewide family court. This bill failed along with an alternative resolution (SJR 5) which suggested a task force to study appropriate subject matter legislation for the family court.

[157]See testimony of Hon. James H. Taylor at the Commission's October 19, 1981, meeting.

Considerable testimony about the family court was presented to the Commission. Even the proponents were not in full agreement as to what should be attempted. For example, the Section of Family and Juvenile Law of the Maryland State Bar Association advocated a family court to include divorce, custody, support, juvenile, paternity, and adoption matters, as did Judge Robert B. Watts, of the Supreme Bench of Baltimore City.[158] This also appears to be the position of the Montgomery County Commission on Women, although that Commission tends to place special emphasis on the domestic relations element.[159] Others expressed concern about the inclusion of juvenile matters in the family court.[160] Still others either opposed the concept or seriously questioned its feasibility.[161]

To establish a new and separate family court within the Maryland court system may well increase the cost and bureaucracy of the system. We note the reputed failure of the Prince George's County experiment, and we further observe the failure of any family court proponent to cite a single instance in which the concept has in fact been fully realized in practice. On the

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[158]See testimony of Bruce A. Kaufman, Esq., and of Judge Watts, at the Commission's February 1, 1982, meeting.

[159]Testimony of Dorothy R. Fait, Esq., at the Commission's October 19, 1981, meeting; see also Montgomery County Government Commission on Women, Family Law Project Report (May 1981).

[160]See, e.g., testimony of District Court Judge Douglas H. Moore, Jr., at the October 19, 1981, meeting and testimony of Professor Natalie H. Rees on February 1, 1982.

[161]Assistant State's Attorney Alexander J. Palenscar, February 1, 1982; Circuit Administrative Judge Ernest A. Loveless, Jr., August 31, 1981; the Maryland Judicial Conference (minutes of June 10, 1982, meeting of the Conference's Executive Committee).

contrary, family courts in other jurisdictions do not appear to have achieved the high objectives set for them.[162]

In the single-judge circuit court jurisdictions in Maryland (nine counties), there is in effect a family court arrangement, because the judge in general handles all matters that come before the circuit court. In all jurisdictions, the supporting services requisite to an effective family court are to some degree available. There are no indications that the legislature would provide funding for greatly enhanced supporting services were a family court established. We recommend that judges make maximum use of available supporting services in family situations, but we do not recommend the establishment of a Maryland Family Court.

4. Selection of Circuit Judges

A recurring problem is the way circuit judges are selected and retained in office.[163] It has often been suggested that Maryland would be better served if circuit judges were selected after being screened by nominating panels and being tested after appointment by elections in which they run on their record, not against a political opponent.[164] Since 1969, Maryland

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[162]Peter S. Prescott, The Child Savers (Knopf 1981).

[163]In Maryland today, only circuit court judges run for election in real political contests. After being appointed by the Governor, a circuit judge must run at the first biennial "election for Representatives in Congress" which occurs "after one year after" the vacancy in the post filled by the judge. Art. IV, section 5, Md. Const.

District Court judges do not stand for election. They have a 10-year term after appointment by the Governor with the advice and consent of the Senate. Article IV, section 41D, Md. Const. After appointment by the Governor and confirmation by the Senate, appellate judges run in retention elections where the voters "vote yes or no for his retention in office." Art. IV, section 5A, Md. Const.

[164]See, for example, the Report of the Constitutional Convention Commission, August 25, 1967, H. Vernon Eney, chairman.

has utilized, through executive order,[165] nominating panels composed of lawyers and laymen to screen persons seeking judicial appointments. An effort to alter the existing election system failed in 1970.[166] We conclude, however, that the present system of electing circuit judges must be changed if the judiciary is to attract and retain the most able persons on the bench.

There are many points at which our discussion of this issue could begin. We choose, as a starting place, the address of the Honorable Emory H. Niles, an eminent Baltimore City jurist. In 1962, when Judge Niles was the President of the Maryland State Bar Association, he propounded, in the President's Annual Address, what has been known ever since as the "Niles Plan." After noting that the subject of "the proper method of selecting judges" has occupied a place in public discourse "ever since the founding of this Republic," Judge Niles critiqued the existing system in a manner still relevant today. He said in pertinent part:

> ... My point is that political activity and ability are not qualifications for being judge. It is the system which I criticize for making such qualities important factors in the selection.
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> An essential element of reform is the provision that after an initial period of probation, and at the end of his elective term, every judge shall run upon his record, and not against an opposing candidate. The question upon the ballot would be 'Shall Judge X be retained in office for another term?' 'Answer Yes or No.'

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[165] See Executive Orders 01.01.1974.23; 01.01.1977.08; and 01.01.1979.08.

[166] Ch. 791, 1969 Laws of Maryland, was defeated by a vote of 256,688 for, 272,232 against at the 1970 General Election.

On the merits, I challenge any person to devise a better test for deciding whether a given judge should be retained than the test of whether he has been a good judge. There is no other rational test. Our present test is whether he can get more votes than the aspirant for his place by making speeches, or kissing babies, or buying glaring signs and posting them upon billboards, or by making a deal with a boss or bosslets, or by that other ancient method now euphemistically described as contributing money to party funds or paying appropriate 'expenses' on election day.

The present situation in Maryland is almost laughably self-contradictory. After an appointment has been made, the new judge serves for a probation period of a year or so until the next general election. The theory is that he is on probation. But when that general election comes around, any candidate, loudmouthed or discreet, rich or poor, trained or untrained, male or female, but never tested as to his ability as a judge, never having served a probationary period, may be elected for the full fifteen-year term! We pervert the valid principle of probation to favor the candidates who have never been on probation.

... Under our present system it is difficult to get first-rate lawyers to give up their practices to run in political contests, to submit themselves to the ordeal of a campaign, and to take their chances on the outcome of a contest in which conscientious and able work may not be rewarded by continuance in office.

For good reason it is difficult. I do not have to mention names to remind you of the disasters of recent years and the injustices done to lawyers who have been persuaded to take these risks and then, having performed well, have been defeated.

Is it a good answer to say: 'Well, we've got good judges, haven't we?' I do not think so. If a motorist drives at 90 miles per hour on a public highway, is it a good answer to criticism for him to say: 'Well, I didn't hit anybody, did I?'

> ... The simple fact is that election is not in our modern urban society the best way to select judges. In no civilized country in the world except the United States are judges chosen by popular election.
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> ... A judge is not a person to carry out the policies of a political party. He may at one time have been; he is today in Soviet Russia. A judge is a person learned in the law whose function is to administer the law in accordance with established basic principles.
>
> The qualities required for a good judge are not those which are likely to win elections. We are familiar with the qualities needed: integrity, courage, learning and judicial temperament. They are not loud speaking, a flair for popularity, a glib tongue or political ambition or alliance.
>
> Would anyone choose a surgeon or a professor of surgery by popular election? In government does one choose an officer requiring technical qualifications by popular election, such as a water engineer, or director of public works?[167]

While this Commission has been functioning, the epidemic of political challenges to appointed circuit court judges has spread from Baltimore City to a number of the counties. We have seen a district judge challenge a circuit judge.[168] In one county, four incumbent judges withstood a challenge, while in another political subdivision four incumbent judges were forced into a five-way general election for four judicial posts when a challenger was nominated in one of the two major party primary elections.

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[167] See Address of President, Hon. Emory H. Niles, 1962 Proceedings of the Maryland State Bar Association, pp. 379-391.

[168] Thereafter, the district judge asked for temporary assignments outside his county to avoid any charges that he favored those who supported his candidacy. District judges from other jurisdictions handled his normal assignment by temporary rotation and assignment.

And, in Baltimore City, an incumbent, after 17 years of judicial service, was not nominated by either party; in Baltimore City, a general election for three judicial seats included two incumbents and three lawyers. The final result was the election of only one appointed judge. This political spectacle and its results throughout the State confirm Judge Niles' oratory -- is it a spectacle and are the results what is best for Maryland? We think not.

During our deliberations, a number of views opposed to the present system were expressed. Some noted the diminished image of the judiciary which occurs when judges, in the midst of political contests, must seek (implore) contributions from those who practice or appear in the courts. The political aspects of the campaigns and the disparity between what makes an electable candidate and what makes a good judge were discussed. Further, it was noted that a particular burden is placed on a judge who, after serving a fifteen-year term and being forbidden by the canons of judicial ethics from political activity,[169] must seek election after reappointment. Finally, the financial sacrifice facing an accomplished lawyer when taking a judgeship was viewed as price enough for service; to force such person into the political cauldron, while forcing the relinquishment of a practice, was viewed as a deterrent to attracting the most capable lawyers to the bench.

We recommend that circuit judges be appointed, as now, by the Governor from lists submitted by a judicial nominating commission. We urge the Governor to support and the General Assembly to approve a constitutional amendment which will allow circuit judges, after appointment and the service

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[169] Canon XXVII.

of a period of time as a judge, to run in elections on their record for a ten-year term. We commend to the voters of Maryland the need for such change in our existing selection system.

We recognize, however, the prior suggestions of this nature have not wrought change in the existing system. While we regret that condition, we recognize it as a reality and in face of that reality offer certain alternatives which, while not wholly satisfactory, would offer improvements over our existing system.

Before turning to the alternatives, we reiterate our belief that Maryland's voters should again be asked to eliminate contested elections for the State's circuit judges. If that approach is not adopted, there are four piecemeal changes which, if adopted, would improve the election process for circuit judges. First, we suggest that if any judge is nominated by both parties, the judge should be deemed elected.[170] Alternatively, circuit judges could be placed before the electorate -- even in contests -- only in the general election.[171] Another piecemeal suggestion would be to have circuit judges run for designated judicial positions so that a challenger would not run against the array but rather against a designated sitting judge. A final suggestion -- one adopted, we note, in Pennsylvania -- would

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[170]This proposal would have meant, for example, that the three "sitting judges" nominated by both the parties in Baltimore County would not have been forced to run in the general election. They -- the three -- would have been deemed elected. The one sitting judge nominated by one party and the challenger nominated by the other party would have run head-to-head in the general election for a single judicial position.

[171]Such proposal would lessen the costs of elections.

be to alter the method of electing judges who run after serving a fifteen-year term; they would face a "yes" or "no" vote, not any challenger.[172]

5. Other Matters

The Commission reviewed a number of other matters related to circuit courts but for one reason or another did not make specific recommendations. The reduction in the number of peremptory challenges was one item discussed somewhat at length during the last meetings of the Commission. The Maryland Judicial Conference proposal to allow 20 peremptory challenges (both for the State and defense) in capital offense cases, 8 peremptory challenges in cases involving a sentence of 20 years or more and 4 peremptory challenges in all other cases, was considered and not endorsed by the Commission.[173] While most Commission members agreed that it was a desirable objective to reduce the number of peremptory challenges, particularly in cases where they are not used, the Commission held some reservations about the idea of equalizing the number of peremptory challenges for both the State and the defense. The concern here was that in those jurisdictions where there is a long term of service for jury duty, the prosecutor already has an edge in terms of seasoned jurors and knowing how jurors voted in previous cases. Equalizing peremptory challenges would give the State just that much more of

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[172]It is anomalous to force a judge to refrain from political activity while on the bench and, then, after 15 years of oblivion, to face the electorate against any person who chooses to challenge. After a 15-year term of service, a circuit judge's record is clear and susceptible to approval by the electorate on a "yes" or "no" basis.

