Maryland State Bar Association

REPORT OF COMMITTEE TO STUDY THE CASE LOAD OF THE COURT OF APPEALS

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October 22, 1958

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Hon. John B. Gray, Jr., President
Maryland State Bar Association
Prince Frederick, Maryland

Dear Judge Gray:

The Committee to Study the Case Load of the Court of Appeals presents herewith its final report to the State Bar Association.

The first interim report of this Committee dated January 15, 1958, was presented to and considered by the Association at its mid-winter meeting in Baltimore on January 25, 1958; the second interim report dated June 10, 1958, was presented to and considered by the Association at its annual meeting in Atlantic City on June 20, 1958. At that time the Association adopted a resolution directing this Committee to continue its study of the matter and present its final report as soon as practicable. The resolution further provided that such final report "with its specific recommendations, including detailed drafts of any proposed constitutional amendments or legislation be printed and sent to each member of this Association at least thirty days before the 1959 mid-winter meeting or any earlier special meeting called to consider the report". The date of the mid-winter meeting has been advanced to December 5, 1958, for the specific purpose of considering the report of this Committee before the next session of the Legislature convenes. Accordingly, pursuant to the resolution adopted at the last meeting of the Association we include in this report our specific recommendations and we append hereto as Annexes G and H detailed drafts of proposed constitutional amendments and legislation to carry our recommendations into effect.

On June 20, 1958, the Association also adopted a resolution requesting the Legislative Council of Maryland to appoint a Committee to "provide liaison and to cooperate with" this Committee in its study of this matter so that the Legislative Council would be fully conversant with the problem and thus be better able to act promptly on any recommendations which this Association might make. Such a committee was appointed by the Legislative Council, and we have had several meetings with that committee and have kept the members thereof advised of the progress of our work.

In our previous two reports we set forth in considerable detail the nature of the problem and the results of our studies up to that time. Although we have devoted a great deal of study to the problem since our second report, the material submitted in our first two reports is, nevertheless, essential in considering the recommendations to be made in this report, and indeed forms the basis of our recommenda-

tions. Unfortunately, however, the supply of printed copies of our two earlier reports is exhausted. We are, therefore, reprinting them as an appendix to this report.

THE PROBLEM

As pointed out by Judge Rollins in his address in 1957, the population of the State of Maryland has been growing very rapidly in recent years. From 1940 to 1950 the State-wide gain in population was 521,757 but from 1950 to 1955 — half as long a period — the gain was 401,015 or almost as much. In 1940 the total population of the State was 1,821,244, in 1950 2,343,001, in 1956 2,753,000 and for 1960 it is estimated that it will be about 3,000,000.

The work load of the Court of Appeals has also been increasing during this period. Thus the total number of opinions per year filed in the period from January, 1940 to July, 1958, ranged from a low of 102 in the year 1942 to a high of 240 in the September, 1957, term *and these figures do not include concurring or dissenting opinions.* In the same period the average number of opinions per judge per year ranged from a low of 13.1 in 1943 and 1944 to a high of 45 in the 1957-58 term. It should also be noted that the average number of opinions does not include opinions by specially assigned judges, but only opinions by the regular members of the Court of Appeals.

Appended hereto as Annex A is a tabulation showing for the years 1940 to 1957 the number of appeals docketed, the number of opinions written by each judge and the average number of opinions per judge. Annex B shows for the period from 1947 to 1957 the number of applications for leave to appeal in habeas corpus cases and the number of opinions on such applications. Annex C is a summary showing in tabular form the number of appeals, the number of opinions and the average number of opinions per judge for each of the years from 1940 to 1957. Annex D is a separate tabulation showing a classification of the appeals in these same years under 19 different headings.

It will be noted from an examination of Annex C that with the exception of a relatively few years there has been a steady increase each year in the number of appeals and in the number of opinions filed. It may be significant that for the most part the years in which a decrease occurred were the years during or following World War II or the Korean conflict. In any event, from 1955 on the number of appeals and the number of opinions has been greater than ever before. The average number of opinions per judge has increased from 17.1 in 1940, 20.7 in 1945 (when the Bond Amendment became effective), 26.5 in 1952 (the first full year of the five judge court) to 45 in 1957 for each of the regular judges of the Court; and were it not for the 12 *per*

curiams and 8 opinions by specially assigned judges the average number of opinions per judge would have been 49 in 1957. In addition, the number of applications for leave to appeal in habeas corpus cases increased from 45 in 1947 to 104 in 1957. As was noted in our second report, appeals in habeas corpus cases have been abolished, but there undoubtedly will be appeals in cases under the Post Conviction Procedure Act. This Act took effect on June 1, 1958, and, accordingly, there are no statistics available as yet to show how much of a burden this will cast upon the judges of the Court of Appeals. Up to June 1, 1958, there were 26 applications for leave to appeal in habeas corpus cases in the present term and as of the time of the writing of this report there has been one appeal in a case under the Post Conviction Procedure Act filed, but there are approximately 50 such cases now pending in the lower courts. In all probability some of these cases will be appealed to the present term.

This Committee is of the opinion that it is urgent that a solution of the problem confronting the Court of Appeals be worked out. It must be kept in mind that there are bound to be ups and downs in the number of opinions filed from year to year, but a glance at Annex C will show that notwithstanding this fact there has been a steady upward trend in the number of appeals docketed and consequently in the number of opinions filed during the past twenty years. We expect this trend to continue as, indeed, it must unless we anticipate that the population, industry and business of the State of Maryland will become stagnant. Even if the Association acts now, it will not be possible to carry our recommendations into effect until 1961, and it is, therefore, highly important that a permanent solution to the problem be worked out now and be put into effect as promptly as possible.

There is a limit to the case load which can be carried by any appellate court and if the case load of the Court of Appeals is or becomes too great, one of three things must inevitably happen: (1) the Court will fall behind in its docket; (2) the quality of the work done by the Court will deteriorate; or (3) the Court will have to resort to an even greater extent to the device of calling *nisi prius* judges to sit on the Court, thereby in effect creating a modified panel system.

Up to the present time the Court of Appeals has been able to keep its docket current. For a number of years the Court has completed the disposition of all cases docketed during the term and filed all opinions in such cases before adjournment. In the 1957-58 term the average time between the docketing of a case and the hearing of argument was 4.6 months, and the time lapse between the date of argument and the filing of an opinion was 1.4 months, which means

that appeals were finally disposed of on an average of 6 months after they were docketed. The Court has been able to accomplish this only by extending its term, convening one month earlier and sitting one month later than was heretofore the practice.

We have carefully considered the work load which a judge of the Court of Appeals can reasonably be expected to carry, and we are firmly of the opinion that the work load during the term just ended was substantially in excess of the maximum, and that if this work load continues or if it increases so that a judge will be required to write more than a maximum of 40 opinions per year, the efficiency of each individual judge and the caliber of work done by the Court will necessarily suffer. It is, therefore, our considered opinion that something must be done to lessen the existing burden on the judges of the Court of Appeals and to prevent any further increase in that burden.

POSSIBLE SOLUTIONS OF THE PROBLEM

Depending upon one's approach there are many, many possible solutions to the problem, but very broadly speaking there are only two ways of reducing the work load of the Court of Appeals, (1) by reducing the number of appeals, or (2) by increasing the number of judges available to hear appeals, either by increasing the number of judges, providing that the court sit in panels, or by establishing other appellate courts.

We have considered many suggestions in each of these two categories, most of which were referred to in our earlier reports but some of which have been made and considered by us since that time. It would serve no useful purpose to set forth at length in this report a discussion of all these possible solutions and our reasons for rejecting most of them.

The problem confronting the State of Maryland is not a unique one, and we have, therefore, considered carefully the various solutions to the problem which have been adopted in other States. In so doing we have endeavored to examine available statistics as to the case load in the highest courts of the various States. This has been a disheartening experience because the bare statistics as to population, number of judges, number of appeals and number of opinions, etc. give no real information as to the operation of the court and are indeed ofttimes misleading. Nevertheless, we append hereto as Annex E a tabulation showing for each State the population, the number of trial judges in the State, the number of judges of the highest court, whether the highest court sits in panels or divisions, the number of Commissioners, if any, to aid the court, the number

of opinions and whether there is an intermediate court. We also append hereto as Annex F a brief statement as to the limitations on the right of appeal in those few States where there are no intermediate courts and which do have such limitations on the right of appeal.

Much more important in our consideration of this problem is the matter of the practices followed by the courts of the several States in deciding appeals. Thus it is important to know, in considering the total number of opinions filed and the number of opinions per judge in other States, whether such opinions are truly opinions of the entire court or are one judge opinions. This, however, is not apparent from a bare tabulation of the statistics. We have, to the extent the information was available to us, tried to ascertain the practices of the highest courts of other States in this regard, but it is not possible to indicate the results of this study in tabular form. It is unfortunately true, however, that in some States the appellate judges have solved the problem of their increasing work load by devoting less time to the circulation of opinions, conferences on opinions, full argument of all cases, etc. These are matters which we believe result in a substantial lessening of the quality of the opinions. They are decidedly not practices which we would like to see adopted in Maryland.

An examination of Annex E does, however, furnish some interesting and informative comparisons. Thus, 21 States out of the total of 51 States and Territories have populations in excess of that of Maryland. Of these 21 States all except six have intermediate courts or are in the process of creating intermediate courts. Of the six which do not have intermediate courts, one, Virginia, does not have an unlimited right of appeal; on the contrary, in Virginia appeal to the highest court is by permission only except in a very limited area. The remaining five States, Massachusetts, Michigan, Minnesota, North Carolina and Wisconsin are the only ones with a population in excess of that of Maryland which do not have an intermediate court and in which there is apparently an unlimited right of appeal to the highest court. The statistics would indicate that the number of opinions in these States varies from a low of 178 in Minnesota to a high of 361 in North Carolina. Here again, however, the statistics can be misleading because we have no way of knowing just what kind of opinions these are, that is, whether they are one judge opinions or are opinions of the full court, nor do we know whether the statistics are accurate in the sense that the number of opinions is given on the same basis as that followed in Maryland. It would appear, however, that on the basis of these 1955 figures the number of opinions was greater in Massachusetts, Michigan, North Carolina and Wisconsin than in Maryland, but only in North Carolina and Wisconsin is the number of opinions greater than the number in Maryland in 1957.

As indicated above, one possible way of reducing the work load on the Court of Appeals is by reducing the number of appeals. There are several ways to do this: (1) by establishing a minimum monetary amount for any appeal, (2) by abolishing the absolute right of appeal and substituting permissive appeal, that is by application for certiorari to the highest court or by permission of the lower court, and (3) by abolishing the right of appeal in certain classes of cases. We had concluded in our earlier reports that none of these methods was wholly satisfactory. Certainly it would be desirable to eliminate appeals involving very small amounts, but this is not practicable because it is entirely possible for a case to involve directly only a very small amount of money and yet in principle involve a great deal. We were also unwilling to recommend a limitation on the right of appeal and concluded that it was essential that there be a right to at least one appeal in every case. It is interesting to note that this was one of the principles adopted by the American Bar Association in its report on judicial standards in 1938. In any event we are confident that the Bar as a whole is in agreement with us that there ought to be a right to at least one appeal in every case. An examination of Annex F will show that this is the prevailing view throughout the country and that there are very few States in which there is not an absolute right to at least one appeal. The system of permissive appeal only seems to have worked well in Virginia if one can judge by the comments of the Virginia lawyers, but if so, this is merely an instance of the exception proving the rule, at least in our opinion. It is significant, however, that in Virginia there were only 134 opinions of the highest court in 1955.

The other broad category of methods of reducing the work load on appellate courts mentioned above is that of increasing the number of judges available to hear appeals, either by increasing the number of judges on the highest court, or by establishing other appellate courts, or by providing for Commissioners, or by providing that the Court sit in panels. We have considered very carefully each of these methods.

If the work load of the judges of the Court of Appeals could be measured solely by the number of opinions, then the simple and obvious solution of the problem would seem to be merely to increase the number of judges on the Court and were we to have one judge opinions with no conferences of judges on opinions, this might possibly solve the problem. However, we do not believe the Bar of Maryland wants one judge opinions but on the contrary wants the deliberation of our full Court on every opinion. The number of opinions written is, moreover, a measure of only a part of the work of the judge because regardless of the number of opinions he is to

write, each judge must participate in the hearing of argument in every case, must read the briefs and records in every case, must participate in the conferences of judges on every case and must carefully consider the opinion written in every case whether it is written by him or one of the other judges. Therefore, a mere increase in the number of judges will not solve the problem; indeed, it may only complicate the problem because the larger the group of judges participating in the hearing of arguments, in conferences, and in the decision of cases, the more difficult and time-consuming will be the process of arriving at a final decision. This is the generally accepted view and all the authorities have agreed for many years that the most efficient appellate court is by all odds the small court. This is the thinking which lead to the adoption of the Bond Amendment in 1944 and we think it is sound thinking today.

An increase in the number of judges with a provision that the Court sit in panels or divisions would undoubtedly very appreciably lessen the work load of the judges and it would not have the disadvantages which would follow if the number of judges were increased and all sat in every case. However, as indicated in our previous reports the proposal that the Court of Appeals sit in panels or divisions has, in the opinion of your Committee, many more serious disadvantages, the primary one being that there would be no finality to the decisions of the Court even if the practice of some States was followed that the Chief Judge sit with each panel or division.

Similarly, we considered the suggestion that the practice of some States of having Commissioners appointed to assist the Court in its work be followed. This practice has been adopted in only a very few States. In essence it provides for the appointment of judges who do not have the title of judges and do not participate in the actual decision of cases although they hear arguments and write opinions. We do not believe this proposal is one which would be approved by the Bar of Maryland. If we are to have additional judges, your Committee believes they should be called judges and should be given the powers of judges and we should not adopt a device which is at best a makeshift one.

We have, therefore, rejected the notion that the problem can be solved by limiting the right of appeal or by increasing the number of judges on the Court of Appeals or by providing that the Court sit in panels or by providing for Commissioners.

GOVERNING PRINCIPLES

We decided that before attempting to recommend to this Association our opinion as to the best possible solution to the problem we should first undertake to state what we believed to be the basic principles which should govern the decision of the Association. We did this and in our second report set out the basic principles which we believed should control. These are of such importance that we desire to repeat them here. They are as follows:

1. There are two aspects to the function of the Court of Appeals as a court of last resort: (a) What may be called the private function, that is, to see that justice is done to the litigants in each individual case; (b) what may be called the public function, that is, to settle and give authoritative expression to the developing body of the law. The two functions are of equal importance in the judicial system of Maryland.

2. 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". The case load ought not to be so great as to prevent this.

3. There ought to be at least one appeal as a matter of right in every case, except possibly in cases where the amount or the issues are too trivial to justify such an appeal.

4. The Court of Appeals should sit as one Court and not in panels or divisions as otherwise there would be no finality to its decisions.

5. In considering the various solutions to the problem the cost to the people of the State is important and should not be overlooked, but it should not be controlling because it is the duty of the State to provide an adequate judicial system.

The application of these principles to the problem is more difficult than the mere statement of them, but to the extent that we have the capacity to do so, we have endeavored to work out a solution which is consistent with and which gives full effect to each and every one of these principles.

It must be kept in mind that the increased case load of the Court of Appeals cannot be attributed solely to the growth of population of the State and the increase in its business activity. In recent

years there have developed entirely new fields of litigation. Automobile traffic, now one of the most prolific sources of litigation, was practically non-existent 50 years ago. The multiplication and expansion of administrative agencies such as those having to do with workmens' compensation, public utility regulation, zoning, social security, licensing and taxation have placed tremendous new burdens upon the judicial system. The result is not merely an increase in the number of appellate cases but also a great increase in the complexity of appellate cases. This necessarily means that it is even more urgent that the judges have the requisite time to consider and decide each case properly and the second principle stated above is all the more important. Moreover, there is a constantly expanding body of law to be examined in doing the necessary research for the decision of appellate cases. Thus, not only has there been a phenomenal increase in the number of reported opinions but in the past 20 years the legislation and administrative regulations having the force of law which the appellate judges are called upon to consider and interpret have likewise grown enormously. All of this increases the burden and strain on the appellate judges and obviously requires more time.

There are several other important factors which must be kept in mind in applying the principles above stated to the problem confronting the Bar. Among these are:

(1) A solution should not be adopted which while relieving the burden on the highest court merely multiplies the number of appeals or increases the complexity of the appellate procedure.

(2) The appellate procedure should be simplified in every possible way and the cost thereof should be kept at a minimum.

(3) There should be no uncertainty as to the right of appeal or as to the Court to which an appeal will lie.

(4) The appellate procedure should not be such as to cause delay and thereby invite a still greater number of appeals taken for the sole purpose of securing delay.

Although the complexity of appellate cases generally has increased greatly in recent years, there are still a great number of such cases which involve largely factual issues and do not present new or novel questions of law. This is not to say that an appeal should be denied in such cases. On the contrary we believe that an appeal should be allowed and it should be an appeal in which the review is not by one judge only. However, this does not require that the appeal in such cases be to the highest court in the State.

There is also another important consideration to be kept in mind. As the complexity of our modern life has increased, the complexity of our judicial system has likewise increased. The number of trial

judges has greatly increased in recent years and with this has come a terrific increase in the purely administrative problem of running the courts. Various devices have been tried, some with more, some with less, success. In many States, as in Maryland, an administrative office of the courts has been established which has aided greatly in improving the administration of justice, but it has been recognized universally that the proper administration of a judicial system requires that there be an administrative head with ample authority. This has resulted in most States, as in Maryland, in constitutional provisions and statutes providing that the chief judge of the highest court shall be the administrative head of the judicial system of the State. This is as it should be and the chief judge of the highest court is the only one who can be effectively clothed with sufficient power to make the judicial machinery operate smoothly and efficiently and with reasonable promptness. This, however, increases the burden on the appellate court because the time required for these purely administrative functions of the chief judge is very substantial and the prospect is that it will continue to increase and not decrease. The chief judge must, unless some means of relief are found, therefore not only do the same work as do his associate judges but in addition carry a burden of administrative responsibilities which are equally important and very time-consuming. It is our opinion that if the administration of justice in the State of Maryland is to continue to improve, the burden of these administrative responsibilities and duties on the chief judge of Maryland will necessarily increase. This aggravates the existing problem to no inconsiderable extent.

DECISIONS OF THE COMMITTEE

When we considered the application of the five basic principles set forth above in the light of the additional facts just recited, we came to the conclusion that the only permanent solution to the problem lies in an increase of the judicial manpower on the appellate level by the creation of an additional appellate court.

At first blush it would appear preferable to create a coordinate rather than an intermediate court of appeals because it would mean no duplication in the number of appeals and at the same time the decisions of each of the two coordinate courts would be final. Also, it would seem relatively simple to provide what cases should go to one court and what cases to the other. On closer study, however, it appeared that this solution was far from a simple one and might indeed lead to many complications. True enough this solution would not involve double appeals but that very fact might be the most serious disadvantage of the plan. Obviously, it would not be easy to base the decision of whether the appeal should go to one court or

the other on the nature of the legal question presented. To do so would inevitably cause serious doubt as to jurisdiction and a multiplicity of appeals and great uncertainty. Therefore, the question of whether the appeal should go to one court or the other should depend upon the nature of the case, that is, for example, whether it was a civil case or a criminal case, a mechanic's lien case or a workmen's compensation case, an automobile negligence case or a suit on a contract, a divorce case or a suit to construe a will, and so on.

Classifying the appeals in this manner, however, leads to further complications because then one cannot for a certainty say that legal questions of a particular type will be decided by one court and not by another. For instance, suppose we said that all criminal cases should go to one appellate court and that all actions on a contract should go to the other appellate court. It is entirely possible for a legal question, say on the admissibility of evidence, to arise in a criminal case that would be precisely the same as a point of evidence which would arise in a contract case, but we would have decisions of two separate courts on this same point of evidence. If their opinions differed, there would be no one court or supreme authority which could resolve the conflict. We would then have one rule of evidence applicable in a criminal case and a different rule applicable in a contract case. These examples could be multiplied, but sufficient has been said to indicate that the proposal of having two coordinate courts, while appearing to be simple and entirely feasible, upon further reflection seems to be entirely unworkable. It was also significant to us that in only two states, Texas and Oklahoma, are there such coordinate courts and in each instance they hear criminal appeals only.

No such problem is presented if an intermediate court is created because then in the event the decision of the intermediate court is not in accord with the decisions of the highest court it can be reviewed by the highest court and reversed; in other words there is only one court with final authority whose decisions are binding and interpret the law not only in the pending case but for the future. This very advantage, however, ofttimes presents a very serious disadvantage, namely, that instead of one appeal in any given case there are two, and it does not seem possible to devise a system which will avoid this in all instances. This is true because the very nature of the solution pre-supposes the possibility of a second appeal.

After much study and consideration of the problem it seemed to us, however, that it was not essential to create an intermediate court as that term is ordinarily understood, i.e., a court to which every appeal must go in the first instance. If appeals could be classified to determine to which of two coordinate courts they should go, why could they not be similarly classified so that appeals of one class only

would go to a new appellate court which would be neither a coordinate court nor an intermediate court strictly speaking, and all other appeals go as heretofore to the Court of Appeals? This would have the advantage of avoiding any possibility of a double appeal in most cases and yet preserve the advantage of there being one court of last resort which would ultimately be able to decide authoritatively all questions of law. In this way it seemed to us we would be able to combine the advantages of both the coordinate court and the intermediate court and yet eliminate the most serious disadvantages of both. True enough, this solution does not mean that there never could be double appeals but certainly the incidence of double appeals could be kept very low. We, therefore, concluded that the best solution would be to provide for a court of this character rather than a coordinate court or an intermediate court in the ordinary sense.

This left us with the problem of deciding precisely what kind of new appellate court would best suit the needs of the State of Maryland. Starting with the premise that the Court would have a limited jurisdiction, that is, that it would have jurisdiction of only a certain class of cases and not of all cases, we concluded that it should be, (1) a Court of as few members as possible, (2) a Court whose decisions in nearly every case would be final without the necessity of further review by a higher court, (3) a Court with stature, dignity and prestige so that in most instances its decisions would be accepted without attempts at further review and (4) a Court created with sufficient flexibility so that necessary adjustments could be made on the basis of experience and if the needs of the future made the necessity for still more judges apparent the necessary changes could be made without any change in the basic structure.

A decision as to the number of judges for such a new court is based on a consideration of a number of factors. The most important, of course, is the extent of the case load to be imposed on the new court. This is difficult to estimate, but we thought that the case load could be divided between the present Court of Appeals and the new court in such a way as to give considerable flexibility; that is, there could be a sufficiently small case load for the new court that three judges could handle it, or the case load could be increased to such an extent that five judges would be necessary. We did not think that greater than five judges would be required at the present time at least. Our first decision, therefore, was to provide for a court of five judges. This, however, posed a number of practical problems, chief among which was the question of determining just how these judges should be selected.

It has been the policy of the State of Maryland to select its judges of the Court of Appeals on the basis of territorial representation. This

was true for many years prior to the adoption of the Bond Amendment and is true today, the only difference being that prior to 1945 the judges were selected on the basis of judicial circuits, whereas today under the Bond Amendment they are selected on the basis of appellate judicial circuits. Since there are four appellate judicial circuits, it is virtually impossible to provide for a new court of three judges and difficult to provide for a new court of five judges. We, therefore, determined to recommend that the new court initially be composed of four judges with authority in the Legislature to increase the number of judges should this be necessary in the future.

In determining what class of cases should go to the new court we thought the following considerations were pertinent: (1) The volume should be sufficient for the new court and yet low enough to allow for an increase, (2) the cases should be those most likely to be factual in nature and not likely to present new or novel and important questions of law, and (3) the classification should be one which could very simply be changed by the Legislature if experience required a change. We, therefore, decided to recommend that initially appeals in criminal cases, domestic relations cases, personal injury and negligence cases and workmen's compensation cases go to the new court. These comprise about a third of the total number of appeals. Undoubtedly some of them will be transferred to the Court of Appeals but on the other hand, the number of appeals in criminal cases (including Post Conviction Procedure Act cases) is very likely to increase in view of the recent decisions of the Supreme Court.

Every member of the Committee was most reluctant to recommend the creation of an ordinary intermediate court, and we recognize that there is bound to be resistance by the Bar to the notion that any intermediate court of appeals is required in Maryland. We think, however, that antagonism to the idea of an additional appellate court will be based largely on the criticism that our appellate procedure would be needlessly complicated, and that two appeals would be required where one now suffices. We think that our plan of classifying the appeals so that only certain types of cases will go to the new court which we recommend and that appeals in all other cases will go as heretofore to the Court of Appeals will meet a very substantial part of these objections, but we felt that it was highly desirable to provide still other means to prevent as far as possible the necessity of two appeals in any case.

It is for this reason that we have proposed the addition of Section 24D to Article 5 of the Code. That section provides three methods by which cases pending in or decided by the new appellate court may be reviewed by the Court of Appeals: (1) by direction of the Court of Appeals or the Chief Judge on its or his own motion, (2) by direction

of the Court of Appeals on application by a party, and (3) by such other methods as may be prescribed by Rule. It will be noted that in each instance review by the Court of Appeals may be either *before or after rendition of judgment by the new appellate court* except in criminal cases. This is an essential part of our recommendation and the most important device by which we hope to avoid double appeals. We contemplate that the Chief Judge will constantly scrutinize the docket of the new appellate court, and that whenever he sees that there is an appeal filed which would ultimately require review by the Court of Appeals he will direct that it be transferred to the docket of the Court of Appeals, thereby avoiding a hearing before the new appellate court. On the other hand, if the case involves substantial questions of fact and a narrow question of law the Chief Judge might feel that it would be better to have the judgment of the new appellate court on the question of fact and allow the questions of law to come to the Court of Appeals by his direction thereafter. This should give sufficient flexibility for most cases, but to guard against oversight on the part of the Chief Judge, we recommend that provision be made for a litigant to request a review of the appeal by the Court of Appeals either before or after a decision by the new appellate court. Also, as experience under the new plan develops, it might be that other methods of review would be better adapted to the circumstances, and we therefore provide that the Court of Appeals may prescribe such other methods by Rule. This we think gives sufficient flexibility to the whole plan.

Of course, the efficient working of the plan depends upon the Rules adopted by the Court of Appeals. We have not attempted to draft such Rules because we think that is properly the function of the Standing Committee on Rules. It is our thought, however, that the Rules be very explicit as to the cases in which an application for review would be permitted, and that they be sufficiently stringent so that the number of such applications granted would be very, very small. Here again the application may be made before as well as after the rendition of judgment by the new appellate court, thus affording an opportunity for counsel to suggest to the Court of Appeals that the case is one which should be reviewed directly by it without a prior hearing by the new appellate court.

We have purposely not provided for review by formal petition for certiorari because this seems wholly unnecessary and needlessly complicated. The Rules could very well provide for a very simple form of application for review and indeed, when such application is made before the case is argued before the new appellate court, it might be simply a short statement or motion in the opening part of the brief. The Rules should also provide for the transfer to the proper court

of a case erroneously appealed either to the new appellate court or to the Court of Appeals. This should prevent any possibility of prejudice to a party if there should ever be any uncertainty as to whether the appeal should go to one court or the other.

We think that by these devices we have met the more serious objections which could be made to an additional appellate court, and we think any remaining objections can be met if the new appellate court has sufficient prestige and sufficient respect of the people of the State that its judgments will be accepted as final in nearly every case. This is particularly important where, in the plan we recommend, the selection of the cases to go to the new appellate court is made not on the basis of the nature of the legal questions involved but instead solely on the basis of the nature of the case. Thus, it seems to us that it would be impossible to justify a situation in which criminal cases are decided by a court of less stature, dignity and prestige than ordinary contract cases, or that divorce cases are decided by a court of less stature, dignity and prestige than mechanics lien cases. It is, therefore, apparent that the qualifications of the judges of the new appellate court should be the same as those of the judges of the Court of Appeals. We think that for these same reasons the salary, and pension and retirement provisions should also be identical. In furtherance of this same idea we also suggest that in the event of a vacancy on the Court of Appeals the Governor may (but shall not be required to) appoint to that vacancy a judge of the new appellate court who would then serve as judge of the Court of Appeals for the remainder of the term for which he was elected and not have to stand for re-election.

We have felt it also very important that care be exercised in selecting the name for the new appellate court and this has caused us great difficulty. The name should be short, should be descriptive of the function of the new court and at the same time should also avoid any notion that the new court is an inferior court. In almost every State where there is an intermediate court the highest court is designated as the Supreme Court and the intermediate court is variously designated as the Court of Appeals, Appellate Division, Superior Court, etc. We are unwilling, however, to suggest a change in the name of our Court of Appeals which has been so designated for well over 150 years and after careful consideration of many names we have decided to recommend that the new appellate court be called the Court of Special Appeals.

We have given very careful consideration to the question of whether the Clerk of the Court of Appeals should also act as Clerk of the Court of Special Appeals. From many points of view this would be desirable; on the other hand, it is also desirable to avoid any con-

flicts or any possibility that the new court be considered a mere appendage of the Court of Appeals. Here again experience may indicate which is the more desirable and we therefore recommend that the Constitution provide that the Clerk of the Court of Appeals also act as the Clerk of the Court of Special Appeals unless the Legislature provides otherwise. We believe it would be better, however, for the new court to have its own clerk and we recommend, therefore, that the Legislature authorize the appointment of a separate clerk for the Court of Special Appeals. We desire to point out, however, that it is important for the success of the plan we recommend that the two clerks work closely together and that their offices be close and preferably in the same building.

We have not attempted to make specific recommendations as to when and where the sessions of the Court of Special Appeals be held. It seems to us that the Court might very well use the courtroom of the Court of Appeals in the alternate two week periods when the Court of Appeals is not sitting. On the other hand, it might be desirable for the Court of Special Appeals to hold some of its sessions at other places in the State. We have therefore recommended that this be left to the determination of the Court of Special Appeals.

Our decisions as to the Court of Special Appeals caused us to give consideration to the question of whether it would be advisable to provide for one additional judge on the Court of Appeals, and we have concluded that it is desirable to do so for a number of reasons.

First, as pointed out above, the burden of administrative responsibilities on the Chief Judge of the Court of Appeals has been increasing steadily in recent years and is in our opinion bound to continue to increase. We think this is as it should be and are heartily in favor of conferring as much administrative authority on the Chief Judge as possible because we believe that only in this way can we achieve a truly efficient judicial system throughout the State. However, this means that the Chief Judge cannot possibly participate to the same extent as the associate judges in the hearing of arguments, decision of cases and writing of opinions in addition to performing his administrative duties. On the other hand, we do not believe the Bar wants cases in the Court of Appeals decided by fewer than five judges, and no member of the Committee is willing to recommend a system by which decisions of the Court of Appeals are made by fewer than five judges. The addition of a sixth judge to the Court of Appeals would enable the Chief Judge to devote a great deal of necessary time to the administrative matters and to the supervision of the entire judicial system of the State and at the same time permit the decision of cases to be made by five judges as heretofore. Also, the addition of a sixth judge would make it unnecessary for a *nisi prius* judge to be desig-

nated to sit on the Court of Appeals when one of the regular judges is disqualified or absent by reason of illness.

A very important part of our recommendation for the creation of a new appellate court is Section 24D of Article 5 of the Code, prescribing the methods by which a case pending in the new appellate court may be reviewed by the Court of Appeals, *either before or after the rendition of judgment by the new appellate court.* We contemplate that under the first clause of this section, the Chief Judge of the Court of Appeals will exercise constant supervision over the docket of the new appellate court and examine the briefs to such an extent that he will be able to determine whether the legal questions presented are such as would ultimately be reviewed by the Court of Appeals. He should also in every case make a preliminary determination of whether the appeal has been docketed in the proper court, and if not, order the appeal transferred to the proper court so as not to cause delay. This will require a considerable amount of time and it is a function which cannot very well be delegated by the Chief Judge. The successful working of this plan, therefore, depends upon the Chief Judge having sufficient time to devote to this duty.

It has been suggested to us that a Chief Judge of the Court of Appeals no matter how much time he is required to devote to purely administrative matters in the supervision of the judicial system, nevertheless, will still want to carry "his fair share" of the burden of the decision making work of the Court. With this view we concur, but we point out that the "fair share" of the Chief Judge by no means implies that he should write the same number of opinions or participate in the decision of the same number of cases as do the associate judges. On the contrary we believe that his "fair share" of the decision and opinion writing in cases is substantially less than the number of decisions participated in and opinions written by his associates on the Court. If our recommendation is adopted and a sixth judge is added to the Court of Appeals, we very strongly urge the Chief Judge to devote a sufficient amount of time to the administrative responsibilities of his office and not to feel that he is in any sense obligated to write a number of opinions equal to that of each of the associate judges. In our opinion at least, and we believe in the opinion of the Bar and of the people of the State of Maryland, the "batting average" of the Chief Judge will not be determined by the number of opinions written by him in each year. His achievements as Chief Judge will be reflected in many other ways and ways perhaps far more important to the maintenance of the standards of judicial administration in this State.