[173]See HB 700 and SB 321 submitted during the 1982 session of the General Assembly.

an advantage -- something defense attorneys suggest to be unfair unless shorter terms of jury duty are adopted.[174]

Another subject area considered by the Commission was the issue of the use of arbitration and alternative dispute resolution programs. The Commission received testimony from the Honorable John F. Fader, II, chairman of the State Bar Association's Special Joint Committee on Alternative Methods of Settling Disputes and the Honorable Arthur J. Simpson, Jr., chairman of the ABA Committee on the Implementation of Standards of Judicial Administration, who were both enthusiastic about arbitration and dispute resolution programs but suggested that they only be considered when a court is burdened by caseload volume and delay.[175] In New Jersey, for example, where Judge Simpson piloted a program on arbitration, the court was experiencing a delay in the disposition of cases of over two and a half years. In general, we feel that the time is not "ripe" for arbitration programs in Maryland at least at the circuit court level. We can foresee that in the future these programs may be a viable alternative particularly in dealing with such areas as the resolution of property disputes in domestic relations cases. In the District Court, we feel that the small claims court process works well and no significant delay problems exist, at least not enough to justify the creation of alternative resolution programs.

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[174]Two jurisdictions in Maryland, Montgomery County and Baltimore City, have implemented One Day/One Trial Systems which call in petit jurors for one day or the length of the trial. These systems have been very successful in improving juror satisfaction and the representativeness of juries and at the same time have not resulted in any substantial increases in monetary awards.

[175]See testimony of Hon. John F. Fader, II, and Jo Benson Fogel, Esquire, at the June 7, 1982, meeting of the Commission, and Hon. Arthur J. Simpson, Jr., at the September 20, 1982, meeting of the Commission.

Finally, the Commission did take up the subject of judicial accountability especially during the seventh meeting of the Commission held in Columbia, Maryland. While there may be pockets of delay with individual judges in certain areas of the State, we feel that in the main trial judges do an excellent job in rendering timely opinions. When excessive numbers of sub-curia opinions are outstanding, this should be the responsibility of the administrative judge working in concert with local bar association committees on bench/bar relations to rectify this problem immediately. In short, we feel that positive criticism can render good relations between the bench and the bar and at the same time produce good impressions with those litigants coming in contact with the courts.

E. District Court Issues

1. Background

Since its creation in 1971, the District Court has operated in an exemplary fashion as a statewide, State-funded court of limited jurisdiction. With its complement of 87 judges and over 800 nonjudicial positions, it has brought high-quality, prompt, accessible justice to the people of Maryland, despite its present massive caseload of over 1.28 million cases per year. Perhaps because of its history of effectiveness, Resolution No. 25 directed us to only a few issues involving the District Court. These include allocation of jurisdiction between the District and circuit courts, the use of six-member juries in the District Court, the decriminalization of nonincarcerable motor vehicle offenses and "the problems of de novo appeals and demands for jury trial ...."

2. Jurisdiction, Nonincarcerable Motor Vehicle Offenses; Trial De Novo

Earlier in this report, we have recommended the decriminalization of nonincarcerable motor vehicle offenses and the transfer of such matters to the executive branch.[176] We have also proposed the transfer of juvenile jurisdiction from the circuit courts to the District Court.[177] Beyond these changes, we do not suggest other modifications of District Court jurisdiction, or further reallocation of jurisdiction between the two trial courts. Specifically, the Commission considered and rejected the amalgamation of the circuit and District Courts and we believe the two-tier trial court system in Maryland is the proper system for the foreseeable future.

District Court jurisdiction has been expanded from time to time over the years. The more important of the most recent changes have included expanding concurrent felony theft jurisdiction in 1980 and 1981;[178] providing concurrent protection from domestic violence jurisdiction in 1980;[179] and extending from $5,000 to $10,000 the limits of concurrent civil jurisdiction in 1981.[180] We believe that the present jurisdictional allocations are reasonable and provide flexibility; we have not been presented with evidence that they are producing difficulties or that justice could be more fairly administered were they modified. Also, while District Court judges have demonstrated the capacity to handle cases of various types

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[176] See pp. 45-49, supra.

[177] See pp. 49-54, supra.

[178] Ch. 468, Acts of 1980; Chs. 608 and 757, Acts of 1981.

[179] Ch. 887, Acts of 1980.

[180] Ch. 758, Acts of 1981.

and complexities, we are not convinced that the court, or the public it serves, would be benefited by jurisdictional increases at this time. Expeditious handling of cases is important to litigants in the District Court. Expanding criminal and civil jurisdictional areas and amounts could be detrimental to the continuing achievement of this goal.

Furthermore, we think it desirable that the District Court have time to adjust to the new juvenile jurisdiction we have recommended, before any other substantial jurisdictional increases are provided. This particular change will also relieve the circuit courts of some workload, thus reducing the need to transfer other present circuit court jurisdictions to the District Court.

As to trial de novo and demands for jury trial, we have already made recommendations in this regard.[181]

3. Six-Member Juries in the District Court

Closely related to the issues of trial de novo and jury trial demands in the District Court is the use of six-member juries in the District Court. These matters are related because the proponents of juries in the District Court offer this device as a means of handling de novo trials without abolishing them altogether, and as a way of reducing circuit court congestion by eliminating some jury trials at that level.[182]

As the supporters of this proposal point out, the use of juries of less than twelve in courts of limited jurisdiction or in controversies involving limited sums is fairly widespread. A recent study indicates the existence

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[181] See pp. 54-63, supra.

[182] Testimony of Judges B. Lavine and Klavan (June 7 and July 19, 1982); Chief Judge Sweeney's letter of July 15, 1982.

of such arrangements in some twenty-four states,[183] and Judge Klavan, in his presentation to us, estimated that 63 to 64 percent of the states have juries in their courts of limited jurisdiction.[184] It may well be, too, that District Court physical facilities are adequate to handle small juries[185] and that the logistics of juror usage could be resolved by procedures whereby the District Court would "rent" jurors from the local circuit court. These data, at best, show that it might be feasible to have six-member juries in the District Court; they do not demonstrate the desirability of this approach.

As we have just observed, the Commission has recommended the abolition of the trial de novo. Should this recommendation be adopted, even in modified form, one argument for juries in the District Court would be eliminated. For us to press for juries in the District Court so that de novo trials could be held there would, moreover, undercut our position that trial de novo should be abolished altogether.

Nor do we perceive the need for establishing District Court juries as a means of reducing the number of cases transferred to the circuit courts via demand for jury trial. We repeat what we have previously noted:[186] Thanks to the operation of Ch. 608, Acts of 1981, in Fiscal 1982 the number of demands for jury trial in criminal and motor vehicle cases (such demands are insignificant on the civil side) dropped to 6,248 from a high of 12,290 in Fiscal 1981. At the same time, the number of criminal and motor vehicle

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[183] NCSC State Court Organization 1980, (1982), Table 35.

[184] Minutes of Meeting of July 19, 1982, p. 3.

[185] Chief Judge Sweeney's letter of July 15, 1982.

[186] Pp. 54-63, supra.

appeals remained essentially stable -- the drop in jury trial demands apparently produced no significant increase in appeals.[187]

The District Court judges are the key to implementation of Ch. 608; if they continue to use if fairly and effectively, it will continue to achieve its salutary purpose of avoiding unnecessary demands for jury trial.[188]

At present, then, there appears to be no urgent reason to place juries in the District Court. There do appear to be reasons for not using juries there, absent the existence of some pressing problem at the circuit court level that would be resolved by juries in the District Court. These reasons include the great importance of retaining the District Court as a tribunal in which simplicity and expedition prevail. Juries would work counter to this concept, and would add some cost as well. Therefore, we recommend that six-person juries not be established in the District Court.[189]

4. Commissioner Issues

Article IV, section 41G of the Maryland Constitution provides:

> There shall be district court commissioners in the number and with the qualifications and compensation prescribed by law. Commissioners in a district shall be appointed by and serve at the pleasure of the Administrative Judge of the district, subject to the

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[187] Annual Report of the Maryland Judiciary, 1981-82, Vol. 2, pp. 62-63.

[188] We are aware that the validity of Ch. 608 is being litigated in both State and Federal courts. We hope the Act will be sustained. Should it be voided, however, that will be the time to consider appropriate alternatives.

[189] With the exception of Judges Klavan, Lavine, and Sweeney, those who discussed this issue before the Commission opposed six-member juries in the District Court; see the comments of Judge McCullough (October 19, 1981); State's Attorneys Cobb and Duckett (September 21 and October 5, 1981); and Attorneys Derby, Goldberg, and Lee (November 2, 1981, and April 22, 1982).

> approval of the Chief Judge of the District Court. Commissioners may exercise power only with respect to warrants of arrest, or bail or collateral or other terms of pre-trial release pending hearing, or incarceration pending hearing, and then only as proscribed by law or rules.[190]

This language, the last sentence of which was copied verbatim from section 5.12 of the proposed Constitution of 1968, demonstrates the important responsibilities District Court commissioners exercise in our criminal justice system. It is they who often have the initial duty of deciding when to issue or not to issue charging documents in a criminal case. It is they who decide whether a defendant shall be jailed or released pending hearing, and if released, upon what terms.

The Commission has heard concerns about the unavailability of commissioners in some jurisdictions, and about the competence of some commissioners. We note that the only statutory qualifications for commissioners are that they "be adult residents of the counties in which they serve, but they need not be lawyers."[191] We are advised that full-time commissioners generally enter State service in pay grade 10 ($12,718-$16,338) and that the highest pay grade they may attain is grade 13 for a supervising commissioner ($15,786-$20,719).

We do not intimate that all commissioners are not fully competent. We are sure that many commissioners are conscientious and able individuals. Yet we think that the low pay scale for these important officers is not designed always to attract and retain those most capable of performing the

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[190] See also section 2-607(c) of the Courts Article; Article 27, section 616 1/2 and MDR's 702, 710-713, 720-723.

[191] Section 2-607(a) of the Courts Article.