Another reason for adding a sixth judge to the Court of Appeals is that since 1945 when the present plan of dividing the State into appellate judicial circuits and allocating the judgeships among the

four appellate judicial circuits was adopted, there has been a very substantial change in the population of the various circuits and more importantly in the number of cases going to the Court of Appeals from the various appellate judicial circuits. At one time the population of the City of Baltimore was approximately half of that of the entire State. That, however, is no longer the case. The population of the City of Baltimore has remained virtually constant in recent years while the population of the counties constituting the metropolitan areas of Baltimore and Washington has grown by leaps and bounds. This is particularly true in Baltimore County and in Prince George's County both of which are in the Second Appellate Judicial Circuit. Ten years ago the population of Baltimore City was **950,000** and the population of the Second Appellate Judicial Circuit was **705,923**. Today the population of Baltimore City is approximately **984,000** and the population of the Second Appellate Judicial Circuit is approximately **1,118,000**. Ten years ago the number of appeals in the Court of Appeals originating in Baltimore City was substantially more than half of the total number of appeals. In 1955 when the total number of appeals was **231** the number of appeals originating in Baltimore City was **102** and the number of appeals originating in the Second Appellate Judicial Circuit was **71**. In 1957 when the total number of appeals was **299** the number of appeals originating in Baltimore City was **106** and the number originating in the Second Appellate Judicial Circuit was **93**. If then we are to adhere to the principle that the judges of the Court of Appeals should be selected on the basis of territorial representation, an allocation of judges which would give two judges to the Second Appellate Judicial Circuit as well as to Baltimore City would be much fairer than the present allocation under which Baltimore City has twice as many judges on the Court of Appeals as does the Second Appellate Judicial Circuit. From this point of view, therefore, the Second Appellate Judicial Circuit is entitled to another judge on the Court of Appeals which necessarily requires that the number of judges be increased from five to six.

RECOMMENDATIONS

We, therefore, submit the following recommendations to the Association:

1. That a new appellate court be created to be known as the Court of Special Appeals and to have four judges, one from each of the present four appellate judicial circuits with authority in the Legislature to increase the number of judges in the future.

2. That the jurisdiction of the Court of Appeals and the Court of Special Appeals be such as may be prescribed by law from time to

time. We recommend that initially appeals in personal injury and negligence cases, workmen's compensation cases, domestic relations cases and criminal cases go to the Court of Special Appeals and that appeals in all other cases go direct to the Court of Appeals.

3. That the Court of Appeals have authority to review cases pending in the Court of Special Appeals either before or after the rendition of judgment by the Court of Special Appeals. We further recommend that the methods of review be, (a) by direction of the Court of Appeals or the Chief Judge thereof on its or his own motion, (b) by order of the Court of Appeals granted on application of a party, or (c) by such other means as may be prescribed by Rule of the Court of Appeals.

4. That the qualifications, salary, and retirement and pension provisions for judges of the Court of Special Appeals be identical with those for judges of the Court of Appeals. We further recommend that the Governor be authorized to appoint a judge of the Court of Special Appeals to fill a vacancy on the Court of Appeals without his having to stand for re-election.

5. That the Court of Special Appeals have its own clerk.

6. That the number of judges of the Court of Appeals be increased from five to six with the additional judge coming from the Second Appellate Judicial Circuit. We recommend that only five judges sit in a case unless otherwise directed by the Chief Judge.

An examination of the proposed constitutional amendments and the proposed legislation, drafts of which are appended hereto as Annexes G and H, will indicate in detail the methods by which we propose that these recommendations be carried out. Summaries of the proposed constitutional and statutory changes will be found at the beginning of each of these two Annexes.

Appeals in the class of cases which we recommend to go to the Court of Special Appeals comprise approximately one-third of the total number of appeals in recent years. Some of these will undoubtedly be reviewed by the Court of Appeals directly without any hearing by the Court of Special Appeals; a few will be reviewed after rendition of judgment by the Court of Special Appeals. It is difficult to make precise estimates but on the basis of the number of appeals and number of opinions in 1957 this arrangement should reduce the work load of the judges of the Court of Appeals to about 30 opinions per judge per year. The system is sufficiently flexible so that changes can readily be made if experience indicates the desirability of changes. Also, if in the future the increase in the appellate case load makes it desirable, the size of the Court of Special Appeals can be increased and pro-

vision made for that court to sit in divisions without changing the basic structure of the plan.

It is our opinion that the adoption of our recommendations will solve the problem of the case load of the Court of Appeals, not only for the present but for the foreseeable future. The plan proposed is therefore a permanent and not a temporary one. We have not attempted to make an exact estimate of the cost of the changes which we recommend but nearly all of the cost will be for the salaries of the additional judges and their secretaries and law clerks, and the clerk of the new court. We think, therefore, that the total cost would be approximately $150,000. per year.

Mr. Frederick W. Invernizzi, Director of the Administrative Office of the Courts, has acted as the secretary of this Committee from the very beginning of our work and has done a very thorough and conscientious job of keeping accurate and detailed minutes which have been invaluable to us. In addition to that, he and his assistant, Mr. Eugene Creed, have been of great assistance in obtaining statistical and other information for us. We are deeply indebted to both of them and wish to take this opportunity to express our appreciation and thanks.

Respectfully submitted,

COMMITTEE TO STUDY THE CASE
LOAD OF THE COURT OF APPEALS

E. Dale Adkins, Jr.,
First Circuit

William H. Adkins, II,
Second Circuit

John Grason Turnbull,
Third Circuit

David W. Byron,
Fourth Circuit

C. Ferdinand Sybert,
Fifth Circuit

Ralph G. Shure,
Sixth Circuit

Frederick W. Invernizzi,
Secretary

Ogle Marbury,
Seventh Circuit

H. Vernon Eney,
Eighth Circuit
Chairman

ANNEX A

Statistics as to Number of Opinions and Number of Appeals in the Court of Appeals of Maryland 1940 — 1957

Judges	*Jan., Apr., Oct. 1940*	*Jan., Apr., Oct. 1941*	*Jan., Apr., Oct. 1942*	*Jan., Apr., Oct. 1943*	*Jan., Apr., Oct. 1944*	*Jan. 1945‡*	*Oct. 1945*	*Oct. 1946*	*Oct. 1947*	*Oct. 1948*	*Oct. 1949*	*Oct. 1950*	*Oct. 1951*	*Oct. 1952*	*Oct. 1953*	*Oct. 1954*	*Oct. 1955*	*Oct. 1956*	*Sept. 1957*
Per Curiam	2			3	2								1						12
Adams				13															
Bailey				7	18														
Bond	15	16	16																
Brune															12	29	35	39	43
Capper					9														
Collins		19	17	14	16	9	25	25	32	30	32	26	37	33	32	30	35	39	10
Delaplaine	15	18	15	15	17	8	23	23	31	30	28	24	34	32	32	31	38		
Forsythe		15	12																
Grason			7	12	14	7	22	24	22	10	33	17	2						
Hammond														33	32	32	36	44	44
Henderson					7	8	27	24	32	30	35	26	40	31	32	28	35	40	48
Horney																			33
Johnson	19	18	4																
Marbury		10	15	15	17	9	25	26	36	27	30	29	36	9					
Markell						5	18	23	27	30	31	29	37						
Melvin				14	15	7	5												
Mitchell	19	3																	
Offutt	13																		
Parke	18																		
Prescott																		37	42
Shehan	4																		
Sloan	21	17	16	15	5														
Sobeloff														21	16				
Specially Assigned Judges									4	2		2			1		7	14	8
Total Opinions	126	116	102	108	120	53	145	145	184	159	189	153	187	159	157	150	186	213	240
Average per Judge	17.1	16.1	14.0	13.1	13.1	7.6	20.7	24.1	30.0*	26.1*	33.0	25.1*	36.8	26.5	26.0*	30.0	35.8*	39.8*	45*
Most by one Judge	21	19	17	15	18	9	27	26	36	30	35	29	40	33	32	32	38	44	48
Least by one Judge	4	3	4	7	5	5	5	23	22*	10*	28	17*	2	9	12*	28	35*	37*	10*
Appeals Docketed	175	150	160	157	155	66	172	166	205	187	214	178	212	176	180	183	231	243	299

‡ There was no April, 1945 Term and the annual terms begin with October, 1946.
* Does not include opinions by specially assigned judges.

ANNEX B

Applications For Leave To Appeal In Habeas Corpus Cases

Opinions Filed on Denial

Judges	*Oct. Term 1947*	*Oct. Term 1948*	*Oct. Term 1949*	*Oct. Term 1950*	*Oct. Term 1951*	*Oct. Term 1952*	*Oct. Term 1953*	*Oct. Term 1954*	*Oct. Term 1955*	*Oct. Term 1956*	*Sept. Term 1957*
Per Curiam	44	28	21								14
Brune							1		5	9	16
Collins				8	2	1	6	4	6	18	4
Delaplaine			3	5	1	11	2	7	9	4	
Grason			4	4							
Hammond						5	2	9	12	23	16
Henderson			5	4	7	2	6	8	10	22	22
Horney											14
Marbury			1	15	4	10					
Markell	1		2	6	9						
Prescott										10	18
Sobeloff						2	2				
Total Opinions	45	28	36	42	23	31	19	28	42	86	104
No. of Applications filed	41	36	44	50	26	34	28	26	39	82	128

ANNEX C

Comparative Statistics As To Appeals and Opinions 1940 — 1957

(The figures below do not include applications for leave to appeal in habeas corpus cases)

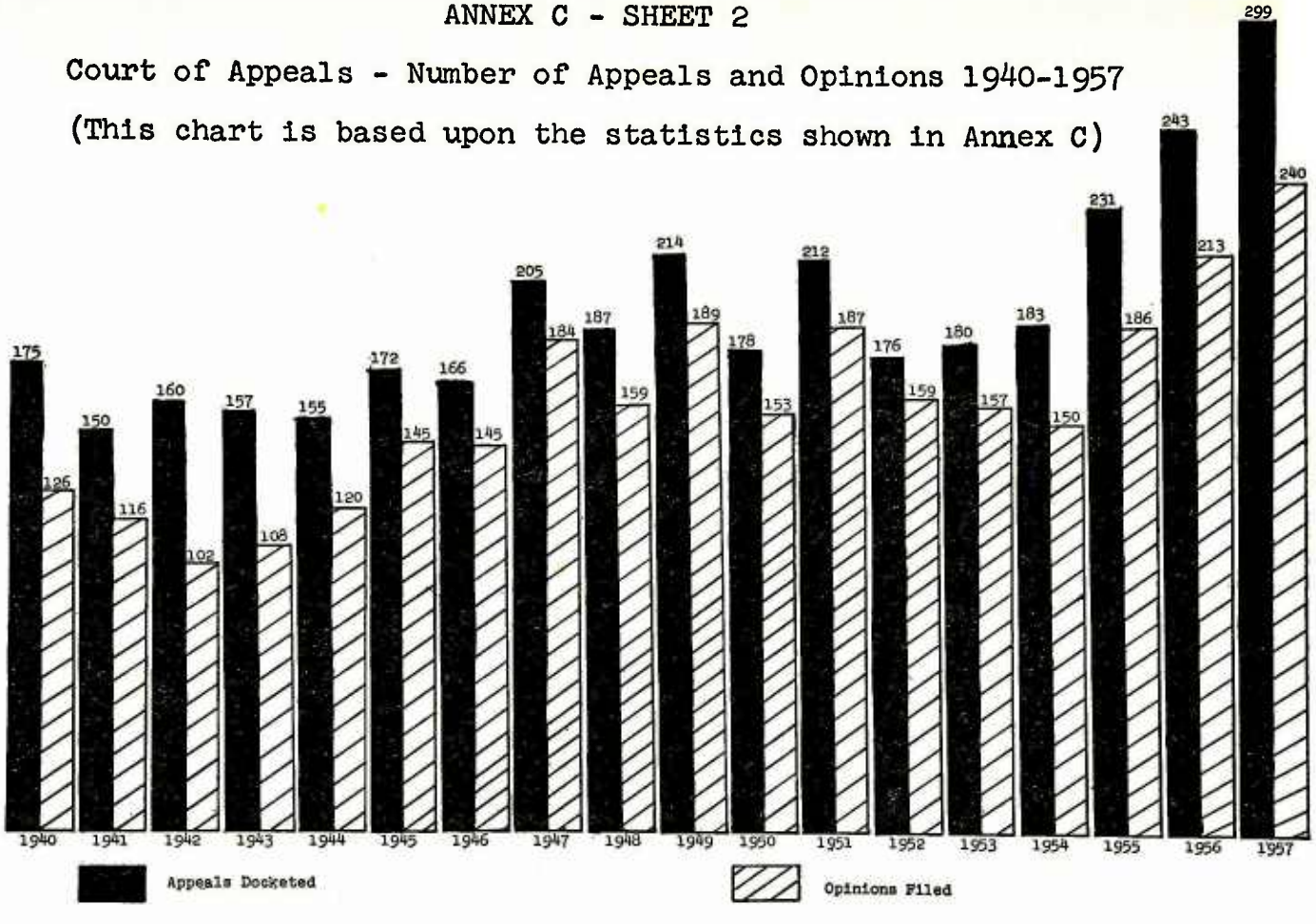
Term	*Appeals Docketed*	*Total Opinions Filed*	*Opinions by Specially Assigned Judges*	*Average* Opinions Per Judge*
Jan., Apr., Oct. 1940	175	126		17.1
Jan., Apr., Oct. 1941	150	116		16.1
Jan., Apr., Oct. 1942	160	102		14.0
Jan., Apr., Oct. 1943	157	108		13.1
Jan., Apr., Oct. 1944	155	120		13.1
Jan. 1945	66	53		7.6
Oct. 1945	172	145		20.7
Oct. 1946	166	145		24.1
Oct. 1947	205	184	4	30.0
Oct. 1948	187	159	2	26.1
Oct. 1949	214	189		33.0
Oct. 1950	178	153	2	25.1
Oct. 1951	212	187		36.8
Oct. 1952	176	159		26.5
Oct. 1953	180	157	1	26.0
Oct. 1954	183	150		30.0
Oct. 1955	231	186	7	35.8
Oct. 1956	243	213	14	39.8
Sept. 1957	299	240	8	45.0

* These figures do not include per curiam opinions or opinions by specially assigned judges.

ANNEX C - SHEET 2

Court of Appeals - Number of Appeals and Opinions 1940-1957

(This chart is based upon the statistics shown in Annex C)



ANNEX D

Subject Matter Classification of Opinions of Court of Appeals 1940 — 1957

	Jan., Apr., Oct. 1940	*Jan., Apr., Oct. 1941*	*Jan., Apr., Oct. 1942*	*Jan., Apr., Oct. 1943*	*Jan., Apr., Oct. 1944*	*Jan. 1945*	*Oct. 1945*	*Oct. 1946*	*Oct. 1947*	*Oct. 1948*	*Oct. 1949*	*Oct. 1950*	*Oct. 1951*	*Oct. 1952*	*Oct. 1953*	*Oct. 1954*	*Oct. 1955*	*Oct. 1956*	*Sept. 1957*
1. Administrative Appeals	2	3		3	1		9	7	12	10	10	7	8	9	7	7	3	1	4
2. Applications for leave to Appeal in habeas corpus	1								5	2	1				1		2		
3. Habeas corpus (other than No. 2)			1	1	1	1	1	10	2				1						1
4. Condemnation				1				1		1	2	1	1	2	2	2	2	3	4
5. Constitutional Questions	7	3	5		3	3		5	5	6	12	6	4	3	3	4	2	2	2
6. Criminal	11	8	10	11	19		13	8	21	17	29	15	43	40	33	33	17	29	33
7. Domestic Relations (includes divorce, annulment, alimony and support of wife or child, and custody	11	9	6	10	7	6	19	15	16	17	11	13	24	10	15	8	16	17	15
8. Mechanics Lien				1		3	1	2		2	2	1	1	4	1		6		1
9. Mortgages	4	5	1	6	2		5	2	2	1	8	3	2	2	3	1	5	2	5
10. Motor Vehicle (includes railroad and other public transportation)	11	13	13	4	12	6	7	10	17	19	28	24	14	14	15	8	32	30	25
11. Other Tort	4	4	6	5	4		7	4	5	6	4	12	10	8	11	7			12
12. Orphans' Court Appeals	11	2		7	2	1		1			1	1			1				1
13. Taxation	4	3	6	5	2		2	4	3	7	5		4	5	6	5	5	12	12
14. Voting and Public Officers	4	4	3	5	2		1						2		3	2	2		
15. Wills and Estates (includes administration of decedent estates and trusts)	10	11	11	11	14	4	20	19	19	17	13	9	13	10	6	13	4	7	10
16. Workmen's Compensation	9	3	5	4	4	4	7	14	8	10	5	4	12	5	5	3	12	6	7
17. Zoning	1	6		1			4	4	7	2	7	7	7	6	10	10	10	13	17
18. Other Equity	22	26	17	21	30	14	19	29	40	28	33	32	20	25	16	20	31	36	46
19. Other Law	14	16	18	12	17	11	30	10	22	14	18	18	21	16	19	27	37	55	45
Totals	126	116	102	108	120	53	145	145	184	159	189	153	187	159	157	150	186	213	240