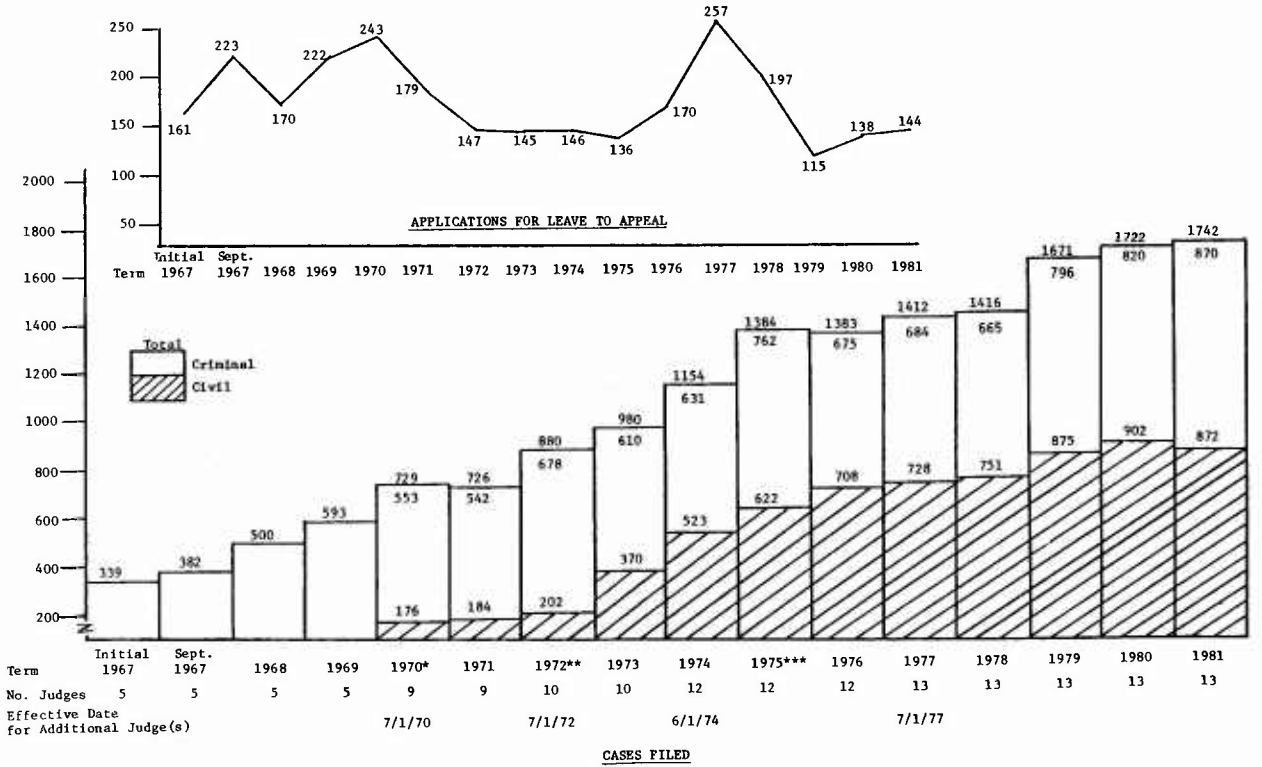
critical responsibilities of commissioners. The existing lack of prescribed qualifications is understandable only in light of the inadequate salary.

To enhance the quality of the corps of commissioners, we recommend that the Chief Judge of the District Court propose and the General Assembly adopt more stringent qualifications, and that the compensation of commissioners be raised, commensurate with increased qualifications.

And while we are aware that the District Court conducts regular training for both new and veteran commissioners, we further recommend that training activity be augmented, in order to equip commissioners to perform their duties which are so vital both to the public interest and to the individual charged with crime.

IV. TABLES AND CHARTS

TABLE 1
THE COURT OF SPECIAL APPEALS
INITIAL TERM 1967 THROUGH 1981 TERM



* 1970 Art. 5, 5a expanded jurisdiction into the civil area.
** 1972 further expansion of civil jurisdiction.
*** Effective January 1, 1975, exclusive initial appellate jurisdiction except for what the Court of Appeals has jurisdiction over.

TABLE 2

FIVE-YEAR COMPARATIVE TABLE
LAW CASES
FILINGS AND TERMINATIONS

FISCAL 1978 - FISCAL 1982

	COMBINED ORIGINAL AND REOPENED CASES FILED AND TERMINATED						COMBINED ORIGINAL CASES FILED AND TERMINATED AND REOPENED CASES HEARD			
	1977-78		1978-79		1979-80		1980-81		1981-82	
	F	T	F	T	F	T	F	T	F	T
FIRST CIRCUIT	934	952	960	867	962	993	758	616	661	668
Dorchester	181	162	191	169	201	185	108	93	112	64
Somerset	81	62	94	72	87	129	34	28	34	43
Wicomico	205	235	224	189	248	247	235	202	185	202
Worcester	467	466	451	437	426	432	381	293	330	359
SECOND CIRCUIT	735	652	618	573	668	608	500	365	507	538
Caroline	56	54	51	43	75	67	90	66	60	79
Cecil	421	383	306	297	280	241	188	131	196	201
Kent	73	60	54	68	77	58	63	71	50	54
Queen Anne's	76	86	112	106	116	96	76	77	82	90
Talbot	109	69	95	59	120	146	83	20	119	114
THIRD CIRCUIT	3,074	2,479	3,399	3,023	3,996	3,474	3,629	3,587	3,447	3,300
Baltimore	2,621	2,066	2,889	2,513	3,376	2,985	3,081	3,125	2,919	2,847
Harford	453	413	510	510	620	489	548	462	528	453
FOURTH CIRCUIT	1,015	842	1,020	790	1,110	792	713	569	665	1,172
Allegany	445	253	437	289	442	225	316	165	222	706
Garrett	141	129	142	123	154	149	88	98	98	115
Washington	429	460	441	378	514	418	309	306	345	351
FIFTH CIRCUIT	3,686	3,084	3,530	2,913	3,865	4,069	2,625	2,076	2,463	2,286
Anne Arundel	2,548	2,259	2,434	2,072	2,554	2,569	1,717	1,227	1,637	1,560
Carroll	408	321	441	325	506	596	280	253	270	281
Howard	730	504	655	516	805	904	628	596	556	445
SIXTH CIRCUIT	2,905	2,615	2,997	2,470	3,485	2,573	3,571	2,331	3,495	2,467
Frederick	268	305	305	249	370	312	300	319	300	337
Montgomery	2,637	2,310	2,692	2,221	3,115	2,261	3,271	2,012	3,195	2,130
SEVENTH CIRCUIT	3,260	2,940	3,548	3,273	4,256	3,566	3,941	3,370	3,919	3,868
Calvert	123	129	159	157	222	219	139	153	117	136
Charles	189	212	279	224	333	283	246	274	298	254
Prince George's	2,780	2,425	2,923	2,679	3,474	2,847	3,328	2,763	3,306	3,252
St. Mary's	168	174	187	213	227	217	228	180	198	226
EIGHTH CIRCUIT	5,480	5,813	5,382	5,794	6,977	5,785	5,871	4,660	6,695	4,511
Baltimore City	5,480	5,813	5,382	5,794	6,977	5,785	5,871	4,660	6,695	4,511
STATE	21,089	19,350	21,454	19,703	25,319	21,860	21,608	17,574	21,852	18,810

NOTE: Terminations in the law category for appeals are available for June 1981 only.

TABLE 2 (contd.)

FIVE-YEAR COMPARATIVE TABLE
EQUITY CASES
FILINGS AND TERMINATIONS

FISCAL 1978 - FISCAL 1982

	COMBINED ORIGINAL AND REOPENED CASES FILED AND TERMINATED						COMBINED ORIGINAL CASES FILED AND TERMINATED AND REOPENED CASES HEARD			
	1977-78		1978-79		1979-80		1980-81		1981-82	
	F	T	F	T	F	T	F	T	F	T
FIRST CIRCUIT	3,142	3,069	3,338	3,249	3,522	3,411	2,655	2,562	3,089	3,204
Dorchester	787	796	826	772	839	763	729	684	769	767
Somerset	334	335	312	286	326	345	281	285	461	476
Wicomico	1,319	1,270	1,442	1,486	1,634	1,560	1,150	1,126	1,334	1,385
Worcester	702	668	758	705	723	743	495	467	525	576
SECOND CIRCUIT	2,035	1,945	2,239	2,030	2,487	2,516	2,423	2,204	2,834	2,915
Caroline	336	306	341	303	378	378	507	478	428	353
Cecil	935	952	970	929	1,143	1,141	1,047	1,055	1,198	1,249
Kent	211	187	223	186	224	225	220	222	231	273
Queen Anne's	260	235	393	344	428	453	383	338	537	598
Talbot	293	265	312	268	314	319	266	111	440	442
THIRD CIRCUIT	8,085	7,287	8,294	8,247	8,103	9,646	7,357	6,689	7,958	8,245
Baltimore	6,406	5,718	6,505	6,580	6,349	8,006	5,626	5,062	6,055	6,476
Harford	1,679	1,569	1,789	1,667	1,754	1,640	1,731	1,627	1,903	1,769
FOURTH CIRCUIT	2,313	1,911	2,402	2,131	2,743	2,332	2,252	1,951	2,410	2,706
Allegany	815	581	900	737	969	767	640	523	759	785
Garrett	272	240	299	266	350	347	350	337	313	319
Washington	1,226	1,090	1,203	1,128	1,424	1,218	1,262	1,091	1,338	1,602
FIFTH CIRCUIT	7,991	6,231	9,143	7,774	8,935	8,357	6,741	6,044	7,658	6,044
Anne Arundel	6,105	4,958	7,098	6,215	6,652	5,661	4,597	4,028	5,286	4,179
Carroll	837	585	942	694	1,041	1,047	929	1,002	949	808
Howard	1,049	688	1,103	865	1,242	1,649	1,215	1,014	1,423	1,057
SIXTH CIRCUIT	6,544	5,365	6,636	6,372	6,901	5,397	6,605	5,029	7,119	5,268
Frederick	1,540	1,443	1,547	1,480	1,672	1,578	1,284	1,273	1,543	1,790
Montgomery	5,004	3,922	5,089	4,892	5,229	3,819	5,321	3,756	5,576	3,478
SEVENTH CIRCUIT	9,742	8,449	11,613	10,204	12,377	10,726	12,276	9,834	15,275	11,947
Calvert	431	395	482	476	613	473	829	818	619	674
Charles	675	586	769	764	847	788	1,317	1,047	1,210	1,443
Prince George's	7,880	6,750	9,725	8,261	10,159	8,717	9,163	7,178	12,539	8,584
St. Mary's	756	718	637	703	758	748	967	791	907	1,246
EIGHTH CIRCUIT	13,779	9,080	15,945	9,982	15,908	17,928	13,419	10,375	13,438	11,841
Baltimore City	13,779	9,080	15,945	9,982	15,908	17,928	13,419	10,375	13,438	11,841
STATE	53,631	43,337	59,610	49,989	60,976	60,313	53,728	44,688	59,781	52,170

TABLE 2 (contd.)