ANNEX E

Pertinent Data With Respect to Appellate Courts in States and Territories of the United States

State Or Territory	Population[1]	Number Of Trial Judges	Highest Court				Intermediate Court
			No. Of Judges	Sits In Divisions[2]	No. Of Commissioners[3]	Opinions[4]	No. Of Judges[5]
Alabama	3,151,000	54	7	No Data		No Data	3
Alaska	206,000	No Data	3	No Data		No Data	
Arizona	1,136,000	26	5			114	
Arkansas	1,768,000	41	7			311	
California	13,922,000	236	7			200	21
Colorado	1,673,000	35	7			180	
Connecticut	2,252,000	34	5			143	
Delaware	438,000	12	3			36	
Florida	4,098,000	61	7			522	9
Georgia	3,779,000	51	7	No Data		279	6
Hawaii	584,000	No Data	3			No Data	
Idaho	640,000	18	5			107	
Illinois	9,637,000	127	7			257	18
Indiana	4,533,000	116	5	No Data		116	6
Iowa	2,799,000	72	9			163	
Kansas	2,136,000	51	7			242	
Kentucky	3,040,000	58	7	x	4	463	*
Louisiana	3,068,000	71	7			282	9
Maine	943,000	8	6			65	
Maryland	2,895,000	40	5			186	
Massachusetts	4,866,000	116	7			226	
Michigan	7,803,000	100	8			232	
Minnesota	3,321,000	57	7			178	
Mississippi	2,185,000	37	9	x		367	
Missouri	4,255,000	76	7	x	6	281	9
Montana	666,000	26	5			81	
Nebraska	1,452,000	35	7	x		174	
Nevada	267,000	14	3			51	
New Hampshire	572,000	7	5			75	
New Jersey	5,627,000	103	7			170	6
New Mexico	830,000	19	5	No Data		120	
New York	15,888,000	220	7	No Data		144	24
North Carolina	4,498,000	41	7			361	
North Dakota	644,000	16	5	No Data		81	
Ohio	9,200,000	153	7			251	33
Oklahoma	2,277,000	48	9	No Data		350	
Oregon	1,769,000	44	7	x		147	
Pennsylvania	11,043,000	139	7			315	7
Puerto Rico	2,267,000	No Data	7			No Data	
Rhode Island	862,000	11	5			121	
South Carolina	2,370,000	14	5			126	
South Dakota	702,000	22	5			55	
Tennessee	3,463,000	61	5	x		No Data	9
Texas	9,138,000	142	9	No Data		124	33
Utah	851,000	18	5			114	
Vermont	376,000	6	5			31	
Virginia	3,797,000	56	7	x		134	
Washington	2,722,000	65	9	x		295	
West Virginia	1,976,000	28	5	No Data		105	
Wisconsin	3,862,000	32	7			266	
Wyoming	316,000	10	3			45	

[1] Population is United States Census Bureau estimate of July 1, 1957, except for Alaska, Hawaii and Puerto Rico which are 1956 estimates.

[2] Blank space indicates that court does not sit in divisions.

[3] Blank space indicates that there are no Commissioners.

[4] All figures are for year 1955 except for Arkansas and Delaware, which figures are for 1953 and are for cases decided with or without opinion.

[5] Blank space indicates there is no intermediate court.

* Constitutional amendment creating intermediate court is being submitted to electorate at November, 1958 election.

ANNEX F

Limitations On Right of Appeal to Highest Court In States Where There Is No Intermediate Court

IOWA — $300.00 pecuniary limitation upon right of appeal. Appeal as of right in land title cases regardless of amount.

KANSAS — $100.00 pecuniary limitation upon right of appeal. Appeal as of right in land title cases and slander and malicious prosecution cases regardless of amount. Questions of constitutional interpretation appealed as a matter of right also.

MICHIGAN — $500.00 pecuniary limitation upon right of appeal.

MISSISSIPPI — $500.00 pecuniary limitation upon right of appeal.

NEVADA — $300.00 pecuniary limitation upon right of appeal. Appeal as of right in all cases involving title to land, including mining claims. Also as of right in cases involving legality of a tax or fine, all equity cases, and questions of law in felony cases.

PUERTO RICO — Seems to be an appeal as of right in all cases except tax, eminent domain, wills and divorce cases under a $2500 pecuniary limit.

VIRGINIA — Appeal only by permission in cases involving more than $300.00. Appeals by petition only, in all cases upon the requisite showing of the importance of the legal questions involved (with one minor exception), such as taxes, land title, constitutional questions, etc.

WASHINGTON — $200.00 pecuniary limitation upon right of appeal. Appeal as of right in land title cases regardless of amount.

WEST VIRGINIA — $100.00 pecuniary limitation upon right of appeal. Appeal as of right in land title cases regardless of amount.

ANNEX G

Summary of Proposed Amendments to Constitution

Article IV — JUDICIARY DEPARTMENT

Part I — General Provisions

Section 1. This section lists the courts of the State. It is proposed to be amended to include the Court of Special Appeals.

Section 2. This section provides that judges shall have resided not less than six months in the judicial circuit for which they may be elected or appointed. It is proposed to be amended to substitute "city, county, judicial circuit or appellate judicial circuit" for "judicial circuit".

Section 3. This section provides for the election of judges by the voters of the city and of each county. It is proposed to be amended to exclude the judges of the Court of Appeals and of the Court of Special Appeals and also to conform this section to Sections 5, 14 and 17A.

Section 5. It is proposed to amend this section to provide for the appointment to a vacancy on the Court of Appeals of a judge of the Court of Special Appeals in the discretion of the Governor. Any judge so appointed holds office as judge of the Court of Appeals for the residue of the term for which he was elected or appointed judge of the Court of Special Appeals.

Section 13A. This section is proposed to be repealed because it was superseded by Section 18A adopted in 1944.

Part II — Court of Appeals and Court of Special Appeals

Section 13B. This section is new and prescribes the counties comprising the respective appellate judicial circuits and is taken from present Section 14 without change. These provisions are put in a separate section for convenience in providing for the election or appointment of judges of the Court of Appeals and judges of the Court of Special Appeals.

Section 14. This section is proposed to be amended so as to eliminate the portion prescribing the counties comprising the respective appellate judicial circuits which provisions are now included in Section 13B and also to provide for six rather than five judges of the Court of Appeals, the additional judge to come from the Second Appellate Judicial Circuit with the further provision that not more than one judge from the

Second Appellate Judicial Circuit shall reside in any one county thereof. There is an additional provision that no more than five judges shall sit in any case unless the Chief Judge shall otherwise direct.

SECTION 15. This section provides that a judge of the Court of Appeals who heard the cause below shall not participate in the decision. It is proposed to be amended to make it applicable also if a judge of the Court of Appeals heard the case as a judge of the Court of Special Appeals.

SECTION 16. This section is proposed to be repealed and the provisions thereof incorporated in Section 17E.

SECTION 17A. This section is new and provides for the composition of the Court of Special Appeals and the election or appointment of the judges thereof. It is patterned after Section 14 which is applicable to the Court of Appeals.

SECTION 17B. This section is new and authorizes the Legislature to provide by law for additional judges of the Court of Special Appeals.

SECTION 17C. This section is new and provides that a judge of the Court of Special Appeals who heard the cause below shall not participate in the decision. It is patterned after Section 15 which is applicable to the Court of Appeals.

SECTION 17D. This section is new and authorizes the Legislature to provide by law for a clerk of the Court of Special Appeals but provides that until such a clerk is provided by law the clerk of the Court of Appeals shall act as clerk of the Court of Special Appeals.

SECTION 17E. This section is new and provides for the publication of reports of opinions of the Court of Appeals and of the Court of Special Appeals. It takes the place of Section 16.

SECTION 17F. This section is new and provides that no member of the Legislature at which these constitutional amendments are proposed shall be ineligible for appointment or election as a judge of the Court of Appeals or as a judge of the Court of Special Appeals by reason of his membership in the Legislature.

SECTION 18. This is the section which authorizes the Court of Appeals to prescribe Rules for all lower courts. It is proposed to be amended so as to make such Rules applicable also to the Court of Special Appeals. It is further proposed to amend this section so as to incorporate in it all present rule making

powers of the Court of Appeals now contained in Sections 18 and 18A of the Constitution and in Sections 25 and 26 of Article 26 of the Code.

SECTION 18A. This is the section designating the Chief Judge of the Court of Appeals as the administrative head of the judicial system of the State and authorizing him to make temporary assignments of the various judges of the State from time to time. It is proposed to be amended so as to give the Chief Judge of the Court of Appeals the same authority over the judges of the Court of Special Appeals and also to incorporate two phrases from Section 13A which it is proposed to repeal.

Part III — Circuit Courts

SECTION 22. This is the section which provides for courts *en banc*. It has rarely been used and it is proposed to be repealed.

Part IV — Courts of Baltimore City

SECTION 33. This section is proposed to be amended so as to eliminate the reference to an appeal to the Court of Appeals from the Supreme Bench of Baltimore City while leaving in the provision for appeal. The effect of the amendment is to leave to the Legislature to determine whether the appeal shall go to the Court of Appeals or to the Court of Special Appeals.

Article V — ATTORNEY-GENERAL AND STATE'S ATTORNEYS

SECTION 3. This is the section which authorizes the Attorney General to prosecute and defend on the part of the State all cases pending in the Court of Appeals. It is proposed to be amended to make it applicable also to cases in the Court of Special Appeals.

SECTION 6. This section requires the clerk of the Court of Appeals to notify the Attorney General of any case pending in said Court to which the State is a party. It is proposed to be amended to impose the same duty on the clerk of the Court of Special Appeals.

Article XVII — QUADRENNIAL ELECTIONS

SECTION 1. This section now provides that all elected State officers except certain judges shall hold office for terms of four years. It is proposed to be amended so as to include specific reference to judges of the Court of Special Appeals as judges to whom the section is not applicable.

DRAFT OF BILL PROPOSING CONSTITUTIONAL AMENDMENT

(Italics indicates new matter; brackets indicate matter to be omitted.)

(Title of bill omitted)

SECTION 1. BE IT ENACTED by the General Assembly of Maryland (three-fifths of all the members elected to each of the two Houses concurring) that the following sections be and the same hereby are proposed as amendments to Sections 1, 2, 3, and 5 of Article IV of the Constitution of Maryland, title "Judiciary Department", Part I — General Provisions; Sections 14, 15, 18 and 18A of Article IV of the Constitution of Maryland, title "Judiciary Department", Part II — Court of Appeals; Section 33 of Article IV of the Constitution of Maryland, title "Judiciary Department", Part IV — Courts of Baltimore City; Section 3 of Article V of the Constitution of Maryland, title "Attorney-General and State's Attorneys"; and Section 1 of Article XVII of the Constitution of Maryland, title "Quadrennial Elections"; and that the following sections of the Constitution of Maryland be and they are hereby proposed to be repealed, being Section 13A of Article IV, title "Judiciary Department", Part I — General Provisions; Section 16 of Article IV, title "Judiciary Department, Part II — Court of Appeals; and Section 22 of Article IV, title "Judiciary Department", Part III — Circuit Courts; and that the following sections be and they are hereby proposed to be added to the Constitution of Maryland, being Sections 13B, 17A, 17B, 17C, 17D, 17E and 17F of Article IV, title "Judiciary Department", Part II — Court of Appeals, all to read as follows and to become effective on January 1, 1961, if adopted by the qualified voters of the State of Maryland:

ARTICLE IV

Judiciary Department

Part I — General Provisions

SECTION 1. The [Judicial] *judicial* power of this State shall be vested in a Court of Appeals, *a Court of Special Appeals,* Circuit Courts, Orphans' Courts, such Courts for the City of Baltimore[,] as are herein after provided for, and Justices of the Peace; all said Courts shall be Courts of Record, and each shall have a seal to be used in the authentication of all process issuing therefrom. The process and official character of Justices of the Peace shall be authenticated as hath heretofore been practiced in this State, or may hereafter be prescribed by Law.

SECTION 2. The Judges of all of the said Courts shall be citizens of the State of Maryland, and qualified voters under this Constitution, and shall have resided therein not less than five years, and not less

than six months next preceding their election[,] or appointment, [in the Judicial Circuit,] as the case may be, *in the city, county, judicial circuit or appellate judicial circuit* for which they may be, respectively, elected[,] or appointed. They shall be not less than thirty years of age at the time of their election[,] or appointment, and shall be selected from those who have been admitted to practice [Law] *law* in this State, and who are most distinguished for integrity, wisdom and sound legal knowledge.

SECTION 3. The Judges of the said several Courts *other than the Court of Appeals and the Court of Special Appeals* shall, *subject to the provisions of Section 5 of Article IV of the Constitution,* be elected in Baltimore City and in each county, by the qualified voters of the city and of each county, respectively, except that in the First and Second Judicial Circuits the said Judges of the several Courts shall be elected by the qualified voters in each respective Judicial Circuit as hereinafter provided, all of the said Judges to be elected at the general election to be held on the Tuesday after the first Monday in November, as now provided for in the Constitution. Each of the said Judges shall hold his office for the term of fifteen years from the time of his election, and until his successor is elected and qualified, or until he shall have attained the age of seventy years, whichever may first happen, and be re-eligible thereto until he shall have attained the age of seventy years, and not after. In case of the inability of any of said Judges to discharge his duties with efficiency, by reason of continued sickness, or of physical or mental infirmity, it shall be in the power of the General Assembly, two-thirds of the members of each House concurring, with the approval of the Governor, to retire said Judge from office.

SECTION 5. Upon every occurrence or recurrence of a vacancy through death, resignation, removal, disqualification by reason of age or otherwise, or expiration of the term of fifteen years of any judge, or creation of the office of any judge, or in any other way, the Governor shall appoint a person duly qualified to fill said office, who shall hold the same until the election and qualification of his successor; except that when a vacancy shall exist in the office of Chief Judge of the Supreme Bench of Baltimore City, the Governor may designate an Associate Judge of said Supreme Bench as Chief Judge of said Supreme Bench, and such appointee as Chief Judge shall hold such office for the residue of the term for which he was last elected an Associate Judge of said Supreme Bench *and except that when a vacancy shall exist in the office of Judge of the Court of Appeals, the Governor may appoint as Judge of the Court of Appeals a Judge of the Court of Special Appeals from the Appellate Judicial Circuit for which the vacancy exists, and he shall hold office as Judge of the Court of Appeals for the*

residue of the term for which he was elected or appointed Judge of the Court of Special Appeals; provided, however, that if such appointment is for Judge of the Court of Appeals for the Second Appellate Judicial Circuit, the appointee shall not be a resident of the same county as the incumbent judge of the Court of Appeals from the Second Appellate Judicial Circuit. The successor of any Judge [. His successor] shall be elected at the first biennial general election for Representatives in Congress after the expiration of the term of fifteen years (if the vacancy occurred in that way) or the first such general election after one year after the occurrence of the vacancy in any other way than through expiration of such term. Except in case of reappointment of a judge upon expiration of his term of fifteen years, no person shall be appointed who will become disqualified by reason of age and thereby unable to continue to hold office until the prescribed time when his successor would have been elected.

[SECTION 13A. The General Assembly shall provide by General Law for the assignment by the Court of Appeals of any of the Chief Judges and any of the Associate Judges of the several Judicial Circuits of this State, including any Judge of the Court of Appeals from Baltimore City, and any of the Judges of the Supreme Bench of Baltimore, to sit in any other or different Judicial Circuits for designated and limited periods, for the purpose of relieving accumulation of busness or because of the indisposition or disqualification of any judge. And any judge so assigned by the Court of Appeals shall have all the power and authority pertaining to the judge of the court to which he is assigned.]