FIVE-YEAR COMPARATIVE TABLE
JUVENILE CAUSES
FILINGS AND TERMINATIONS

FISCAL 1978 - FISCAL 1982

	COMBINED ORIGINAL AND REOPENED CASES FILED AND TERMINATED						COMBINED ORIGINAL CASES FILED AND TERMINATED AND REOPENED CASES HEARD			
	1977-78		1978-79		1979-80		1980-81		1981-82	
	F	T	F	T	F	T	F	T	F	T
FIRST CIRCUIT	536	574	503	479	520	558	529	453	493	466
Dorchester	188	201	150	135	173	195	94	78	94	63
Somerset	53	54	62	46	56	71	59	56	48	51
Wicomico	161	184	180	187	158	159	210	185	220	238
Worcester	134	135	111	111	133	133	166	134	131	114
SECOND CIRCUIT	553	579	619	600	594	609	449	411	575	607
Caroline	79	78	87	84	65	78	51	49	81	66
Cecil	239	256	253	242	236	248	192	207	271	272
Kent	60	63	53	57	72	78	39	33	32	29
Queen Anne's	71	66	111	105	84	85	87	64	107	139
Talbot	104	116	115	112	137	120	80	58	84	101
THIRD CIRCUIT	2,180	1,940	2,616	2,321	2,692	2,816	2,849	2,557	3,294	3,326
Baltimore	1,593	1,540	1,996	1,666	2,228	2,151	2,288	2,140	2,656	2,899
Harford	587	400	620	655	464	665	561	417	638	427
FOURTH CIRCUIT	980	999	1,044	1,048	1,054	1,035	851	770	886	919
Allegany	409	411	448	448	424	402	363	334	378	366
Garrett	143	151	118	120	128	130	131	117	103	107
Washington	428	437	478	480	502	503	357	319	405	446
FIFTH CIRCUIT	2,565	2,740	2,160	2,428	2,428	2,464	2,885	2,638	3,182	2,975
Anne Arundel	1,778	2,011	1,513	1,660	1,550	1,513	1,869	1,752	2,184	2,006
Carroll	364	318	388	378	471	528	489	448	554	550
Howard	423	411	259	390	407	423	527	438	444	419
SIXTH CIRCUIT	2,285	2,509	2,224	2,469	2,711	2,903	2,634	1,724	3,525	3,663
Frederick	176	214	225	237	184	195	224	195	256	229
Montgomery*	2,109	2,295	1,999	2,232	2,527	2,708	2,410	1,529	3,269	3,434
SEVENTH CIRCUIT	5,890	6,070	4,657	4,281	4,838	5,426	5,431	4,861	6,677	6,883
Calvert	206	240	193	201	347	323	366	323	332	389
Charles	532	511	394	393	441	427	477	427	707	673
Prince George's	4,884	5,097	3,873	3,451	3,795	4,435	4,369	3,938	5,470	5,588
St. Mary's	268	222	197	236	255	241	219	173	168	233
EIGHTH CIRCUIT	9,592	9,207	11,663	9,866	11,807	12,900	9,743	8,487	11,118	9,669
Baltimore City	9,592	9,207	11,663	9,866	11,807	12,900	9,743	8,487	11,118	9,669
STATE	24,581	24,618	25,486	23,492	26,644	28,711	25,371	21,901	29,750	28,508

*Includes juvenile causes processed at the District Court level.

TABLE 2 (contd.)

FIVE-YEAR COMPARATIVE TABLE
CRIMINAL CASES
FILINGS AND TERMINATIONS

FISCAL 1978 FISCAL 1982

	COMBINED ORIGINAL AND REOPENED CASES FILED AND TERMINATED						COMBINED ORIGINAL CASES FILED AND TERMINATED AND REOPENED CASES HEARD			
	1977-78*		1978-79*		1979-80*		1980-81*		1981-82**	
	F	T	F	T	F	T	F	T	F	T
FIRST CIRCUIT	977	1,309	890	887	1,124	1,002	2,063	1,395	1,263	2,048
Dorchester	206	225	139	148	157	141	225	140	160	247
Somerset	86	117	94	81	149	139	176	124	92	92
Wicomico	351	618	405	390	482	472	712	582	609	778
Worcester	334	349	252	268	336	250	950	549	402	931
SECOND CIRCUIT	897	866	773	680	920	851	1,064	758	1,041	1,099
Caroline	101	117	70	56	100	118	102	68	109	105
Cecil	435	407	363	356	462	346	548	418	554	548
Kent	120	119	69	72	84	82	92	59	65	103
Queen Anne's	124	123	137	115	119	123	189	119	160	197
Talbot	117	100	134	81	155	182	133	94	153	146
THIRD CIRCUIT	4,681	4,476	4,939	4,581	4,791	5,368	5,807	4,656	5,604	5,574
Baltimore	4,103	3,884	4,258	4,013	4,173	4,609	4,862	3,850	4,718	4,636
Harford	578	592	681	568	618	759	945	806	886	938
FOURTH CIRCUIT	812	774	1,053	848	1,145	1,231	1,164	1,069	846	1,027
Allegany	204	177	288	256	277	286	331	271	230	294
Garrett	89	94	81	81	93	84	137	104	131	120
Washington	519	503	684	511	775	861	696	694	485	613
FIFTH CIRCUIT	3,311	3,078	3,123	3,090	3,171	3,660	4,439	3,651	4,158	4,483
Anne Arundel	2,274	2,215	2,078	2,189	1,915	2,091	2,547	2,186	2,485	2,559
Carroll	435	404	450	213	594	697	753	660	604	696
Howard	602	459	595	688	662	872	1,139	805	1,069	1,228
SIXTH CIRCUIT	1,935	1,740	1,714	1,443	2,083	1,833	2,723	1,947	2,719	2,316
Frederick	369	324	395	328	462	473	503	343	402	570
Montgomery	1,566	1,416	1,319	1,115	1,621	1,360	2,220	1,604	2,317	1,746
SEVENTH CIRCUIT	3,604	2,921	3,650	3,626	3,948	4,148	4,821	4,251	4,696	4,790
Calvert	234	183	179	246	170	217	306	248	226	328
Charles	480	501	770	545	876	951	684	771	479	489
Prince George's	2,734	2,106	2,533	2,647	2,724	2,804	3,555	3,000	3,785	3,703
St. Mary's	156	131	168	188	178	176	276	232	206	270
EIGHTH CIRCUIT	19,512	17,348	22,374	21,121	21,825	23,743	23,980	22,897	10,248	7,586
Baltimore City	19,512	17,348	22,374	21,121	21,825	23,743	23,980	22,897	10,248	7,586
STATE	35,729	32,512	38,516	36,276	39,007	41,836	46,061	40,624	30,575	28,923

*One case represented one charge (count) rather than one incident in Baltimore City. An audit conducted in 1980 found that by using charge statistics Baltimore City reported 2.19 times the number of filings and 2.01 times the number of terminations as would have been reported under a system comparable to other counties.

**Baltimore City changed their counting procedures from individual charges to cases in July 1981. Cases are defined as charges arising out of a single incident. Thus, one case represents one incident.

NOTE: Included in the termination figures are criminal cases which are actually closed but remain on the open case file because of CJIS considerations.

TABLE 3

APPEALS FILED, CASES DISPOSED AND PENDING CASES IN THE COURT OF SPECIAL APPEALS (FY 74 THROUGH FY 82) AND PROJECTED APPEALS, DISPOSED CASES AND OPINIONS (FY 83 THROUGH FY 85)

	FY 74	FY 75	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82	Projected FY 83	FY 84	FY 85
Appeals Filed (Incoming Volume)	1,055	1,240	1,428	1,399	1,350	1,517	1,771	1,645	1,839	1,901	1,987	2,072
Total Disposed Cases* (Outgoing Volume)	966	1,115	1,334	1,467	1,453	1,369	1,473	1,923	1,618	1,847	1,934	2,021
Dismissed Prior to Argument or Consideration	111	227	312	363	357	347	340	491	359	X	X	X
Transferred to the Court of Appeals	25	82	73	109	83	85	50	71	86	X	X	X
Opinions	827	804	938	989	999	911	1,061	1,346	1,161	1,264	1,317	1,369
	(228 R) (599 U)	(312 R) (492 U)	(305 R) (633 U)	(302 R) (687 U)	(209 R) (790 U)	(196 R) (715 U)	(218 R) (843 U)	(235 R) (1,111 U)	(176 R) (985 U)			
Number of Authorized Judges	10	12**	12	12	13***	13	13	13	13	X	X	X

* Total disposed cases in each fiscal year slightly exceed the total cases dismissed prior to argument or consideration, cases transferred to the Court of Appeals and opinions filed, because in each fiscal year a small number of cases are disposed in some other way (for example, dismissed without opinion after argument).

** Increase effective June 1, 1974, but was not filled until FY '75. See Chapter 706 of the 1974 Laws of Maryland.

*** Increase effective July 1, 1977. See Chapter 252 of the 1977 Laws of Maryland.

R - Reported.
U - Unreported.

SOURCE: Administrative Office of the Courts; information compiled on the Court of Special Appeals by the Special Projects, Research, and Planning Services Unit, July 1982.

TABLE 4

NUMBER OF CIRCUIT AND DISTRICT COURT JUDGES
AND CASE FILINGS - 1955-56; 1971-72; 1981-82

	1955-56	1971-72	1981-82
Circuit Courts			
No. of Judges	44	79	103
Filings	42,670	71,137	141,958
Judges/Population	31,666	51,473	41,619
Judges/Filings	970	900	1,347
District Court			
No. of Judges	N/A	74	87[a]
Filings	N/A	778,718	1,281,128[b]
Judges/Population	N/A	57,020	51,033[c]
Judges/Filings	N/A	10,523	15,252

[a]Includes Chief Judge of District Court and two juvenile judges in Montgomery County.
[b]Excludes juvenile cases in Montgomery County.
[c]Excludes Chief Judge of District Court and two juvenile judges in Montgomery County.

SOURCES: First Annual Report of the Administrative Office of the Courts, 1955-56
Seventeenth Annual Report of the Administrative Office of the Courts, 1971-72
Sixth Annual Report of the Maryland Judiciary, 1981-82

TABLE 5

CIRCUIT COURT ADDITION OF JUDGES AND CASE PROCESSING TIMES IN THREE COUNTIES, FY 1979 AND FY 1982

	County A (Two judges added in 1979 for total of 9)		County B (One judge added in 1979 for total of 2)		County C (One judge added in 1979 for total of 2)	
	FY 1979	FY 1982	FY 1979	FY 1982	FY 1979	FY 1982
Filings						
Law	2,434	1,637	279	298	451	330
Equity	7,098	5,286	769	1,210	758	525
Criminal	2,078	2,485	770	479	252	402
Juvenile	1,513	2,184	394	707	111	131
Total	13,123	11,592	2,212	2,694	1,572	1,388
Average Days From Filing to Disposition						
Law	213	448	198	297	182	285
Equity	193	249	204	192	175	272
Criminal	158	158	116	145	135	190
Juvenile	108	105	81	76	69	52

County D

By way of comparison, data are supplied as to County D, in which there were 10 judges in FY 1979. Two were added in FY '82 but did not take office until December 1981 and February 1982, respectively, so their addition is unlikely to have had a material effect on FY 1982 case processing times.

	FY 1979	FY 1982
Filings		
Law	2,889	2,919
Equity	6,505	6,055
Criminal	4,258	4,718
Juvenile	1,996	2,656
Total	15,648	16,348
Average Days From Filing to Disposition		
Law	491	512
Equity	232	351
Criminal	126	118
Juvenile	102	162

Note: The average days from filing to disposition in FY 1982 does not include reopened cases or cases with incorrect termination date.

SOURCES: Third Annual Report of the Maryland Judiciary, 1978-79
Sixth Annual Report of the Maryland Judiciary, 1981-82

TABLE 6

STAFFING PATTERNS OF JUDICIAL OFFICERS AND STAFFS
HANDLING JUVENILE AND MINOR TRAFFIC

	Estimated Judicial Strength Handling Juvenile Matters	Estimated Judicial Strength Handling Minor Traffic	Estimated Difference in Judicial Strength	No. of Clerical Positions Handling Juvenile Matters	No. of Clerical Positions Handling Minor Traffic	No. of Support Positions - Funded Locally - Staffing Juvenile Courts
Allegany	.30	.20	- .10	(Less than one)	2	(Less than one)
Anne Arundel	2.10	1.20	- .90	6	4	6
Baltimore City	8.00	3.50	-4.50	27	16	30
Baltimore County	.60	4.40	+3.80	5	9	2
Calvert	.05	.20	+ .15	(Less than one)	(Less than one)	(Less than one)
Caroline	.10	.20	+ .10	(Less than one)	(Less than one)	(Less than one)
Carroll	.65	.20	- .45	1	1	1-2
Cecil	*	.60	+ .60	(Less than one)	3	(Less than one)
Charles	.30	.20	- .10	(Less than one)	1	(Less than one)
Dorchester	.10	.20	+ .10	(Less than one)	1	(Less than one)
Frederick	.20	.40	+ .20	(Less than one)	5	(Less than one)
Garrett	.10	.20	+ .10	(Less than one)	(Less than one)	(Less than one)
Harford	.60	.40	- .20	1	3	1
Howard	.90	.40	- .50	2	4	2
Kent	.10	.20	+ .10	(Less than one)	(Less than one)	(Less than one)
Montgomery	*	1.00	+1.00	N/A**	7	N/A**
Prince George's	3.00	2.00	-1.00	14	9	13
Queen Anne's	.10	.20	+ .10	(Less than one)	(Less than one)	(Less than one)
St. Mary's	.25	.20	- .05	(Less than one)	1	(Less than one)
Somerset	.05	.20	+ .15	(Less than one)	(Less than one)	(Less than one)
Talbot	*	.20	+ .20	(Less than one)	(Less than one)	(Less than one)
Washington	.30	.40	+ .10	1	3	(Less than one)
Wicomico	*	.40	+ .40	(Less than one)	3	(Less than one)
Worcester	.10	.40	+ .30	(Less than one)	2	(Less than one)
Total	17.90	17.50	- .40	57***	74***	55-56

KEY: - indicates shortage in judicial strength upon transfer.
+ indicates excess number of judges upon transfer.
0.20 indicates approximately one judicial day.

*In Montgomery County, two judges presently handle juvenile matters in the District Court. Also, in Cecil, Talbot, and Wicomico Counties, District Court judges are cross-designated to sit one day a week to hear juvenile matters in the circuit court.
**Clerical positions in Montgomery County are already in the District Court.
***Does not include positions less than one.

SOURCE: Information provided by circuit and local administrators, District Court Headquarters staff and compiled by the Judicial Special Projects, Research, and Planning Services Unit, Administrative Office of the Courts, September 1982.

TABLE 7

GEOGRAPHICAL AND FUNCTIONAL DISTRIBUTION OF DISTRICT COURT REVENUES

(July 1, 1981 - June 30, 1982)
Fiscal 1982

	Natural Resources	Bond Forfeitures	Criminal	Civil	Motor Vehicle	Total*
Allegany	$ 6,590.00	$ 1,530.00	$ 22,990.00	$ 17,695.00	$ 426,912.15	$ 476,483.55
Anne Arundel	22,506.00	27,885.00	171,209.00	277,965.84	1,501,154.29	2,003,289.75
Baltimore City	325.00	23,860.00	624,781.35	882,565.73	1,783,781.17	3,327,037.74
Baltimore County	13,535.00	40,063.00	178,617.98	583,703.42	2,665,554.14	3,491,204.95
Calvert	6,806.00	5,510.00	8,794.00	14,732.00	160,259.39	196,094.89
Caroline	795.00	3,100.00	10,440.00	9,803.00	118,205.75	142,592.60
Carroll	3,910.00	3,260.00	14,329.00	34,918.00	275,490.97	332,212.57
Cecil	7,914.50	24,527.50	41,645.00	23,010.00	953,245.73	1,051,071.58
Charles	11,105.00	(4,571.44)	32,197.00	30,149.00	412,073.00	481,943.88
Dorchester	18,125.00	300.00	27,052.00	19,225.00	177,114.00	242,306.80
Frederick	4,435.00	5,530.00	27,556.51	44,523.00	834,463.85	917,406.86
Garrett	6,925.00	125.00	13,805.50	7,405.00	184,886.24	213,314.94
Harford	10,501.00	24,595.00	27,726.00	58,230.25	759,243.60	882,006.70
Howard	1,595.00	15,195.00	37,371.52	68,624.00	1,126,311.88	1,252,189.27
Kent	10,165.00	750.00	12,450.00	9,964.00	151,782.00	185,227.15
Montgomery	2,065.00	-0-	72,110.00	276,470.72	3,081,486.64	3,443,041.87
Prince George's	5,358.00	110,517.40	183,056.40	412,911.95	3,005,773.48	3,726,162.35
Queen Anne's	15,745.00	500.00	3,715.00	12,509.00	255,190.06	287,908.41
St. Mary's	15,305.00	750.00	28,859.00	19,652.25	251,628.18	316,825.07
Somerset	29,785.78	3,080.00	8,970.00	7,066.00	214,573.00	263,608.88
Talbot	18,403.00	6,325.00	18,005.00	15,706.00	253,750.00	311,747.35
Washington	5,095.00	16,688.63	49,309.08	79,066.80	766,286.45	918,639.87
Wicomico	8,155.00	5,510.00	41,268.60	32,002.00	768,596.13	855,772.68
Worcester	9,620.00	7,905.00	24,196.00	23,010.00	450,989.41	517,053.99
M.A.T.S.	--	--	--	--	199,851.55	199,851.55
Total	$234,764.28 (0.90%)	$322,935.09 (1.24%)	$1,680,453.94 (6.45%)	$2,960,907.96 (11.37%)	$20,778,603.06 (79.81%)	$26,034,995.25 (100.00%)

*The above chart does not itemize $57,330.92 in miscellaneous revenues which counts for approximately 0.23% of total revenues.

SOURCE: Information provided by District Court Headquarters' staff and compiled by the Judicial Special Projects, Research, and Planning Services Unit, Administrative Office of the Courts, August 1982.

TABLE 8

ESTIMATED PETIT AND GRAND JUROR PER DIEM COSTS FOR FISCAL 1984;
COST SAVINGS PROJECTED IF SIX-PERSON JURIES ARE INSTITUTED IN CIVIL CASES*

	COLUMN 1	COLUMN 2**	COLUMN 3***	COLUMN 4
	Per Diem Juror Costs FY 82 Expenditures (Petit & Grand Jurors)	Estimated Per Diem Juror Costs FY 84 (Petit & Grand Jurors)	Savings Projected As a Result of Six-Member Juries Being Implemented in Civil Trials	Net Estimated Juror Costs Fiscal 84 (With Six-Member Civil Juries) (Column 2 Minus Column 3)
Allegany	21,350	23,900	1,900	22,000
Anne Arundel	243,850	273,100	21,850	251,250
Baltimore City	650,350	1,092,600	87,400	1,005,200
Baltimore County	271,150	303,700	24,300	279,400
Calvert	31,100	26,100	2,100	24,000
Caroline	7,150	8,000	650	7,350
Carroll	34,750	38,900	3,100	35,800
Cecil	58,700	65,750	5,250	60,500
Charles	45,150	50,550	4,050	46,500
Dorchester	24,300	27,200	2,200	25,000
Frederick	28,200	31,600	2,550	29,050
Garrett	12,850	14,400	1,150	13,250
Harford	105,150	117,750	9,400	108,350
Howard	61,700	69,100	5,550	63,550
Kent	15,100	16,900	1,350	15,550
Montgomery	360,650	404,000	32,300	371,700
Prince George's	256,600	431,100	34,500	396,600
Queen Anne's	9,050	10,050	800	9,250
St. Mary's	17,700	19,800	1,600	18,200
Somerset	11,900	13,350	1,050	12,300
Talbot	12,750	21,400	1,700	19,700
Washington	74,700	83,650	6,700	76,950
Wicomico	32,100	35,950	2,900	33,050
Worcester	20,850	23,350	1,850	21,500
Total	2,407,150	3,202,200	256,200	2,946,000

* All figures have been rounded to the nearest $50.

** This column reflects adjustments in per diem rates. (Baltimore City, +$5.00; Calvert County, -$5.00; Prince George's County, +$5.00; and Talbot County, +$5.00. All per diem rates would be set at $15.00 a day.) The column further reflects an annual increase in the number of jury trials at a six percent rate.

*** This column assumes that civil jury trials constitute about 40% of petit jury costs and that approximately 20% of these costs would be saved annually by a reduction to six-member juries, as suggested by the Commission.

SOURCE: Fiscal information in the above table was compiled by the Judicial Special Projects, Research, and Planning Services Unit in the Administrative Office of the Courts through the efforts of circuit and local court administrators, jury commissioners, and the clerks of the circuit court.

V. MINORITY REPORTS

112.

RETENTION OF TRIAL DE NOVO

Senator Victor L. Crawford
Delegate Joseph E. Owens

The trial de novo has been with the Maryland court systems for many years and has been working very well. Any overloading of the circuit court was ameliorated by the enactment of recent legislation which would deny a jury trial demand in the District Court if both the State's Attorney and the judge would bind themselves to a sentence of less than ninety (90) days of incarceration. The evidence before the Commission was that the demands for jury trial, which were overburdening the circuit court, have been substantially reduced by this legislation.

It appears that the main complaint against the trial de novo comes from the District Court judges themselves. Of course, the prosecutors are also complaining. The District Court judges feel that their status as a judge is reduced by allowing a defendant who has been convicted to appeal and thereby obtain a new trial. There is no doubt that in many instances the appeal is taken in the form of a sentence review because many defendants feel that the sentence imposed in the District Court was unusually harsh. However, most circuit courts seem to be able to handle the appeals from the District Court very expeditiously and there has been very little complaint from circuit court judges concerning an abuse of the trial de novo. The main complaints seem to come from the District Court judges and from the prosecutors.

It is true that because of a trial de novo, the State's witnesses must once again reappear in court. However, when we are dealing with the criminal law, which is the enormous power of the State being brought to bear upon an individual's right to freedom, it does not appear to be an undue burden to require the witness to come back to court, when an individual's

liberty will be taken from him and he faces the stigma of a criminal record. In many, if not most of the cases, the State's witness is a police officer and it is no burden upon the general public by the use of the trial de novo.

To allege that there may be appeal on the record is to ignore the realities of the situation. The District Court transcribing system is less than perfect, and although it is true that a tape can be purchased for $10, the tape must be transcribed and presented to the court. We know of no circuit court judges who are interested in simply listening to a tape. Experience has shown in civil cases that the cost of transcribing the proceedings in the District Court can amount to well over $100, and sometimes in excess of $200. Since many of these criminal cases are tried by the Public Defender's Office, and since the defendant has an absolute right to appeal, the costs of these transcripts will break the budget of the Public Defender's Office and require an enormous fiscal note and financial burden upon the State. This is a financial burden over and above the present system, since the cost of the transcript must be added to the present Public Defender's budget and the judicial budget. No additional time could possibly be saved since some judge must read these transcripts, or at the very minimum, listen to the tapes.

Although it is true that some appeals are frivolous, because of the enormous workload on the District Court there are occasions when full and complete justice is not done. This in no way is the fault of the individual District Court judges, who by and large, are of high caliber. Because of the enormous workload and the necessity for trying scores, if not hundreds of cases per day, proper time and attention cannot always be given to each individual case. Accordingly, if a defendant feels justice was not done,

especially in those cases where he faces incarceration, it is a very small price to pay for civil liberties and democracy to allow the trial de novo.