Part II — Court of Appeals *and Court of Special Appeals*

SECTION 13B. *The state shall be divided into four appellate judicial circuits, in manner following, viz.: the counties of Cecil, Kent, Queen Anne's, Caroline, Talbot, Dorchester, Wicomico, Worcester and Somerset shall constitute the First Appellate Judicial Circuit; the counties of Harford, Baltimore, Anne Arundel, Prince George's, Charles, Calvert and St. Mary's shall constitute the Second Appellate Judicial Circuit; the counties of Carroll, Howard, Montgomery, Frederick, Washington, Allegany and Garrett shall constitute the Third Appellate Judicial Circuit; the City of Baltimore shall constitute the Fourth Appellate Judicial Circuit.*

SECTION 14. The Court of Appeals shall be composed of [five] *six* Judges, [two from the City of Baltimore;] one from the First Appellate Judicial Circuit, [consisting of Cecil, Kent, Queen Anne's, Caroline, Talbot, Dorchester, Wicomico, Worcester and Somerset Counties; one] *two* from the Second Appellate Judicial Circuit, [consisting of Harford,

Baltimore, Anne Arundel, Prince George's, Charles, Calvert and St. Mary's Counties; and] one from the Third Appellate Judicial Circuit, [consisting of Carroll, Howard, Montgomery, Frederick, Washington, Allegany, and Garrett Counties. The City of Baltimore shall, for the purposes of this section, be designated as] *and two from* the Fourth Appellate Judicial Circuit; *provided, however, that not more than one Judge from the Second Appellate Judicial Circuit shall reside in any one county thereof. If at any election for Judge from the Second Appellate Judicial Circuit a candidate shall receive sufficient votes to cause him to be declared elected but the election of such candidate would result in both Judges from the Second Appellate Judicial Circuit residing in the same county, then there shall be declared elected that candidate not similarly disqualified receiving the next highest number of votes.* The Judges of the Court of Appeals shall, *subject to the provisions of Section 5 of Article IV of the Constitution,* be elected by the qualified voters of their respective Appellate Judicial Circuits, their terms to begin on the date of their qualification. One of the Judges of the Court of Appeals shall be designated by the Governor as the Chief Judge. The [jurisdiction of the] Court of Appeals *shall have appellate jurisdiction only which* shall be co-extensive with the limits of the State and such as [now is or] or may [hereafter] be prescribed by law. It shall hold its sessions in the City of Annapolis at such time or times as it shall from time to time by rule prescribe. Its session or sessions shall continue not less than ten months in each year, if the business before it shall so require, and it shall be competent for the Judges temporarily to transfer their sittings elsewhere upon sufficient cause. The salary of each Judge of the Court of Appeals shall be that now or hereafter prescribed by the General Assembly and shall not be diminished during his continuance in office. *No more than five Judges shall sit in any case unless the Chief Judge shall otherwise direct.* Three of the Judges shall constitute a quorum, and the concurrence of a majority of [a quorum] *those sitting* shall be sufficient for the decision of any cause.

SECTION 15. [The] *Any* Judge *of the Court of Appeals* who heard the cause below *either as a trial Judge or as a Judge of the Court of Special Appeals* shall not participate in the decision; in every case an opinion, in writing, shall be filed within three months after the argument[,] or submission of the cause[;]. [and the] *The* judgment of the Court shall be final and conclusive[; and all cases shall stand for hearing at the first term after the transmission of the Record].

[SECTION 16. Provision shall be made by Law for publishing Reports of all causes, argued and determined in the Court of Appeals, which the Judges shall designate as proper for publication.]

SECTION 17A. *The Court of Special Appeals shall be composed of four judges, one from the First Appellate Judicial Circuit, one from the Second Appellate Judicial Circuit, one from the Third Appellate Judicial Circuit and one from the Fourth Appellate Judicial Circuit. The Judges of the Court of Special Appeals shall, subject to the provisions of Section 5 of Article IV of the Constitution, be elected by the qualified voters of their respective Appellate Judicial Circuits, their terms to begin on the date of their qualification. One of the Judges of the Court of Special Appeals shall be designated by the Governor as the Chief Judge. The Court of Special Appeals shall have appellate jurisdiction only which shall be co-extensive with the limits of the State and such as may be prescribed by law. It shall hold its sessions in the City of Annapolis or at such other place or places in the State and at such time or times as it shall from time to time by rule prescribed. Its session or sessions shall continue not less than ten months in each year if the business before it shall so require. The salary of each Judge of the Court of Special Appeals shall be that prescribed by the General Assembly and shall not be diminished during his continuance in office. Three of the Judges shall constitute a quorum, and the concurrence of a majority of those sitting shall be sufficient for the decision of any cause.*

SECTION 17B. *The General Assembly may from time to time provide by law for an additional Judge of the Court of Special Appeals and designate the appellate judicial circuit from which such Judge shall be appointed or elected. Whenever provision is so made by the General Assembly another Judge of the Court of Special Appeals shall, subject to the provisions of Section 5 of Article IV of the Constitution, be elected by the voters of said appellate judicial circuit, who shall be subject to the same constitutional provisions, hold his office for the same term of years, receive the same compensation and have the same powers as are or shall be provided by the Constitution or laws of this State for the Judges of the Court of Special Appeals.*

SECTION 17C. *Any Judge of the Court of Special Appeals who heard the cause below shall not participate in the decision; in every case an opinion, in writing, shall be filed within three months after the argument or submission of the cause. The judgment of the Court of Special Appeals shall be final and conclusive unless reviewed by the Court of Appeals in those cases permitted by law.*

SECTION 17D. *The General Assembly may provide by law for a Clerk of the Court of Special Appeals, who shall be appointed by and shall hold his office at the pleasure of said Court. Until a Clerk of the Court of Special Appeals is so provided for by law, the Clerk of the Court of Appeals shall act as the Clerk of the Court of Special Appeals.*

SECTION 17E. *Provisions shall be made by law for publishing Reports of all causes argued and determined in the Court of Appeals and in the Court of Special Appeals, which the Judges thereof, respectively, shall designate as proper for publication.*

SECTION 17F. *No member of the General Assembly at which the amendment of Section 14 and the addition of Sections 17A, 17B, 17C, 17D and 17E were proposed, if otherwise qualified, shall be ineligible for appointment or election as a judge of the Court of Appeals or as a judge of the Court of Special Appeals by reason of his membership in such General Assembly.*

SECTION 18. It shall be the duty of the Judges of the Court of Appeals to make and publish rules and regulations for the prosecution of appeals to said [appellate] Court *and to the Court of Special Appeals,* whereby they shall prescribe the periods within which appeals may be taken, what part or parts of the proceedings in the Court below shall constitute the record on appeal, and the manner in which such appeals shall be brought to hearing or determination, and shall regulate, generally, the practice of [said] *the* Court of Appeals *and the Court of Special Appeals,* so as to prevent delays[,] and promote brevity in all records and proceedings brought into *either of* said Courts, and to abolish and avoid all unnecessary costs and expenses in the prosecution of appeals therein; and the said Judges shall make such reduction in the fees and expenses of [the] *each of* said Courts as they may deem advisable. [It shall also be the duty of said Judges of the Court of Appeals to devise, and promulgate by rules, or orders, forms and modes of framing and filing bills, answers, and other proceedings and pleadings in Equity; and also forms and modes of taking and obtaining evidence, to be used in Equity cases; and to revise and regulate, generally, the practice in the Courts of Equity of this State, so as to prevent delays, and to promote brevity and conciseness in all pleadings and proceedings therein, and to abolish all unnecessary costs and expenses attending the same.] *The Court of Appeals, from time to time, shall make rules and regulations to regulate and revise the practice and procedure in that Court and in all other Courts of this State and the forms and modes of taking and obtaining evidence. In connection therewith the Court of Appeals may also devise and promulgate by rules or orders, forms and modes of framing and filing complaints, answers, declarations, pleas and other proceedings and pleadings in law and in equity and in criminal causes. If the Judges of the Court of Appeals deem it advisable, the said general rules of practice and procedure may unite the practice and procedure in actions at law and suits in equity so as to secure one form of civil action and procedure for both. If pursuant hereto, the Court of Appeals shall adopt rules uniting the practice and procedure in actions at law and suits in*

equity, then immediately upon the effective date of said rules the jurisdiction of the Circuit Court of Baltimore City, the Circuit Court No. 2 of Baltimore City, the Superior Court of Baltimore City, the Baltimore City Court and the Court of Common Pleas of Baltimore City shall be deemed to be enlarged and extended to cover all civil actions. The power of the Courts other than the Court of Appeals to make rules of practice and procedure, shall be subject to the rules and regulations prescribed by the Court of Appeals or otherwise by law. And all rules and regulations hereby directed to be made, shall, when made, have the force of Law, until rescinded, changed[,] or modified by the said Judges[,] or the General Assembly.

SECTION 18A. The Chief Judge of the Court of Appeals shall be the administrative head of the judicial system of the State. He shall from time to time require, from each of the judges of the Circuit Courts for the several counties and of the Supreme Bench of Baltimore City, *and of the Court of Special Appeals,* reports as to the judicial work and business of each of the judges and their respective courts. He may, in case of a vacancy or of illness, disqualification or other absence of one or more judges of the Court of Appeals *or of the Court of Special Appeals, or for the purpose of relieving an accumulation of business,* designate any judge of any of the Circuit Courts for the counties or of the Supreme Bench of Baltimore City *or of the Court of Special Appeals* to sit in any case or for a specified period as a judge of the Court of Appeals *or of the Court of Special Appeals* in lieu of a judge of [that] *either of those* courts, and may designate, to sit as a judge of the Circuit Court for any county or of any Court or Courts of Baltimore City, either alone or with one or more other judges, in any case or for a specified period, any judge of the Court of Appeals *or of the Court of Special Appeals* or of any other Circuit Court or of the Supreme Bench of Baltimore City. *Any judge so assigned by the Chief Judge shall have all the power and authority pertaining to the judge of the court to which he is assigned.* In the absence of the Chief Judge of the Court of Appeals the provisions of this Section shall be applicable to the senior judge present. The powers of the Chief Judge under the aforegoing provisions of this section shall be subject to such rules and regulations, if any, as the Court of Appeals may make. [The Court of Appeals from time to time shall make rules and regulations to regulate and revise the practice and procedure in that Court and in the other courts of this State, which shall have the force of law until rescinded, changed or modified by the Court of Appeals or otherwise by law. The power of the courts other than the Court of Appeals to make rules of practice and procedure shall be subject to the rules and regulations prescribed by the Court of Appeals or otherwise by law.]

Part III — Circuit Courts

[SECTION 22. Where any Term is held, or trial conducted by less than the whole number of said Circuit Judges, upon the decision or determination of any point, or question, by the Court, it shall be competent to the party, against whom the ruling or decision is made, upon motion, to have the point, or question reserved for the consideration of the three Judges of the Circuit, who shall constitute a court in banc for such purpose; and the motion for such reservation shall be entered of record, during the sitting, at which such decision may be made; and the several Circuit Courts shall regulate, by rules, the mode and manner of presenting such points, or questions to the Court in banc, and the decision of the said Court in banc shall be the effective decision in the premises, and conclusive, as against the party, at whose motion said points, or questions were reserved; but such decision in banc shall not preclude the right of Appeal, or writ of error to the adverse party, in those cases, civil or criminal, in which appeal, or writ of error to the Court of Appeals may be allowed by Law. The right of having questions reserved shall not, however, apply to trials of Appeals from judgments of Justices of the Peace, nor to criminal cases below the grade of felony, except when the punishment is confinement in the Penitentiary; and this Section shall be subject to such provisions as may hereafter be made by Law.]

Part IV — Courts of Baltimore City

SECTION 33. The said Supreme Bench of Baltimore City shall have power, and it shall be its duty, to provide for the holding of as many general Terms as the performance of its duties may require, such general Terms to be held by not less than three Judges; to make all needful rules and regulations for the conduct of business in each of the said Courts, during the session thereof, and in vacation, or in Chambers, before any of said Judges; and shall also have jurisdiction to hear and determine all motions for a new trial in cases tried in any of said Courts, where such motions arise either, on questions of fact, or for misdirection upon any matters of Law, and all motions in arrest of judgment, or upon any matters of Law determined by the said Judge, or Judges, while holding said several Courts; and the said Supreme Bench of Baltimore City shall make all needful rules and regulations for the hearing before it of all of said matters; and the same right of appeal [to the Court of Appeals] shall be allowed from the determination of the said Court on such matters, as would have been the right of the parties if said matters had been decided by the Court in which said cases were tried.

ARTICLE V

Attorney-General and State's Attorneys

SECTION 3. It shall be the duty of the Attorney General to prosecute and defend on the part of the State all cases, which at the time of his appointment and qualification and which thereafter may be depending in the Court of Appeals *or the Court of Special Appeals of this State,* or in the Supreme Court of the United States, by or against the State, or wherein the State may be interested; and he shall give his opinion in writing whenever required by the General Assembly or either branch thereof, the Governor, the Comptroller, the Treasurer or any State's Attorney, on any legal matter or subject depending before them, or either of them; and when required by the Governor or General Assembly, he shall aid any State's Attorney in prosecuting any suit or action brought by the State in any Court of this State, and he shall commence and prosecute or defend any suit or action in any of said Courts, on the part of the State, which the General Assembly, or the Governor, acting according to law, shall direct to be commenced, prosecuted or defended, and he shall have and perform such other duties and shall appoint such number of deputies or assistants as the General Assembly may from time to time by law prescribe: And he shall receive for his services an annual salary of Three thousand dollars, or such annual salary as the General Assembly may from time to time by law prescribe: but he shall not be entitled to receive any fees, perquisites or rewards whatever, in addition to the salary aforesaid, for the performance of any official duty; nor shall the Governor employ any additional Counsel, in any Case whatever, unless authorized by the General Assembly.

SECTION 6. It shall be the duty of the Clerk of the Court of Appeals *and the Clerk of the Court of Special Appeals* and of the Commissioner of the Land Office, respectively, whenever a case shall be brought into said Court, or office, in which the State is a party, or has interest, immediately to notify the Attorney General thereof.

ARTICLE XVII

Quadrennial Elections

SECTION 1. All State officers elected by qualified voters (except judges of the Circuit Courts [of the several circuits, the member of the Court of Appeals from Baltimore City, and members], *judges* of the Supreme Bench of Baltimore City, *judges of the Court of Appeals and judges of the Court of Special Appeals*)[,] and all county officers elected by qualified voters, shall hold office for terms of four years, and until their successors shall qualify.

SECTION 2. AND BE IT FURTHER ENACTED that the foregoing section hereby proposed as an amendment to the Constitution of this State shall, at the next general election to be held in this State in November, 1960, be submitted to the legal and qualified voters thereof for their adoption or rejection in pursuance of the directions contained in Article XIV of the Constitution of Maryland, and at the said general election the vote on the said proposed amendment to the Constitution shall be by ballot and upon each ballot there shall be printed the words, "For Constitutional Amendment" and "Against Constitutional Amendment" as now provided by law and immediately after said election due returns shall be made to the Governor of the vote for and against said proposed amendment as directed by said Article XIV of the Constitution and further proceedings had in accordance with said Article XIV.

ANNEX H

Summary of Proposed Changes in Code of Public General Laws.

Article 5 — APPEALS

Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 15A, 16, 17, 18, 19 and 20. These are the sections which now provide for an appeal to the Court of Appeals. It is proposed to amend all of them so as to leave in the same provision for appeal without specifying the court to which the appeal is to be taken. New Sections 24A and 24B will prescribe the court to which the appeal is to be taken.

Section 22. This section authorizes an appeal without the joinder of co-plaintiffs or co-defendants. It is proposed to be amended to make it applicable to appeals to the Court of Special Appeals and to applications for review to the Court of Appeals.

Section 23. This section provides for costs in appeals to which the State or its agencies or political subdivisions may be parties. It is proposed to be amended to apply as well to appeals to the Court of Special Appeals and also to eliminate the reference to applications for leave to appeal in habeas corpus cases which are no longer permissible.

Section 24. It is proposed to amend this section to eliminate an unnecessary reference to Section 2.

Section 24A. This section is new and prescribes which appeals shall be taken to the Court of Special Appeals.

Section 24B. This section is new and prescribes which appeals shall be taken to the Court of Appeals.

Section 24C. This section is new and provides for an appeal to the Court of Appeals from the Court of Special Appeals in any case in which the judges of the latter court are evenly divided. It is the only provision for an appeal as of right from the Court of Special Appeals to the Court of Appeals.

Section 24D. This section is new and prescribes the methods by which a case in the Court of Special Appeals may be reviewed by the Court of Appeals, either before or after the rendition of judgment by the Court of Special Appeals. It will be noted that review is by an order of the Court of Appeals granted on its own motion or upon application of any party. There is no provision for a writ of certiorari.

SECTION 24E. This section is new and repeals any provisions of the Code inconsistent with Sections 24A, 24B, 24C and 24D. There are over 200 references to appeals in the Code, most of which refer to appeals to the Court of Appeals. It is not practicable to amend each of these provisions specifically.

SECTION 25. This section provides for an appeal from the Orphans' Courts to the Circuit Courts for the Counties or the Superior Court of Baltimore City. It is proposed to amend this section so as to eliminate the reference to the Court of Appeals while leaving in the law the provision for a further appeal from the Circuit Court or the Superior Court. Proposed Section 24B will provide that the appeal will be to the Court of Appeals.

Article 17 — CLERKS OF COURTS

SECTION 25. This section provides for reports by clerks to the Comptroller. It is proposed to be amended so as to include the clerk of the Court of Special Appeals.

SECTION 36. This section which authorizes the clerk of a court to enter an appeal upon application during the vacation of the court is obsolete and is proposed to be repealed.

SECTION 46A. This section is new and provides for a separate clerk of the Court of Special Appeals. It is patterned after Section 45 which provides for the clerk of the Court of Appeals.

SECTION 46B. This section is new and provides for the bond of the clerk of the Court of Special Appeals. It is patterned after Section 46 which prescribes the bond for the clerk of the Court of Appeals.

Article 26 — COURTS

SECTION 1. This section confers power on the lower courts to make rules for the governing of their courts. The courts are referred to as courts of "law and of equity". It is proposed to be amended to refer to the courts simply as courts of "the State" so as to make it clear that the section is applicable to the Court of Special Appeals as well as to other courts of the State.

SECTION 23. This section provides for the disqualification of judges related to a party by consanguinity or affinity. It is proposed to be amended so as to be applicable to judges of the Court of Special Appeals.

SECTION 24. This section provides that a judge of the Court of Appeals shall not be deemed to have abandoned his residence in the circuit for which he shall have been elected by reason of his residence in Annapolis. It is proposed to be amended so as to be applicable to judges of the Court of Special Appeals.

SECTIONS 25 and 26. These sections confer rule making power on the Court of Appeals. It is proposed that they be repealed because the essential provisions thereof will be incorporated in the amendments of Section 18 of Article IV of the Constitution.

SECTION 27. This section confers power on lower courts to make rules of practice and procedure for their respective courts subject to the general rules adopted by the Court of Appeals. It is proposed to be amended to confer on the Court of Special Appeals the same rule making power subject to the general rules adopted by the Court of Appeals.

SECTION 28. This section provides for the Standing Committee on Rules of the Court of Appeals. It is proposed to be amended so as to refer to Section 18 of Article IV of the Constitution rather than to Section 25 of Article 17 of the Code which is to be repealed. It is further proposed to be amended to provide for the payment of expenses of the Committee out of such funds as may be provided in the State budget rather than out of funds of the Judicial Council which is non-existent.

SECTION 29A. This section is new and provides authorization for the appointment of law clerks, stenographers, etc. for the Court of Special Appeals. It is patterned after Section 29 which is applicable to the Court of Appeals.

SECTION 47. This section prescribes the salaries paid by the State to the various judges of the State. It is proposed to be amended by adding a new sub-section (b) prescribing the same salaries for judges of the Court of Special Appeals as for judges of the Court of Appeals.

SECTION 49. This section prescribes the pensions paid by the State to the various judges of the State. It is proposed to be amended to prescribe the same pensions for judges of the Court of Special Appeals as for judges of the Court of Appeals.

SECTION 65. This section provides for an appeal in juvenile causes to the Court of Appeals. It is proposed to be amended to eliminate the reference to the Court of Appeals. Under proposed Section 24A of Article 5 the appeal will be to the Court of Special Appeals.

Article 36 — FEES OF OFFICERS

SECTION 14. This section prescribes the fees to be charged by the clerk of the Court of Appeals. It is proposed to be amended to make the same fee schedule applicable to the clerk of the Court of Special Appeals.

SECTION 15. This section prescribes the charge which may be made by the clerk of a lower court for the record on appeal to the Court of Appeals. It is proposed to be amended to make the same charge applicable for the record on appeal to the Court of Special Appeals.

Article 41 — GOVERNOR — EXECUTIVE AND ADMINISTRATIVE DEPARTMENTS

SECTION 162. This section provides for the distribution by the State Librarian of copies of the Session Laws. It is proposed to be amended to include the judges and clerk of the Court of Special Appeals among those to whom copies are to be distributed.

SECTION 165. This section provides for the distribution of the Maryland Reports by the State Librarian. It is proposed to be amended to include the judges and clerk of the Court of Special Appeals among those to whom the Reports are to be distributed and to eliminate the designation of "Maryland Reports". This will leave open the question of whether the opinions of the Court of Appeals and the opinions of the Court of Special Appeals are to be published in one volume or to be published separately. This question can be resolved by the State Reporter under the supervision of the Court of Appeals.

Article 70 — OFFICIAL OATHS

SECTION 2. This section is proposed to be amended to include the judges and clerk of the Court of Special Appeals among the officials who take their oaths before the Governor.

Article 80 — REPORTER — STATE

SECTION 3. It is proposed to amend this section to include opinions of the Court of Special Appeals among those to be reported by the State Reporter.

SECTION 4. This section provides for the publication of opinions of the Court of Appeals by the State Reporter under the direction and supervision of the Court of Appeals. It is proposed to be amended so as to include opinions of the Court of Special Appeals.

DRAFT OF BILL EMBODYING STATUTORY CHANGES

(Italics indicates new matter; brackets indicate matter to be omitted.)

(Title of bill omitted)

SECTION 1. BE IT ENACTED by the General Assembly of Maryland that Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 15A, 16, 17, 18, 19, 20, 22, 23, 24 and 25 of Article 5 of the Code of Public General Laws, title "Appeals", be and the same are hereby repealed and reenacted, with amendments, and five new sections be and they are hereby added to Article 5 of said Code, title "Appeals", said new sections to follow immediately after Section 24 thereof and to be known as Sections 24A, 24B, 24C, 24D and 24E, all to read as follows:

APPEALS

Appeals To Court Of Appeals *And To Court of Special Appeals*

Appeals From Courts Of Law

SECTION 1. Any party may appeal [to the Court of Appeals] from any final judgment or determination of a court of law in any civil suit or action, including a mandamus action, or in any prosecution for the recovery of any penalty or fine or damages; provided, however, that this section shall not be construed to permit an appeal [to the Court of Appeals] from any judgment or determination entered by a court of law in the proper exercise of its jurisdiction on appeal from a justice of the peace, people's court or trial magistrate.

SECTION 2. Any party may appeal [to the Court of Appeals] from a decision, determination or ruling of a court of law to which issues have been sent from an equity court or an orphans' court to be tried.

SECTION 3. Any person interested may appeal [to the Court of Appeals] from the decision of the lower court on any question decided under Article 47 of the Code of Public General Laws, but the execution or effect of any judgment, decree, decision or order from which such an appeal shall be taken shall not be suspended or stayed unless a bond shall be given in such penalty, with such condition and with such security as the lower court may prescribe and approve.

SECTION 4. The court from whose judgment or order an appeal is taken under §3 of this article shall immediately upon the entry of the order for appeal certify and state the questions raised in and decided by such court; and no question which shall not appear by such certificate to have been raised in said court shall be considered [by the Court of Appeals] *on the appeal.*

SECTION 5. Any party may appeal [to the Court of Appeals] from a final judgment or order granting or refusing peremptory mandamus in any case involving the title or right to a public office.

Appeals From Courts Of Equity

SECTION 6. Any party may appeal [to the Court of Appeals] from any final decree, or order in the nature of a final decree, entered by a court of equity.

SECTION 7. Any party may appeal [to the Court of Appeals] from any of the following interlocutory orders entered by or actions of a court of equity:

(a) An order granting or dissolving an injunction.

(b) A refusal to dissolve an injunction.

(c) A refusal to grant an injunction; and such right of appeal shall not be prejudiced by the filing of an answer to the bill of complaint or petition for an injunction on behalf of any opposing party, nor by the taking of depositions in reference to the allegations of the bill of complaint or petition to be read on the hearing of the application for an injunction.

(d) An order appointing a receiver.

(e) An order, remedial in its nature, adjudging in contempt of court any party to a cause or any person not a party thereto, except orders entered requiring the payment of alimony.

(f) An order for the sale, conveyance or delivery of real or personal property or the payment of money, or the refusal to rescind or discharge such an order, unless such delivery or payment is directed to be made to a receiver appointed by the court.

(g) An order determining a question of right between the parties and directing an account to be stated on the principle of such determination.

An appeal under this section from an order granting an injunction or from a refusal to dissolve the same or from an order appointing a receiver shall not be entered until the answer of the party appealing has first been filed in the cause.

SECTION 8. Any receiver, trustee, or other fiduciary appointed by or acting under the jurisdiction of a court of equity may appeal [to the Court of Appeals] from any final decree by which any preference or priority between creditors or other persons interested in the estate is determined, but no such appeal shall be entered without the consent and approval of the court having jurisdiction over the estate.

Appeals From Orphans' Courts

SECTION 9. Any party may appeal [to the Court of Appeals] from any decree, order, decision or judgment of an orphans' court.

SECTION 10. If a decree, order, decision or judgment of an orphans' court shall have been given or made in a summary proceeding, and on the testimony of witnesses, an appeal [to the Court of Appeals] shall not be allowed under §9 of this article unless the party desiring to appeal shall immediately give notice of his intention to appeal and request that the testimony be reduced to writing. In such case the testimony shall be reduced to writing at the cost of the party requesting the same.

SECTION 11. An appeal pursuant to §9 of this article shall not stay any proceedings in the orphans' court from which the appeal is taken which may with propriety be carried on before the appeal is decided, if the court can provide for the conforming to the decision of the [Court of Appeals,] *appellate court,* whether such decision eventually be for or against the appellant.

Appeals In Criminal Cases

SECTION 12. A defendant in a criminal action may appeal [to the Court of Appeals] from any conviction or sentence imposed by a circuit court of a county or the Criminal Court of Baltimore other than a conviction or sentence imposed by a circuit court of a county or the Criminal Court of Baltimore in the proper exercise of its jurisdiction on appeal from a trial magistrate. An appeal under this section shall not stay execution of sentence unless counsel for the defendant so appealing shall make oath that the appeal is not taken for delay. Upon taking such appeal the defendant so appealing shall, in all cases not punishable by death or imprisonment in the penitentiary, be entitled to remain on bail, and in other cases not capital, the court from which the appeal is taken shall have the discretionary power to admit to bail; provided that nothing herein contained shall be construed to prohibit the court from requiring additional or greater bail pending an appeal than such defendant may already have given before conviction.

SECTION 13. In all criminal actions where sentence has been suspended by the court the defendant shall have a right to appeal [to the Court of Appeals] under §12 of this article in the same manner as if sentence or judgment had been entered in said action.

SECTION 14. The State may appeal [to the Court of Appeals] from a final order or judgment granting a motion to dismiss, or quashing or dismissing any indictment, information, presentment or inquisition

in a criminal action, but the State shall have no right of appeal in any criminal action where the defendant has been tried and acquitted.

SECTION 15. In a criminal action where a sentence of death is imposed and the defendant files an oath in "forma pauperis" and an order for appeal pursuant to and within the time limited by the Maryland Rules [of Procedure], the court imposing such sentence shall sign an order directing that all costs, including but not limited to all court costs, the cost of preparing the transcript of testimony, the cost of preparing and transmitting the record, and the cost of the briefs, appendices and printed record extract necessary in connection with the appeal shall be paid by the State of Maryland and that the record be transmitted to the [Court of Appeals] *appellate court* at the expense of the State. A copy of such order shall be included in the record transmitted to the [Court of Appeals] *appellate court* and the payment of all filing fees to the Clerk of the [Court of Appeals] *appellate court* in connection with the appeal shall be waived. If counsel prosecuting such appeal on behalf of the defendant has been appointed as such counsel by the court imposing sentence or by the [Court of Appeals] *appellate court,* the [Court of Appeals] *appellate court* may allow to such counsel a fee in such amount as the court shall think proper for his services in connection with such appeal, such fee to be paid by the State.

SECTION 15A. In any criminal case where a defendant has been convicted or sentenced, other than a conviction or sentence imposed by a circuit court of a county or the Criminal Court of Baltimore in the proper exercise of its jurisdiction on appeal from a trial magistrate where no *further* appeal [to the Court of Appeals] is provided by law and other than appeals in accordance with Article 31B of the Annotated Code of Maryland, and except as provided in §15, and the defendant files an order for appeal pursuant to and within the time limited by the Maryland Rules [of Procedure], the defendant, if unable by reason of poverty to pay the cost of an appeal [to the Court of Appeals], may file with the court imposing the sentence a petition under oath alleging the fact of his poverty and his inability to defray the expense of prosecuting an appeal. The lower court upon being satisfied that such defendant is unable by reason of poverty to defray the expense of prosecuting an appeal [to the Court of Appeals] shall sign an order directing that all costs, including but not limited to all court costs, the cost of preparing the transcript of testimony, the cost of preparing and transmitting the record, and the cost of the briefs, appendices and printed record extract necessary in connection with the appeal shall be paid by the State of Maryland and that the record be transmitted to the [Court of Appeals] *appellate court* at the expense of the State. A copy of such order shall be included in the record transmitted to the

[Court of Appeals] *appellate court* and the payment of all filing fees to the Clerk of the [Court of Appeals] *appellate court* in connection with the appeal shall be waived. If counsel prosecuting such appeal on behalf of the defendant has been appointed as such counsel by the court imposing sentence or by the [Court of Appeals] *appellate court,* the [Court of Appeals] *appellate court* may allow to such counsel a fee in such amount as the court shall think proper for his services in connection with such appeal, such fee to be paid by the State.

SECTION 16. In an appeal in a criminal action the [Court of Appeals] *appellate court* shall give judgment without regard to technical errors, defects or exceptions which do not affect the substantial rights of the parties.

SECTION 17. If the [Court of Appeals] *appellate court* shall remand a criminal action to the lower court in order that such court may pronounce the proper judgment or sentence, the lower court in passing sentence shall deduct from the term of the sentence the time already served by the defendant under the previous sentence from the date of his conviction.

Appeals In Contempt Cases

SECTION 18. Any person may appeal [to the Court of Appeals] from any order or judgment passed to preserve the power or to vindicate the dignity of the court and adjudging him in contempt of court. Upon such appeal, in cases of both direct and constructive contempt, the [Court of Appeals] *appellate court* shall consider and pass upon the law and the facts and shall make such order as to it may seem proper, including the reversal or modification of the order from which the appeal was taken.

Appeals In Custody Cases

SECTION 19. Any party to the proceedings, aggrieved by an order of any court of this State the effect of which is to deprive any parent, grandparent or natural guardian of the care and custody of a child, may appeal [to the Court of Appeals] from such order. Upon any such appeal the facts of the case shall be reviewed by the [Court of Appeals] *appellate court* as in appeals from final decrees entered by courts of equity.

Appeals From Commissioner Of The Land Office

SECTION 20. Any party may appeal [to the Court of Appeals] from any judgment, final order or determination made by the Commissioner of the Land Office in any case affecting the title to lands.

General Provisions

SECTION 22. An appeal to the Court of *Special* Appeals, *or an appeal or an application for review to the Court of Appeals,* authorized by law may be taken with or without the assent or joinder in such appeal *or application for review* of co-plaintiffs or co-defendants or other parties.

SECTION 23. In appeals from executive, administrative or judicial decisions or actions, civil or criminal, of the State of Maryland, its instrumentalities, departments, commissions, agencies, or political subdivisions, costs shall be assessed against the parties by the circuit courts of the counties, the courts of Baltimore City, *the Court of Special Appeals* and the Court of Appeals, as in cases between private suitors; and said courts are expressly empowered and directed to assess costs against the State of Maryland, its instrumentalities, departments, commissions, agencies, or political subdivisions whenever costs would be so assessed if the State were a private suitor, said costs to be paid out of the budget of the State, or of the agency or political subdivision of the State concerned. Provided that in all cases of criminal appeals [to the Court of Appeals of Maryland, and in all habeas corpus appeals], the cost of printing the State's brief and record extract, and any other costs incurred by the State, shall be paid immediately by the political subdivision in which the case originated, upon notice thereof from the Attorney General, and should the case be decided against the State in favor of the appellant, all costs shall be assessed against the political subdivision in which the case originated. Should any defendant against whom costs have been assessed by the [Court of Appeals] *appellate court* in a criminal case [or in a habeas corpus appeal] fail to pay said costs to the political subdivision in which the case originated, then it shall be the duty of the State's attorney for said political subdivision to take the necessary steps to recover the same. This section shall apply to all costs previously incurred by the State for the printing of briefs and record extracts in criminal cases and not yet paid by the political subdivision in which the case originated.

SECTION 24. An appeal [pursuant to §2 of this article] from a decision, determination, or ruling of a court of law to which issues have been sent from an orphans' court to be tried shall stay all proceedings in the orphans' court concerning the matter of such issues.

Court To Which Appeal Entered

SECTION 24A. *The following appeals shall be entered to the Court of Special Appeals: (1) appeals under §1 of this article in actions for injuries or damages to persons or property based on the alleged negli-*

gence of the defendant, in actions for the annulment of marriages, and in cases appealed from the Workmen's Compensation Commission; (2) appeals under §§2, 6, 7 or 8 of this article in actions for alimony, divorce, support and maintenance of spouse, parents or children, and annulment of marriages; (3) all appeals under §§12, 13, 14 or 19 of this article; (4) all applications for leave to appeal and appeals under the Post Conviction Procedure Act (§645-I of Article 27 of the Code of Public General Laws); and (5) appeals under §65 of Article 26 of the Code of Public General Laws.