RETENTION OF TRIAL DE NOVO

Delegate Joseph E. Owens
Senator Victor L. Crawford
Delegate William S. Horne
Delegate Thomas A. Rymer

In its decision to recommend trial de novo appeals be abolished for criminal cases in the District Court, the Commission acted contrary to one of its major goals, relief of the circuit court workload.

Until the recently enacted "Gerstung Bill" the number of demands for jury trials at the District Court level was over 12,000 per year. The enactment of that law resulted in a drop, in its first year of operation, of about 6,000 demands to a little over 6,000 in FY 1982 with no increase in the de novo appeals. The number of de novo appeals in FY 1982 was 4,055 which was 2,000 less than the drop in jury demands. All cases covered by the "Gerstung Bill" are those in which the defendant has a right to a jury trial and enactment of the law was possible only because of the ultimate right to a jury trial in a trial de novo appeal. The new law would have to be repealed if de novo appeals were eliminated because it would be in violation of the constitutional right to a trial by jury. Repeal of the law alone would result in a net increase of 2,000 cases transferred to the circuit courts even with the reduction as the result of the elimination of the trial de novo on appeal. Of course, there would still be appeals on the record which could take more time than a de novo appeal and this would be a new burden placed on the circuit courts.

The increased number of cases transferred to the circuit courts will be much larger than that which will be caused by repeal of the "Gerstung Bill." While approximately 12,000 asked for a jury trial prior to the change of the law, many more times that 12,000 who were entitled to a jury trial did not

demand one in the District Court. Their rationale was that the jury trial was always there as a last resort but they hoped to have the case terminated as soon as possible. Many defendants who felt that they would prefer a jury trial were dissuaded from asking for one by their counsel on the assurance that if they felt that they were denied justice at the District Court level they could still get their jury trial. How many of these would request a jury trial with the elimination of the trial de novo can only be speculative but it would probably be at least double or triple the requests made prior to the recent change in the law. This would inundate the circuit courts with criminal trials from the District Court.

There would also be a marked increase in the time required to try a criminal trial in the District Court if this change is effected. The present procedure in the District Court while following some basic rules is rather informal. There is no need to protect the record and this results in a more loose interpretation of the rules, less objections, less argument, very few written or pretrial motions and a much quicker trial. When the only grounds for appeal is an error on part of the trial judge, the need to protect the record and see that every possible objection and point is placed in the record, the time of trial will be greatly increased.

Another factor not considered by the Commission is the increased jurisdiction in criminal matters that has occurred since its creation. Intended to handle misdemeanors for the most part, the number of felonies within its jurisdiction has greatly increased and many of the more serious felonies can now be tried there. Without the ability to resort to a de novo appeal, the production line justice of 30 and 40 cases a day could not continue. Additional discovery, pretrial motions and other formal procedures would

have to be instituted. This would be in direct contradiction to the purpose for which the District Court was established.

The problem of witnesses and victims being called many more times is greatly exaggerated in the majority report. While any inconvenience to these people is undesirable, it could be that the increase for jury demands would create a necessity for more appearances. In most appeals the only witness is a police officer, the majority of the de novo appeals being motor vehicle cases, and the officer is normally not present but on call. Many lay witnesses are also placed on call and never have to appear.

The only remaining argument is the stature of the District Court and while judicial ego may be important it will have to give when gratifying it will greatly increase the workload of the circuit courts.

COURT OF SPECIAL APPEALS - ADDITIONAL JUDGESHIP

Delegate Thomas A. Rymer
Delegate Joseph E. Owens

The Commission report states that the creation of an additional judgeship to the Court of Special Appeals appears imminent. However, we believe that every reasonable time alternative should be tried before this Court is expanded. We do not subscribe to the proposition that an increase is imminent.

We are impressed with the success of the pretrial conferences in certain types of cases and believe this procedure can continue to be increasingly useful to reduce the number of opinions. We see a trend toward a greater percentage of unreported cases and find this desirable provided the Court continues to prudently separate the "wheat from the chaff."

The Court should receive some help from the recommendations of this Commission that the role of the Central Professional Staff in the Court of Special Appeals be expanded and that each appellate judge should be provided with two law clerks. Appeals to the Court of Special Appeals will be further reduced if we transfer, as recommended, juvenile jurisdiction to the District Court, allowing appeals to the circuit court and directing any further review to the Court of Appeals. Furthermore, some time will be saved when review of convictions following guilty pleas becomes discretionary. We should ascertain the effect of each of these changes before adding an additional judge.

There are several other areas which should be further reviewed by the Court in order to save the time of its members. The most important of these is in the realm of oral arguments. The report makes the suggestion that the Court of Special Appeals "continue to review procedures to reduce further

the number of oral arguments." We would prefer a stronger statement that "oral arguments shall only be held at the discretion of the Court." While there may be times when a reading of the brief by a judge fails to answer all of the questions, there are indications that in 90-95 percent of the time opinions are shaped by the elaborate briefs. An attorney should be able to rely on his brief to provide all of the legal answers. However, whether an attorney has a good case or realizes that he does not, it is difficult to advise a client that he is offering to submit. The Court itself should decide which cases to hear and assign for oral argument only those cases about which one or more of the panel members wishes more information. Presently, seven days out of each 22-day month are used, in part, for the argument of cases. If we consider vacations, holidays, and scheduling, more of the Court's time is spent in argument than is realized. If the Court were to reduce the number of oral arguments by even 50 percent, briefs might improve and substantial time would be saved for the preparation of opinions.

Another area for further review by the Court concerns the possibility of increased use of more circuit court judges on the panels. This alternative may be more feasible when juvenile matters are moved from the circuit court giving these judges more breathing room.

RETENTION OF NONINCARCERABLE MOTOR VEHICLE OFFENSES IN THE DISTRICT COURT

Delegate Joseph E. Owens
Delegate William S. Horne

While we have no disagreement that nonincarcerable motor vehicle offenses be decriminalized and made civil infractions, we respectfully disagree with the majority in respect to the transfer of said offenses from the District Court system to the State Motor Vehicle Administration. It is our position that the benefits of a reduction in the District Court docket are more than offset by the disadvantages of the logistical problems such a transfer would entail. Under the current system these cases are presently heard in the 80 courtrooms now in use in the District Court throughout Maryland. There are currently approximately 85 clerks docketing motor vehicle cases, maintaining the records in connection thereto and collecting and disbursing the fines assessed in such cases. These cases are also handled in the computerized automatic traffic system, which has been established by the District Court and the Administrative Office of the Courts. Obviously, to transfer the cases from the District Court system would require the establishment of an equivalent network within the State Motor Vehicle Administration. In addition, hearings would presumably be held in the various motor vehicle administration offices throughout the State of Maryland. In the rural parts of the State these offices are somewhat widely scattered and there are many rural counties in which no Motor Vehicle Administration Office is located. This would, therefore, apparently necessitate prospective litigants to travel considerable distances in order to have their cases resolved. It is obvious that this inconvenience would accrue not only to the recipient of the citation, but to

the various law enforcement agencies which issue these citations. One can easily foresee the difficulties that might arise in the scheduling of such hearings when law enforcement officers are also required to be in the various District Courts in connection with other more serious motor vehicle offenses.

Perhaps more basic, however, is the fact that a transfer of non-incarcerable motor vehicle offenses to the State Motor Vehicle Administration would constitute a step backward from the District Court to a system much like that which existed prior to the creation of the District Court. While the trial of these cases may seem simplistic and demeaning to members of the Bench and Bar, to the individual receiving the citation, they are sometimes quite important indeed. It is our position that one receiving such a citation might perceive a basic unfairness in having the same hearing officer who will be responsible for administrative penalties making a decision as to guilt or innocence and to the judicial sanctions which will be imposed as a result of a finding of guilt. In addition, even with the upgraded hearing officer system presently in existence in the Motor Vehicle Administration, there still exists a lack of uniformity in application of rules of procedure among various hearing officers.

RETENTION OF NONINCARCERABLE MOTOR VEHICLE OFFENSES IN THE DISTRICT COURT

M. Albert Figinski, Esq.
Hon. J. William Hinkel

After 15 months of effort, the Commission to Study the Judicial Branch of Government has presented a lengthy review of Maryland's judicial system. Only a few substantial changes are suggested. This restrained approach reflects that, on the whole, Maryland's judicial system now works well although not perfectly. Furthermore, given the difficult economic conditions that have existed throughout this Commission's tenure, it is prudent to be cautious when tinkering with such a system and practical to be parsimonious when reviewing new ways to spend the taxpayers' money on such a system.

Because cost considerations were the implicit undergirding of many of the Commission's approaches, it is important to note -- highlight -- that the percentage of the State budget allocated to courts has remained constant recently; but, when compared with expenditures of a decade ago, the courts' share has shrunk. For example, in FY 1978, the State budgeted $22,845,351 for the courts, less than one percent of the total budget, i.e., .59 percent; in FY 1982, the dollars budgeted were $32,940,430, still less than one percent, i.e., .58 percent. In comparison, in FY 1972 the courts got $15,091,260, or .83 percent of the total State budget. In FY 1973, the courts' share was .71 percent; in FY 1974 it was .65 percent.

These fiscal facts are recited so that the Commission's commentary about cost of additional judges may be placed in proper perspective. Judgeships are, certainly, expensive items, but the entire cost of the

judiciary is really minute in comparison with other expenditures of government.

These fiscal facts are recited, moreover, as a backdrop for discussing the one serious misdirection suggested by the Commission. The misstep -- taking nonincarcerable motor vehicle offenses out of the District Court -- came about because the Commission did not wish to shift juvenile matters to the District Court (a sound decision in itself) without taking "something" out of the District Court. This two-step dance was caused by a desire to avoid suggesting the need for more judges at the District Court if juvenile matters were moved and "nothing" was taken out of the District Court's purview.

Nonincarcerable motor vehicle offenses are now handled efficiently and effectively by the District Court. The proper handling of traffic cases was a major reason for the creation of the District Court system. Decriminalizing the offenses has merit but shifting the caseload from judges to hearing officers somewhere in the executive branch smacks of a return to the ill-fated magistrate system. It would be preferable to leave traffic cases in the District Court and bite the bullet by straight forwardly suggesting an increase in the number of judges to handle the shift of juvenile cases.

Over the past two decades there has been an astounding growth in the number and kind of legal determinations made by this State's administrative agencies instead of the courts. Great caution should attend adding yet another layer (i.e., motor vehicle offenses) to the administrative law. It is recognized that now there exists a point system that is administered by the Department of Motor Vehicles. But a court adjudication, if the driver seeks it, is now the basis for the assessment of points. There should

continue to be a judicial role in traffic matters, even while nonincarcerable traffic matters are decriminalized.

TRANSFER OF JUVENILE COURT JURISDICTION

Delegate Joseph E. Owens

I dissent from the Commission's recommendation to transfer the Juvenile Court jurisdiction to the District Court.