SECTION 24B. *The following appeals shall be entered to the Court of Appeals: (1) all appeals under §§1, 2, 6, 7 or 8 of this article other than those specifically mentioned in §24A of this article, and (2) all appeals under §§3, 5, 9, 18, 20 and 21 of this article.*

SECTION 24C. *Any party to an appeal to the Court of Special Appeals may appeal to the Court of Appeals from any final judgment or determination of the Court of Special Appeals in any case where the judges of the Court of Special Appeals are evenly divided in opinion.*

SECTION 24D. *Any case pending in the Court of Special Appeals may be reviewed by the Court of Appeals, either before or after the rendition of judgment by the Court of Special Appeals, by any of the following methods: (1) by order of the Court of Appeals or the Chief Judge thereof entered on its or his own motion; (2) by order of the Court of Appeals granted upon the application of any party to the appeal in the Court of Special Appeals; and (3) by such other method and in such other circumstances as may be prescribed by Rule of the Court of Appeals; provided, however, that an appeal pending in the Court of Special Appeals in a criminal action shall not be reviewed by the Court of Appeals after the rendition of judgment by the Court of Special Appeals except upon application of the defendant in such action.*

SECTION 24E. *Any provisions of the Code of Public General Laws providing for appeals to the Court of Appeals which are inconsistent with §§24A, 24B, 24C and 24D of this article be and the same are hereby superseded by said sections to the extent of such inconsistency.*

SECTION 25. Instead of a direct appeal [to the Court of Appeals] pursuant to §9 of this article, any party may appeal to the circuit court for the county or to the Superior Court of Baltimore City from any decree, order, decision, or judgment of an orphans' court. Any such appeal shall be heard de novo by said circuit court or Superior Court, as the case may be, and such court shall give judgment according to the equity of the matter. From the final judgment or determination of said circuit court or Superior Court there shall be a further right of

appeal [to the Court of Appeals] pursuant to the provisions of §1 of this article.

SECTION 2. AND BE IT FURTHER ENACTED that Section 25 of Article 17 of the Code of Public General Laws, title "Clerks of Courts", be and the same is hereby repealed and re-enacted, with amendments, Section 36 of said Article 17 of said Code be and the same is hereby repealed, and two new sections be and the same are hereby added to said Article 17 of said Code to follow immediately after Section 46 thereof, to be known as Sections 46A and 46B, and all to read as follows:

CLERKS OF COURTS

General Duties Of Clerks

SECTION 25. Every clerk, including the [Clerk] *clerks* of the Court of Appeals *and of the Court of Special Appeals,* shall annually return to the Comptroller a full and accurate account of all his fees, emoluments and receipts, whether on his own account as such clerk, or for the State, city or county, including fines and forfeitures, and also of all expenses incident to his office; and such accounts shall be rendered under oath, and in such forms and supported by such proofs as shall be prescribed by the Comptroller; and every clerk, including said [Clerk] *clerks* of the Court of Appeals *and of the Court of Special Appeals,* shall render with his account of the expenses incident to his office, a list of the clerks employed by him, stating the rate of compensation allowed to each, and the duties which they severally perform, and, also, the sums paid for stationery, official and contingent expenses, fuel and other items, and stating the purposes for which said expenses are applied; and in the account of fees there shall be a separate statement of all those fees charged during the year included in said account, which at the date of said account remained uncollected.

[SECTION 36. The clerk of any court shall, upon application during the vacation of said court, enter an appeal from the judgment, order or decree of said court to the Court of Appeals.]

SECTION 46A. *There shall be a Clerk of the Court of Special Appeals who shall be appointed by and shall hold his office at the pleasure of said Court. The said Clerk shall have the custody of all the records and papers of the Court of Special Appeals. He may appoint, subject to the approval of the Judges of the Court of Special Appeals, such additional Deputy Clerks as the requirements of his office as Clerk of the Court of Special Appeals shall necessitate, who shall perform such duties as shall be prescribed by the said Judges and the Clerk, and shall receive such compensation as shall be provided in the State bud-*

get. The Clerk of the Court of Special Appeals shall provide such record books, dockets, etc., as may be suitable and necessary. He shall give certified copies under the seal of said Court of all papers and records of which he shall have custody as aforesaid and such copies shall be evidenced in the same manner as other certified copies of record are.

SECTION 46B. *The Clerk of the Court of Special Appeals, before he acts as such, shall give bond to the State of Maryland in such penal sum as the State Comptroller may prescribe, with security or securities to be approved by a judge of the Court of Special Appeals, and with condition that he faithfully perform the duties of his office and account for all funds received under color of his office. He shall give a new bond in like manner on or before the first day of December of each second year following his qualifications in office. Such bonds shall be filed with the State Comptroller.*

SECTION 3. AND BE IT FURTHER ENACTED that Sections 1, 23, 24, 27, 28, 47, 49 and 65 of Article 26 of the Code of Public General Laws, title "Courts", be and the same are hereby repealed and re-enacted, with amendments, Sections 25 and 26 of said Article 26 of said Code be and the same are hereby repealed, and one new section be and the same is hereby added to said Article 26 of said Code, to follow immediately after Section 29 thereof, to be known as Section 29A, and all to read as follows:

COURTS

General Provisions

SECTION 1. The judges of the several courts of [law and of equity] *the State* may make such rules and orders from time to time for the well-governing and regulating their respective courts and the officers and suitors thereof and under such fines and forfeitures as they shall think fit, all of which fines shall go to the State.

Court of Appeals *and Court of Special Appeals*

SECTION 23. Any judge of the Court of Appeals, *or any judge of the Court of Special Appeals,* or any judge of a circuit court, or any judge of the Supreme Bench of Baltimore City, who shall be connected by consanguinity or affinity with any party to a cause within the third degree, counting down from a common ancestor to the more remote, shall be disqualified from sitting in such cause.

SECTION 24. No judge of the Court of Appeals *or of the Court of Special Appeals* shall be deemed to have abandoned his residence in the *appellate* judicial circuit for which he shall have been elected by

reason of his residence in Annapolis during the term for which he may have been elected, unless he shall signify his intention so to abandon his residence in his said [district] *appellate judicial circuit* by voting in the City of Annapolis.

SECTION 25. [The Court of Appeals is authorized and requested to prescribe by general rules, the practice and procedure in all civil actions both at law and in equity in all courts of record throughout the State. Such general rules may, if the judges of the Court of Appeals deem it advisable, unite the practice and procedure in actions at law and suits in equity so as to secure one form of civil action and procedure for both. Such general rules may regulate all appeals in civil actions and may likewise regulate the form and method of taking and the admissibility of evidence in all civil actions. Such rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant, nor shall any such rules apply to practice and procedure in criminal cases, but as used in §§25-28, the terms "practice and procedure", shall be liberally construed, and without intending hereby to limit their comprehensive application, shall be deemed to include the forms of process, writs, pleadings and motions, and the subjects of parties, depositions, discovery, trials, judgments, new trials and provisional and final remedies. Such general rules shall be reported to the General Assembly of Maryland within thirty days after the beginning of its next regular session and except as modified or repealed by act of the General Assembly shall take effect on the 1st day of September, 1941. Upon taking effect, such rules and any subsequent amendments or additions thereto, shall supersede any prior inconsistent public general law, public local law, municipal ordinance or rule of the Court of Appeals or any other court. Such rules may be rescinded, changed, modified or added to from time to time by the Court of Appeals or by the General Assembly, and such alterations or additions to the rules shall become effective at such time as the Court of Appeals or General Assembly shall provide.]

SECTION 26. [If the Court of Appeals shall, pursuant to the power hereinbefore conferred upon it, provide for a united practice and procedure in actions at law and suits in equity, then immediately upon the effective date of said rules, the jurisdiction of the Circuit Court of Baltimore City, the Circuit Court No. 2 of Baltimore City, the Superior Court of Baltimore City, the Baltimore City Court and the Court of Common Pleas of Baltimore City, shall be deemed to be enlarged and extended to cover all civil actions.]

SECTION 27. The judges of the Supreme Bench of Baltimore City shall have power to establish rules governing the practice and procedure in the courts of Baltimore City, except the Orphans' Court,

and the judges of *the Court of Special Appeals and* of the circuit courts of the counties and of the Orphans' Courts of Baltimore City and of the counties shall have power to establish rules governing the practice and procedure in their respective courts, provided that such rules shall not be inconsistent with any general rules adopted by the Court of Appeals, or with any statute then or thereafter in force.

SECTION 28. In order to aid in the performance of the duties placed upon it by [§25 hereof] *Section 18 of Article IV of the Constitution of this State,* the Court of Appeals shall have power to appoint a standing committee of members of the bar who shall serve without compensation, except their traveling and other expenses. The Court of Appeals may employ such assistants as may from time to time be necessary, and shall have power to fix the salaries of the persons so employed. All such salaries, as well as the traveling and other expenses of the committee, including printing and other costs, shall be paid [by the judicial council out of such amount as may be appropriated to it] *out of such funds as may be provided in the State budget.*

SECTION 29A. *The Court of Special Appeals shall have power to appoint such law clerks, stenographers and other employees as it shall deem necessary and the persons so appointed shall receive such compensation as shall be provided in the State budget. Whenever, in the judgment of said Court, the attendance or services of a sheriff may be required in said Court, the judges thereof may direct a sheriff to attend or perform such services, for which attendance and services the said sheriff shall be entitled to such compensation as the Court shall determine.*

Salaries Of Judges

SECTION 47.

(a) Judges of Court of Appeals. — The salary of the Chief Judge of the Court of Appeals shall be twenty-two thousand dollars ($22,000) per annum; the salary of each of the associate judges of the Court of Appeals shall be twenty-one thousand dollars ($21,000) per annum.

(b) *Judges of Court of Special Appeals. — The salary of the Chief Judge of the Court of Special Appeals shall be twenty-two thousand dollars ($22,000) per annum; the salary of each of the associate judges of the Court of Special Appeals shall be twenty-one thousand dollars ($21,000) per annum.*

[(b)](c) Judges of Supreme Bench of Baltimore City. — The salary of each of the several judges of the Supreme Bench of Baltimore City shall be eleven thousand five hundred dollars ($11,500.00) per annum.

[(c)](d) Judges of first seven judicial circuits. — The salary of each of the judges of the several circuit courts of the first seven judicial circuits shall be fifteen thousand dollars ($15,000.00) per annum.

[(d)](e) Salaries payable monthly. — All salaries herein provided for shall be payable monthly.

Pensions Of Judges And Their Widows

SECTION 49. Every elected judge of the circuit court for any of the counties, of the Supreme Bench of Baltimore City, [and] of the Court of Appeals of Maryland *and of the Court of Special Appeals of Maryland,* shall be paid, after the termination of active service, if he is then at least sixty years of age or when he becomes sixty years of age, a pension or salary calculated at the rate of four hundred and fifty dollars ($450.00) per annum for each year, or any part thereof, of active service by appointment and election as a judge of the circuit court for any of the counties, of the Supreme Bench of Baltimore City, [and] of the Court of Appeals of Maryland *and of the Court of Special Appeals of Maryland,* up to and including twenty years of such active service, so that the maximum pension or salary for such service payable hereunder to any one person shall not exceed the sum of nine thousand dollars ($9,000.00) per annum. In addition to the payment of a pension or salary of four hundred and fifty dollars ($450.00) for each year of service, each judge of the Court of Appeals *and of the Court of Special Appeals* shall be allowed one hundred dollars ($100.00) for each year of service as a member of the Court of Appeals *or of the Court of Special Appeals* but, in no event, shall the total pension or salary exceed eleven thousand dollars ($11,000.00). Provided, however, that any elected judge who has retired or who hereafter voluntarily retires from active service after reaching the age of sixty years and before reaching the age of seventy years, and resumes the practice of law, shall not be entitled to the increases in salary or pension provided by this section, but shall be paid the salary or pension at the rate provided before the passage of this section. In the event that a retired judge engaged in the practice of law should thereafter relinquish such practice and notify the Governor and Comptroller of the State of such fact, then, from and after the date of such notification the judge shall be entitled to all the benefits provided by this section. In the case of an elected judge who may serve on the Court of Appeals *or on the Court of Special Appeals* subsequent or prior to service as a circuit court judge for any of the counties or of the Supreme Bench of Baltimore City, the amount of pension per annum shall be calculated according to the total years of active service not exceeding twenty at the pension rate fixed herein. This section shall apply to

all elected judges already retired from active service except as provided herein. Any former judge who accepts any salaried public office or position, municipal, county, State or federal, shall not be paid any pension or salary so long as he remains in such office or position. The mayor and city council of Baltimore and the county commissioners of the several counties are hereby expressly authorized to levy for and pay additional pensions or salaries to such former judges of the Court of Appeals, *the Court of Special Appeals,* the Supreme Bench of Baltimore City and the circuit courts of the counties who served or may hereafter serve in the judicial circuits in which the City of Baltimore or any county exercising the authority conferred herein is located; and any such provision heretofore made is hereby ratified and confirmed.

Juvenile Causes

SECTION 65. Any interested party aggrieved by any order or decree of the judge, may appeal therefrom **[**to the Court of Appeals**]**. Such appeal, the character and extent of the hearing and all procedure in connection therewith shall be in such form and manner as the Court of Appeals shall, by rule, determine.

The pendency of any such appeal or application therefor with respect to a child shall not suspend the order of the judge regarding such child, nor shall it discharge such child from the custody of the person, institution or agency to whose care child shall have been committed by the judge, under §61, unless the **[**Court of Appeals**]** *appellate court* shall so order.

SECTION 4. AND BE IT FURTHER ENACTED that Sections 14 and 15 of Article 36 of the Code of Public General Laws, title "Fees of Officers", be and the same are hereby repealed and re-enacted, with amendments, to read as follows:

FEES OF OFFICERS

Clerks of Court

SECTION 14. The Clerk*s* of the Court of Appeals *and of the Court of Special Appeals* of Maryland may charge and shall be entitled to receive the fees hereinafter set forth for the performance of **[**his**]** *their* duties, as follows:

(1) For filing the record in any appeal and all duties incident thereto, $20.00;

(2) For filing a motion for reargument and all duties incident thereto, $5.00;

(3) For a certificate under seal of the admission of any attorney, $5.00;

(4) For any copy of a certificate under seal of the admission of any attorney, $1.00;

(5) For furnishing copies of laws per hundred words, 12½¢;

(6) For rendering any services required or necessarily incident to the duties of the office, and not hereinabove covered, the clerk may make such charges as are reasonable and appropriate;

(7) For furnishing copies of opinions, $2.00, when ordered in advance, or $3.00 if ordered thereafter.

SECTION 15. In all cases of appeals to the Court of Appeals *and to the Court of Special Appeals,* both at law and in equity, the clerk of the court from which said appeal is taken shall charge but ten cents per hundred words and no more for making up the record of same, and when typewritten copies of any of the papers, or of the testimony necessary to make up said record, are furnished by either of the parties to said cause, or their counsel, the said clerk shall charge for that part of the record but two cents per hundred words for comparison, instead of the above charge, and no more.

SECTION 5. AND BE IT FURTHER ENACTED that Sections 162 and 165 of Article 41 of the Code of Public General Laws, title "Governor — Executive and Administrative Departments", be and the same are hereby repealed and re-enacted, with amendments, to read as follows:

GOVERNOR — EXECUTIVE AND ADMINISTRATIVE DEPARTMENTS

The Executive Department

State Librarian

SECTION 162. He shall have bound the laws, journals and documents of the General Assembly and shall distribute and forward the same when bound, under the direction of the Governor, to the persons entitled by law to receive the same, that is to say: To the Governor of the State of Maryland, one copy of each; to the Comptroller, Treasurer, Commissioner of the Land Office, each one copy of the laws; to the Court of Appeals, one copy of the laws for the office of the Clerk and one copy for each judge; *to the Court of Special Appeals, one copy of the laws for the office of the Clerk and one copy for each judge;* to the Library of Congress, eight copies of the laws and two copies of the journals and documents; to the Department of Legislative Reference, two copies of each for the use of the Depart-

ment and forty-eight copies of the laws and twenty-eight copies of the Code of Public General Laws for exchange with other states; to the Enoch Pratt Free Library of Baltimore City, two copies of each; to the executive department of each state and territory of the Union, one copy of the laws, documents and journals; to the Board of Correction, one copy of the laws; to the mayor and city council of Baltimore, two copies of the laws; to the chief judge and each of the associate judges of the Supreme Bench of Baltimore City, one copy of the laws; to the clerk of the Superior Court of Baltimore City, the clerk of the Court of Common Pleas, the clerk of the Circuit Courts of Baltimore City, the clerk of the Criminal Court of Baltimore, and the clerk of the Baltimore City Court, one copy of the laws for the use of their respective offices and one copy of the journals and documents for the inspection of the citizens; to the Register of Wills of Baltimore City, one copy of the laws; for each judge of the Orphans' Court, one copy of the laws and one copy for the office; one copy of the laws for each police justice, each judge of the People's Court, and each justice of the peace assigned to the traffic court and juvenile court in and for the City of Baltimore; to the clerks of the circuit courts for the several counties, one copy of the laws for office use and one copy of the journals and documents for the inspection of the citizens; to each of the associate judges of the several judicial circuits, except the eighth circuit, one copy of the laws; one copy of the laws, journals and documents for each member of the General Assembly; one copy for the offices of the county commissioners; and one copy for each justice of the peace, trial magistrate, substitute magistrate and juvenile court magistrate in and for their respective counties; the said copies to be delivered by the clerks of the circuit courts and the clerks of the Baltimore City Court. The remaining volumes of the Session Laws, journals and documents, including copies of the Code of Public General Laws of Maryland, deposited in the State Library, shall be retained in the State Library or distributed under the supervision and direction of the library committee of the Maryland State Library or may be used by the State Library for exchange purposes.