Judicial standards invariably call for juvenile jurisdiction to be at the highest level trial court. While one county, Montgomery, presently provides for juvenile jurisdiction in the District Court, no other county has moved to follow suit despite the fact that the Constitution was amended in 1976 to allow such transfer of jurisdiction.

In order to handle the juvenile cases some jurisdiction will have to be relinquished by the District Court and to date the only suggested transfer of jurisdiction is minor traffic cases to the Motor Vehicle Administration. This is opposed by the Chief Judge of the District Court.

No consideration was given to the possible fiscal impact of transferring this responsibility from a county supported court to a State court. Further study must be conducted before any transfer of this jurisdiction can be proposed.

VI. PROPOSED LEGISLATION FOR THE 1983 SESSION OF THE GENERAL ASSEMBLY

PROPOSED LEGISLATION FOR THE 1983 SESSION OF THE GENERAL ASSEMBLY

The following represents a list of bills proposed by the Commission and prepared by the Department of Legislative Reference for introduction in the 1983 legislative session. These bills were reviewed in detail by a subcommittee of the Commission and will be included with the final report to the Governor's Office.

-- Change the name of the Court of Appeals to the Supreme Court of Appeals of Maryland.

-- Change the name of the Court of Special Appeals to the Appellate Court of Maryland.

-- Use of application for leave to appeal in a review of final judgments following a guilty plea.

-- Retention election of circuit court judges.

Alternative proposals:

-- a) Circuit court judges be deemed elected if the candidate wins both partics' primaries.

-- b) Circuit court judges run in the general election only.

-- c) A person seeking to run for a judgeship must designate the outgoing judge whose office the person seeks.

-- d) A circuit court judge must run in the first biennial general election in a contested election for a term of 15 years. At the completion of that term, the judge could run in a retention election for ten-year terms.

-- Transfer juvenile jurisdiction from the circuit courts to the District Court of Maryland.

-- Abolish juvenile masters.

-- State reimbursement to the political subdivisions for jurors' expenses at the rate of $15 per diem.

-- Abolish trial de novo in criminal appeals.

-- Provide six-member juries in circuit court civil trials.

-- Transfer nonincarcerable motor vehicle offenses and parking violations from the District Court to the executive branch of government.

-- Decriminalize nonincarcerable motor vehicle cases.

VII. APPENDICES

HOUSE JOINT RESOLUTION No. 91

11r3449 09

By: Delegate Delegates Owens and Jimeno
Introduced and read first time: February 19, 1981
Assigned to: Judiciary

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 27, 1981

SIGNED

RESOLUTION NO. 25

MAY 12 '81

HOUSE JOINT RESOLUTION

BY THE PRESIDENT AND THE SPEAKER

A House Joint Resolution concerning

A Commission to Study the Judicial Branch of Government

FOR the purpose of requesting the appointment of a commission to study the Judicial Branch of Government.

WHEREAS, The Governor's Commission on Judicial Reform, appointed in 1972, performed valuable studies and made important recommendations in the area of judicial reform, a number of which recommendations were adopted; and

WHEREAS, As Chief Judge Robert C. Murphy noted in his 1981 State of the Judiciary Address to the General Assembly of Maryland, to "achieve the effective administration of justice under the conditions of the 1980's, within finite limits of available fiscal resources, requires a thorough study to determine whether modifications of our existing judicial system are needed to make it work more efficiently"; and

WHEREAS, Such a study should be conducted by a commission with broad-based representation from all branches of government and from the private sector; now, therefore, be it

RESOLVED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Legislative Policy Committee be urged to establish a Commission to Study the Judicial Branch of Government; and be it further

RESOLVED, That the commission consist of ~~17~~ 16 members, as follows: ~~two~~ three members of the Senate of Maryland, to be appointed by the President of the Senate; ~~two~~ three members of the House of Delegates, to be appointed by the Speaker of the House; three judges, to be appointed by the

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EXPLANATION:
Underlining indicates amendments to bill.
~~Strike--out~~ indicates matter stricken by amendment.

Chief Judge of the Court of Appeals; three members of the Maryland Bar, at least one with substantial prosecutorial and at least one with substantial criminal defense experience, to be appointed by the President of the Maryland State Bar Association, Inc.; ~~two--representatives--of--local government---to--be--appointed-by-the-Governer;-two-officials of-the-Executive-Branch-of-State-government,-to-be-appointed by-the-Governer--and~~ three representatives of the public, who shall not be lawyers, judges, or public employees, to be appointed by the Governor; the Governor to appoint the Chairman from among the appointed members of the Commission; and the State Court Administrator shall serve as a nonvoting member; and be it further

RESOLVED, That commission members shall serve without compensation, but may be reimbursed for reasonable expenses incurred in the performance of their duties; and be it further

RESOLVED, That the commission receive staff support from the Governor's Commission on Law Enforcement and the Administration of Justice and from the Administrative Office of the Courts; and that all State and local agencies of government are urged to cooperate with the commission by supplying information and advice as requested; and be it further

RESOLVED, That the commission is urged to study all aspects of the operations of the Judicial Branch of government, including, but not limited to, consolidation and funding of the circuit courts of the several counties and Baltimore City; the allocation of civil, juvenile, and criminal jurisdiction between the circuit courts and the District Court of Maryland; ~~the expanded use of masters in equity-matters;~~ the feasibility of a family court; the use of six member juries in the District Court and in the circuit courts; the decriminalization of nonincarcerable motor vehicle offenses; alternative methods of dispute resolution; the problems of de novo appeals from and demands for jury trials in the District Court; the structure of the appellate courts; and the allocation of appellate jurisdictions; and be it further

RESOLVED, That the commission report its findings and recommendations to the 1983 session of the General Assembly; and be it further

RESOLVED, That a copy of this Resolution be sent to the Honorable Harry Hughes, Governor of Maryland; the Honorable James Clark, Jr., President of the Senate of Maryland; the Honorable Benjamin Cardin, Speaker of the House of Delegates; the Honorable Robert C. Murphy, Chief Judge of the Court of Appeals; Charles O. Fisher, Esq., President of the Maryland State Bar Association, Inc., 207 East Redwood Street, Suite 905, Baltimore, Maryland 21202; Mr. Richard W. Friedman, Executive Director, Governor's Commission on

Law Enforcement and the Administration of Justice, Suite 700, One Investment Place, Towson, Maryland 21204; and William H. Adkins- II, Esq., State Court Administrator, Courts of Appeal Building, Annapolis, Maryland 21401.

Approved:

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Governor.

_____

Speaker of the House of Delegates.

_____

President of the Senate.

B. SCHEDULE OF COMMISSION MEETINGS DATES AND PLACES

First Meeting	Monday, August 10, 1981 Thomas Hunter Lowe House Office Building Annapolis, Maryland
Second Meeting	- Monday, August 31, 1981 Thomas Hunter Lowe House Office Building Annapolis, Maryland
Third Meeting	Monday, September 21, 1981 University of Maryland School of Law Marshall Law Library Baltimore, Maryland
Fourth Meeting	Monday, October 5, 1981 Thomas Hunter Lowe House Office Building Annapolis, Maryland
Fifth Meeting	Monday, October 19, 1981 County Administration Building Upper Marlboro, Maryland
Sixth Meeting	- Monday, November 2, 1981 Thomas Hunter Lowe House Office Building Annapolis, Maryland
Seventh Meeting	Monday, November 16, 1981 Kittamaqundi Room Rouse Building Columbia, Maryland
Eighth Meeting	Monday, December 7, 1981 Thomas Hunter Lowe House Office Building Annapolis, Maryland
Ninth Meeting	Monday, January 4, 1982 Thomas Hunter Lowe House Office Building Annapolis, Maryland
Tenth Meeting	Monday, February 1, 1982 Thomas Hunter Lowe House Office Building Annapolis, Maryland
Eleventh Meeting	Thursday, April 22, 1982 Charles Room Belvedere Hotel Baltimore, Maryland

B. SCHEDULE OF COMMISSION MEETINGS (contd.)

Twelfth Meeting	- Monday, May 10, 1982 Thomas Hunter Lowe House Office Building Annapolis, Maryland
Thirteenth Meeting	Monday, June 7, 1982 Thomas Hunter Lowe House Office Building Annapolis, Maryland
Fourteenth Meeting	- Monday, June 21, 1982 Thomas Hunter Lowe House Office Building Annapolis, Maryland
Fifteenth Meeting	Monday, July 19, 1982 Thomas Hunter Lowe House Office Building Annapolis, Maryland
Sixteenth Meeting	- Monday, August 9, 1982 Thomas Hunter Lowe House Office Building Annapolis, Maryland
Seventeenth Meeting	Monday, September 20, 1982 Thomas Hunter Lowe House Office Building Annapolis, Maryland
Eighteenth Meeting	Monday, October 25, 1982 Thomas Hunter Lowe House Office Building Annapolis, Maryland
Nineteenth Meeting	Friday, November 5, 1982 Thomas Hunter Lowe House Office Building Annapolis, Maryland
Twentieth Meeting	Monday, November 15, 1982 Thomas Hunter Lowe House Office Building Annapolis, Maryland

C. WITNESSES

Meeting	
1	No Witnesses
2	Hon. Robert C. Murphy, Chief Judge, Court of Appeals of Maryland Hon. Richard P. Gilbert, Chief Judge, Court of Special Appeals of Maryland Hon. Ernest A. Loveless, Jr., Chairman, Conference of Circuit Judges Hon. Robert F. Sweeney, Chief Judge, The District Court of Maryland
3	Deborah K. Handel, Esq., Chief, Criminal Appeals and Correctional Litigation Division of the Attorney General's Office Peter Cobb, Esq., President, Maryland State's Attorneys' Association Alan H. Murrell, Esq., Maryland Public Defender Joseph F. Murphy, Jr., Esq., Criminal Law Section, Maryland Bar Association
4	Warren B. Duckett, Jr., Esq., State's Attorney for Anne Arundel County Andrew Jay Graham, Esq.
5	Hon. Douglas H. Moore, Jr., District Court for Montgomery County, Juvenile Division Hon. Edgar P. Silver, Supreme Bench of Baltimore City, Juvenile Division Hon. James H. Taylor, Circuit Court for Prince George's County Dorothy R. Fait, Esq., Montgomery County Commission for Women Hon. William H. McCullough, County Administrative Judge, Circuit Court for Prince George's County William J. Parker, Jr., Esq., Upper Marlboro, Maryland Samuel F. Ianni, Esq., Hyattsville, Maryland James C. Chapin, Esq., College Park, Maryland Richard E. Schimel, Esq., Chevy Chase, Maryland William L. Grimm, Esq., Baltimore, Maryland Edward John Skeens, Esq., Suitland, Maryland
6	Robert E. Cahill, Esq., Immediate Past President of the Bar Association of Baltimore City E. Stephen Derby, Esq., Chairman of the Section on Judicial Administration of the Maryland State Bar Association Bernard F. Goldberg, Esq., Howard County

C. WITNESSES (contd.)

Meeting	
7	Hon. Richard P. Gilbert, Chief Judge, Court of Special Appeals William H. Adkins, II, Esq., State Court Administrator Richard Talken, Esq., President, Howard County Bar Association Carmen Colandrea Marjorie B. Johnson, President of the League of Women Voters William R. Hymes, Esq., State's Attorney for Howard County
8	No Witnesses
9	Richard Bartlett, Esq., Dean, Albany Law School, Union University Victoria Cashman, ABA Committee on Implementation and Standards of Judicial Administration Hon. Robert F. Sweeney, Chief Judge, District Court of Maryland William H. Adkins, II, Esq., State Court Administrator
10	Charles H. Dorsey, Jr., Esq., Executive Director, Legal Aid Bureau William L. Grimm, Chief of the Juvenile Law Unit, Legal Aid Bureau Richard F. Pecora, Chief of Family Law Unit, Legal Aid Bureau Natalie H. Rees, Assistant Professor of Law, University of Baltimore School of Law Hon. Robert B. Watts, Supreme Bench of Baltimore City Bruce A. Kaufman, Esq., Chairman, Family and Juvenile Law Section of the Maryland State Bar Association Alexander J. Palenscar, Esq., Chief, Juvenile Courts Division, Baltimore City State's Attorney's Office Rex C. Smith, Director, Juvenile Services Administration
11	No Witnesses
12	William J. Rubin, Esq., Chairman of the Administrative Law Section, Maryland State Bar Association Henry R. Lord, Esq., Administrative Law Section, Maryland State Bar Association Thomas G. Young, Esq., Administrative Law Section, Maryland State Bar Association Delegate Steven Sklar
13	Hon. George B. Rasin, Jr., Circuit Court for Kent County Hon. John F. Fader, II, Circuit Court for Baltimore County Jo Benson Fogel, Esq. Hon. Robert L. Karwacki, Supreme Bench of Baltimore City Hon. Robert J. Woods, Circuit Court for Prince George's County Hon. Edward O. Weant, Jr., Associate Judge, Court of Special Appeals Hon. Howard S. Chasanow, Circuit Court for Prince George's County

C. WITNESSES (contd.)

Meeting	
13 (contd.)	Hon. Bess B. Lavine Alan H. Murrell, Esq., Public Defender Hon. Ernest A. Loveless, Jr., Chairman, Conference of Circuit Judges Hon. J. Dudley Digges, Retired Judge, Court of Appeals J. Basil Wisner, Chief Deputy Comptroller of Maryland Elmer H. Kahline, Jr., President, Maryland State Court Clerks' Association Thomas Basil, Assistant Director, Maryland Association of Counties Edward L. Sealover, Intergovernment Liaison Officer, Prince George's County Hon. Benjamin Brown, City Solicitor for Baltimore City Mrs. Janet L. Hoffman, Department of Budget and Fiscal Services, Baltimore City
14	Hon. Robert C. Murphy, Chief Judge, Court of Appeals of Maryland
15	Hon. Stanley Klavan, Administrative Judge of the Montgomery County District Court William H. Ratchford, II, Director, Department of Fiscal Services William H. Adkins, II, Esq., State Court Administrator
16	Professor Larry S. Gibson, Reporter for the Standing Committee on Rules of Practice and Procedure
17	Hon. Arthur J. Simpson, Superior Court, New Jersey
18	No Witnesses
19	No Witnesses
20	No Witnesses

D. MATERIALS DISTRIBUTED TO THE COMMISSION TO STUDY THE JUDICIAL BRANCH OF GOVERNMENT

ABA - "Standards Relating to Court Organization"

ABA/National Center for State Courts - "Maryland State Court Profile"

Adkins, William H., II Memo on "Identifying Priorities for Commission Study"

Adkins, William, H., II A paper entitled "Court Funding and Administration in Maryland," January 4, 1982

Adkins, William H., II - Memo on "Federal Law 96-272, the Adoption, Assistance and Child Welfare Act of 1980," August 9, 1982

Adkins, William H., II Memo on "Standards with Respect to Numbers of Opinions Per Judge," July 16, 1982

Administrative Office of the Courts - Annual Report of the Maryland Judiciary 1980-1981

Chasanow, Howard S., Co-chairman of the Committee to Reduce Costs and Delay of the Judicial Administration Section of the Maryland Bar Association - "Testimony Before the Commission to Study the Judicial Branch of Government," June 7, 1982, with Appendix B "Size of Trial Juries and Vote Required for a Jury Verdict"

Cobb, Peter C., President, Maryland State's Attorneys' Association and State's Attorney for Harford County "Outline of Comments to the Commission to Study the Judicial Branch of Government," October 5, 1981

Criminal Justice Newsletter, Vol. 13, Number 1, January 4, 1982

Duckett, Warren B., State's Attorney for Anne Arundel County "Criminal/ Juvenile Justice Suggestions"

Fait, Dorothy R., Esq., Committee Chairman Family Law Project Report - Montgomery County Government Commission for Women, May 1981

Final Report of the Jury Study Committee to the 1980-81 Maryland Judicial Conference

Fisher, Irving H., Judge, District Court of Maryland for Prince George's County - "The Case for Abolition of the De Novo Trial"

Gilbert, Richard P., Chief Judge, Court of Special Appeals "Where Do We Go From Here?" Maryland Bar Journal, April 1981

D. MATERIALS DISTRIBUTED TO THE COMMISSION TO STUDY THE JUDICIAL BRANCH OF GOVERNMENT (contd.)

"Geographical and Functional Distribution of District Court Revenues" (Fiscal 1982), Compiled by the Administrative Office of the Courts, August 1982

Goldberg, Bernard F. "Suggestions to the Commission to Study the Judicial Branch of Government," November 2, 1981

Grimm, William - Memo to Charles Dorsey and Gerald Walsh on "Preliminary Proposal: Statewide Provision of Legal Services to Children Who Are the Subject of Child in Need of Assistance (CINA) Proceedings," October 2, 1981

Governor's Commission on Law Enforcement and the Administration of Justice "Court Standards and Goals in Maryland"

Henderson, Thomas A., and Guynes, Randall, Institute for Economic and Policy Studies, Inc.; Barr, Carl, Brock University "Organizational Design for Courts"

Hoffman, Janet L., Director, Office of Intergovernmental Research, Baltimore City - Letter to Charles O. Fisher, Sr., June 10, 1982

Hugel, David H., Esq. "Administrative Organization, An Idea Whose Time Has Come"

Hurwitz, Steven "Maryland Family Court," December 3, 1981

Jimeno, Philip C. Letter to Charles O. Fisher, Sr., January 28, 1982

Johnson, Marjorie "Testimony Presented to the Commission to Study the Judicial Branch of Government," November 16, 1981

Kelly, Michael J., Dean, University of Maryland School of Law - "Written Testimony Submitted to the Commission to Study the Judicial Branch of Government," October 5, 1981

Lally, Peter J. - "Re: Summary of Testimony and Materials Provided to the Commission to Study the Judicial Branch of Government District Court Jurisdiction, Use of Six-Member Juries and Other Matters Related to District Court Operations," August 10, 1981, through June 21, 1982

Lord, Henry R. Letter to William H. Adkins, II, June 4, 1982

Loveless, Ernest A., Jr. "Statement to the Commission to Study the Judicial Branch of Government," June 7, 1982

Maryland Association of Counties "Statement in Support of State Assumption of Fiscal Responsibility for Maryland's Circuit Court System Before the Commission to Study the Judicial Branch of Government," June 7, 1982

D. MATERIALS DISTRIBUTED TO THE COMMISSION TO STUDY THE JUDICIAL BRANCH OF GOVERNMENT (contd.)

Maryland Constitution Section 4A. Commission on Judicial Disabilities created; composition; appointment and terms of members; vacancies; compensation and expenses. Section 4B. Power of Commission on Judicial Disabilities; procedure; removal or retirement of judges by Court of Appeals

Maryland Rules of Procedure Rule 1227. Censure, Removal or Retirement of Judges

Massachusetts Experience on Six Person Juries (Judge Levine's handout)

Minutes of the Section Council of Judicial Administration of the Maryland State Bar Association, December 15, 1980

Minutes of the Special Meeting of the Conference of Circuit Judges, April 15, 1982

Minutes of the Executive Committee of the Maryland Judicial Conference, June 2, 1982

Moore, Douglas H., Jr., Judge, District Court of Maryland for Montgomery County, Juvenile Division - "Testimony Presented to the Commission to Study the Judicial Branch of Government," October 19, 1981

Noonan, James J., Operations Specialist, Systems Planning Division - Memo to Albert D. Paolino, Acting Director, Systems Planning Division on "Administrative Adjudication of Motor Vehicle Offenses," September 2, 1982

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O'Malley, Michael V., Administrative Office of the Courts "Fiscal Estimate of Legislation, SB 864, Circuit Courts, State Assumption of Costs," March 2, 1982

O'Malley, Michael V., Administrative Office of the Courts - "Fiscal Estimate of Legislation, SB 783, Circuit Courts Funding," March 1, 1982

Palenscar, Alexander, Assistant State's Attorney, Baltimore City "Testimony Presented to the Commission to Study the Judicial Branch of Government," February 1, 1982

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Rasin, George B., Jr., Administrative Judge, Second Judicial Circuit Memo to the Commission to Study the Judicial Branch of Government, June 7, 1982

D. MATERIALS DISTRIBUTED TO THE COMMISSION TO STUDY THE JUDICIAL BRANCH OF GOVERNMENT (contd.)

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Scanlan, Alfred L. - "Comments and a Suggestion for Relief of the Staggering Caseload of the Court of Special Appeals," Maryland Bar Journal, Fall 1980

Schaefer, William Donald, Mayor of Baltimore City "Statement Prepared for Presentation to the Commission to Study the Judicial Branch of Government," June 7, 1982

Smith, Rex C., Director, Juvenile Services Administration, Department of Health and Mental Hygiene "Testimony Presented to the Commission to Study the Judicial Branch of Government," February 1, 1982

"Staffing Patterns of Judicial Officers and Staffs Handling Juvenile and Minor Traffic," compiled by the Administrative Office of the Courts, September 1982

Sweeney, Robert F., Chief Judge of the District Court of Maryland "Testimony Presented to the Commission to Study the Judicial Branch of Government," January 4, 1982

Sweeney, Robert F., Chief Judge of the District Court of Maryland - Letter to Charles O. Fisher, Sr., Esq.

Sweeney, Robert F., Chief Judge of the District Court of Maryland - Memo to the Commission to Study the Judicial Branch of Government on the "Views of the Judges of the District Court," August 31, 1981. Attachment A "District Court Jurisdiction Ballot," November 8, 1980. Attachment B "District Court Judicial Survey Prepared by Overview Committee, District Court of Maryland," November 1979

Taylor, James H., Judge, Circuit Court for Prince George's County - "Proposal for Family Court Pilot Project: Prince George's County," October 19, 1981

"Topical Summary of Testimony Presented to the Commission to Study the Judicial Branch of Government," August 10, 1981, through November 16, 1981

Wisner, Basil J., Chief Deputy Comptroller, State of Maryland "Testimony Presented to the Commission to Study the Judicial Branch of Government," June 7, 1982

D. MATERIALS DISTRIBUTED TO THE COMMISSION
TO STUDY THE JUDICIAL BRANCH OF GOVERNMENT (contd.)

Woods, Robert J., Judge, Circuit Court for Prince George's County - "Testimony Presented to the Commission to Study the Judicial Branch of Government," June 7, 1982

Young, Thomas G., Esq. - Letter to Charles O. Fisher, Esq., June 4, 1982