SECTION 165. The [Maryland Reports] *published opinions of the Court of Appeals and of the Court of Special Appeals* shall be distributed by the Librarian in the following manner, that is to say: To The Court of Appeals, two copies for the office and one for each of the judges thereof; *to the Court of Special Appeals, two copies for the office and one for each of the judges thereof;* to each of the associate judges of the circuit courts for the several counties, to the chief judge and the associate judges of the Supreme Bench of Baltimore City one copy each for the use of their respective offices; to the clerks of the circuit courts for the several counties and of the City

of Baltimore and the clerk of the Superior Court of Baltimore City, the clerk of the Court of Common Pleas, the clerk of the Baltimore City Court, and the clerk of the Criminal Court of Baltimore, one copy each; to the registers of wills throughout the State for the use of the registers of wills and orphans' court, one copy; to the Commissioner of the Land Office, one copy; to the executive chamber, one copy; to the Library of Congress, five copies; to the Enoch Pratt Free Library of Baltimore City, two copies; to the General Assembly, eight copies; and to the executive department of each state in the Union, one copy; to the Comptroller of the treasury, the Treasurer of Maryland, the Department of Legislative Reference, the police commissioner of Baltimore City, and the State Tax Commission, one copy each; and to the librarian of the library company of the Baltimore Bar such copies of the reports, laws, journals and documents of the State of Maryland of which he may now have duplicates and of which he may have duplicates from time to time as new volumes are published, as can be spared from the State Library, not exceeding in each case two copies of such volumes. The remainder of said reports shall be deposited in the State Library and shall be retained in the State Library or distributed under the direction of the library committee or may be used by the State Library for exchange purposes.

SECTION 6. AND BE IT FURTHER ENACTED that Section 2 of Article 70 of the Code of Public General Laws, title "Official Oaths", be and the same is hereby repealed and re-enacted, with amendments, to read as follows:

OFFICIAL OATHS

SECTION 2. The Secretary of State, the Judges of the Court of Appeals *and of the Court of Special Appeals* and their *respective* Clerks, the Attorney General, the State Reporter, the State Librarian, the Adjutant General, the Treasurer, Comptroller and the Commissioner of the Land Office shall take and subscribe the said oath before the Governor and the same shall be preserved in a book to be kept by the Secretary of State.

SECTION 7. AND BE IT FURTHER ENACTED that Sections 3 and 4 of Article 80 of the Code of Public General Laws, title "Reporter — State", be and the same are hereby repealed and re-enacted, with amendments, to read as follows:

REPORTER — STATE

SECTION 3. Said Reporter, under the supervision of the Court of Appeals of this State, shall prepare for publication reports of all the cases argued and determined in the Court of Appeals of this State

designated by said court to be reported, *and reports of all cases argued and determined in the Court of Special Appeals designated by said court to be reported,* within six months from the time when the same shall have been determined. The reports in all cases shall be published in such form and shall contain such material as the Court of Appeals may, from time to time, determine. The Reporter shall, in the usual manner of authors, superintend the publication[s], correction and proofreading of such reports, and shall secure the copyright for the State of Maryland and as its property; and in addition to his aforesaid salary shall receive such sum as may be provided in the State budget for clerical assistance. The cost of advertising for proposals for the publication of said reports shall be paid by the Comptroller upon the presentation of properly authenticated vouchers. The Clerk of the Court of Appeals *and the Clerk of the Court of Special Appeals* shall promptly deliver to the State Reporter accurate typewritten copies of all the opinions of the Court of Appeals *and of the Court of Special Appeals,* to be paid for by the said clerks out of the fees of [his] *their respective* offices.

SECTION 4. The State Reporter, under the direction and supervision of the Court of Appeals of Maryland, shall arrange for the publication of the [Maryland Reports] *opinions of the Court of Appeals and the opinions of the Court of Special Appeals* and let the necessary contracts for [such reports] *the same.* Such contracts may be awarded upon such terms and conditions as the State Reporter shall under the direction and supervision of the Court of Appeals of Maryland, deem necessary. The publisher shall deliver to the State Library three hundred copies of each volume bound in *a* first-class [buckram] *manner;* and the State shall pay therefor to the publisher the contract price per volume for each of said three hundred volumes.

SECTION 8. AND BE IT FURTHER ENACTED that this Act shall take effect January 1, 1961, if the constitutional amendment proposed by Chapter ..... of the Acts of the General Assembly of 1959 is adopted by the qualified voters of this State at the general election to be held in November, 1960.

APPENDIX

Reprints of Prior Reports of Committee

The statistical tables printed as Annexes to the prior reports have not been reprinted because they have been brought up to date and printed as Annexes to the final report.

January 15, 1958

Hon. G. C. A. Anderson,
President, Maryland State Bar Assn.,
Baltimore, Maryland.

Dear Mr. Anderson:

INTRODUCTORY

On June 21, 1957, Judge Edward D. E. Rollins delivered an address before the Maryland State Bar Association[1] following which the Association adopted a resolution directing the President to appoint a committee to study the case load of the Court of Appeals and report back to the Association. You appointed the undersigned Committee on August 7, 1957, and the Committee held its first meeting on August 21, 1957, since which time the Committee has had numerous other meetings, including one joint session with the entire present membership of the Court of Appeals and with Judge Stephen R. Collins, just recently retired as a member of the Court of Appeals. In addition a subcommittee of this Committee has had one extended conference with the judges of the Court of Appeals and the Chairman and some of the members of the Committee have had individual conferences with different judges of the Court of Appeals. We have studied a considerable amount of published material on the subject[2] and the judges have also

[1] "Suggestions for the Improvement of the Administration of Justice in the Appellate Field in Maryland." Address by Edward D. E. Rollins before The Maryland State Bar Association, THE DAILY RECORD, June 22, 1957.

[2] The following is a partial bibliography of published material considered by the Committee:

"The Work of the Commission on the Judiciary Article of the Constitution of Maryland", address by Chief Judge Carroll T. Bond, Transactions of the Maryland State Bar Association, Vol. 47, pp. 211-221.

Address by Judge Hall Hammond before The Alumni Association of the University of Maryland, THE DAILY RECORD, April 8, 1957.

"Suggested Appellate Court Changes", paper by Walter H. Buck, Esq., THE DAILY RECORD, August 23, 1957.

"Judicial Statistics of State Courts of Last Resort", 31 Journal of The American Judicature Society, 116, December 1947.

Vanderbilt, "Minimum Standards of Judicial Administration" — 1949.

Vanderbilt, "Improving the Administration of Justice — Two Decades of Development" — 1957.

First, Second, Third and Fourth Annual Reports of the Judicial Council of Florida.

"Statistics on Work of Highest State Appellate Courts", Institute of Judicial Administration, June 1, 1954.

"Court Commission Systems and References", Institute of Judicial Administration, July 18, 1955.

"Selecting Cases for Appellate Review", Institute of Judicial Administration, July 24, 1956.

"State Intermediate Appellate Courts, Their Jurisdiction, Case Load and Expenditures", Institute of Judicial Administration, August 7, 1956.

given us in writing their views as to certain proposals considered by us.[3]

There has not been sufficient time for us to complete our studies and prepare a comprehensive final report. This is, therefore, an interim report but because we feel that some matters should be acted upon by the Association at the mid-winter meeting to be held on January 25th, we are at this time making several definite recommendations for legislative action and one recommendation for a constitutional amendment. These should be acted upon by the Legislature at the 1958 session so that the two recommendations requiring only legislative action can, if adopted by the Legislature, be put into effect before the September, 1958, term of the Court of Appeals begins and the constitutional amendment can be voted on by the electorate at the November, 1958, election. As to matters other than these three recommendations our report is presented at this time for the information of the Association and for discussion at the mid-winter meeting. The Committee would like to continue its study and present its final report and recommendations at the June, 1958, meeting of the Association.

HISTORICAL

From 1778 to 1806 the Court of Appeals of Maryland consisted of five judges with appellate functions only; from 1806 to 1851 the Court consisted of the six chief judges from the judicial districts or groups of the county trial courts and these judges had *nisi prius* as well as appellate functions. From 1851 to 1864 there were four judges elected from four divisions of the State who had appellate functions only. This was continued by the Constitution of 1864 except that there were five instead of four judges. The Constitution of 1867 provided for a court of eight judges, seven of whom were the chief judges of the seven county circuits and the other of whom was elected from Baltimore City. The seven county judges had *nisi prius* duties but the Baltimore City judge did not. This arrangement continued until the adoption of the Bond Amendment in 1944 which was effective January 1, 1945. During the transitional period under the Bond Amendment from 1945 to 1951 the Court consisted successively of eight, seven and six judges, but since the retirement of Judge Grason on November 8, 1951, the Court has

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"Appellate Courts — Internal Operating Procedures, Preliminary Report", Institute of Judicial Administration, July 5, 1957.

"The Court of Appeals of Maryland — A Five-Year Case Study", Herbert M. Brune, Jr. and John S. Strahorn, Jr., 4 M.L.R. 343.

First Annual Report of the Administrative Office of the Courts, 1955-6.

Second Annual Report of the Administrative Office of the Courts, 1956-7.

"The Volume of Cases in the Court of Appeals", paper read by Judge William L. Henderson before the Round Table, Transactions of the Maryland State Bar Association, Vol. 56, pp. 177-183.

[3] Copies of the letters from Chief Judge Brune and from Judges Hammond, Prescott and Horney are appended hereto as Annex A.

consisted of five judges, three of whom are from the counties and two of whom are from Baltimore City. There have been no changes in the constitutional provisions with respect to the organization of the Court of Appeals since the Bond Amendment and under the present Constitution, for the purpose of electing judges to the Court of Appeals, the judicial circuits of the State are grouped into four appellate judicial circuits, the first three of which includes all the counties and the fourth of which consists of Baltimore City only. The judges have appellate functions only, although some of the judges have from time to time by assignment of the chief judge sat at *nisi prius* to relieve congestion in some of the county Circuit Courts.

The organization and function of the Court of Appeals of Maryland has been the subject of debate among the judges and lawyers of Maryland for the past 50 years. The present organization of the Court of Appeals is based on the suggestions and recommendations of the then Attorney General William C. Walsh to this Association at the mid-winter meeting in 1941.[4] The Association at that time approved a resolution submitted by him recommending the reorganization of the Court of Appeals substantially along present lines. A committee was appointed to implement this resolution and thereafter on recommendation of this Association the Governor appointed the Commission on the Judiciary Article of the Constitution of Maryland of which Chief Judge Bond was Chairman. In June, 1942, this Association adopted a resolution approving the interim report made by this Commission to the Governor.[5] The necessary constitutional amendments were proposed by the Legislature in 1943 and adopted at the election in November, 1944.

It would serve no useful purpose to repeat here all the pros and cons of the debate which preceded the adoption of the recommendations of the Bond Commission.[6] Suffice it to say that the two principal

[4] Transactions of the Maryland State Bar Association, Vol. 46, pp. 17-29.
[5] Transactions of the Maryland State Bar Association, Vol. 47, pp. 222, 254.
[6] (1940) 4 Md. L. Rev. 333, An Introductory Description of the Court of Appeals of Maryland, by Carroll T. Bond.
(1940) 4 Md. L. Rev. 343, The Court of Appeals of Maryland — A Five-Year Case Study, by Herbert M. Brune, Jr., and John S. Strahorn, Jr.
(1941) 5 Md. L. Rev. 203, The Pending Proposal to Reorganize the Court of Appeals of Maryland.
(1942) 6 Md. L. Rev. 119, The Movement to Reorganize the Court of Appeals of Maryland, by William C. Walsh.
(1942) 6 Md. L. Rev. 148, Proposals to Change the Maryland Appellate Court System, by Walter H. Buck.
(1942) 6 Md. L. Rev. 304, The Interim Report of the Commission on the Judiciary Article.
(1943) 7 Md. L. Rev. 143, Court of Appeals Amendment Passes Legislature.
(1943) 7 Md. L. Rev. 324, The Proposed Court of Appeals Amendment.
(1944) 8 Md. L. Rev. 91, Reorganization of the Court of Appeals of Maryland, by Morris A. Soper.
(1944) 8 Md. L. Rev. 226, Victory for Court of Appeals Reorganization.

questions at issue were whether the Court of Appeals should consist of eight judges or five judges or some number in between and whether the judges should have only appellate duties or should also have *nisi prius* duties. There was no unanimity of opinion among the judges of the Court of Appeals or among the members of the Bar on these questions and some very strong views were expressed publicly on both sides of each question. Nevertheless, the view that five judges with appellate duties only could efficiently carry the work load of the Court and at each term dispose of all cases presented to it, at least for the foreseeable future, prevailed.

Before the Court had actually been reduced to five judges the debate was again renewed by the letter of Chief Judge Marbury presented to the Association at its June, 1950, meeting in which he recommended that the Constitution be amended to authorize the Legislature, whenever requested by the Chief Judge of the Court of Appeals, to increase the number of judges of the Court of Appeals to seven.[7] The letter was referred to the Miles Committee which submitted its report at the mid-winter meeting in 1951.[8] There was a majority report and a minority report by the late Edward H. Burke, Esq.,[9] both of which were considered and debated at length at the mid-winter and at the June, 1951, meetings of the Association.[10] The majority report, which was finally approved by the Association, recommended that the number of judges not be increased.[11] The only other recommendations of the Miles Committee were that if a reduction in the work load of the Court of Appeals should be required, it should be accomplished by "(1) limiting the number of appeals which are heard by the court, (2) reducing the size of opinions in cases which failed to present a novel or unusual question of law, and (3) calling upon *nisi prius* judges to serve temporarily on the Court of Appeals in accordance with prevailing constitutional provisions." The only specific suggestions to implement these recommendations were (1) to adopt legislation to limit the right of appeal to cases involving a stipulated amount and (2) action by the Court to reduce the length of opinions and to adopt the practice of filing short *per curiam* opinions.[12]

THE PRESENT PROBLEM

As pointed out by Judge Rollins in his address the State of Maryland is one of the fastest growing states. From 1940 to 1950 the Statewide gain in population was 521,757 but from 1950 to 1955 — half as long a period — the gain was 401,015 or almost as much. In 1940 the

[7] Transactions of the Maryland State Bar Association, Vol. 55, pp. 269, 271.
[8] Transactions of the Maryland State Bar Association, Vol. 56, pp. 32-37, 168-183.
[9] Transactions of the Maryland State Bar Association, Vol. 56, pp. 312-326.
[10] Transactions of the Maryland State Bar Association, Vol. 56, pp. 37-48, 184-209.
[11] Transactions of the Maryland State Bar Association, Vol. 56, p. 200.
[12] Transactions of the Maryland State Bar Association, Vol. 56, p. 35.

total population of the State was 1,821,244, in 1950 2,343,001, in 1951 2,744,014 and for 1960 is estimated to be about 3,000,000.[13]

The work load of the Court of Appeals has also been increasing during this period. A very comprehensive five year case study by Messrs. Brune and Strahorn[14] showed that the number of opinions filed in the years 1935 to 1939, inclusive, totaled 714 and ranged from a low of 115 to a high of 172 in each year. The average number of majority opinions per judge per year was 17.6 and the average number of opinions per judge, including both concurring and dissenting opinions was 18.65. Appended hereto is a tabulation showing for the years 1940 to 1957, inclusive, the number of cases docketed, the number of opinions filed, the average number of opinions per judge, the number of applications for leave to appeal in habeas corpus cases and the number of opinions on such applications.[15] A classification of the appeals in these same years under 19 headings is also appended hereto.[16]

It will be noted that with the exception of the years 1950 and 1952 there has been a steady increase each year in the number of appeals and in the number of opinions filed. In 1949 and 1951 the number of appeals and opinions was greater than it had been in the previous years or in the years immediately following but from 1955 on the number of appeals and the number of opinions has been greater than ever before. The average number of opinions per judge has increased from 17.1 in 1940, 20.7 in 1945 (when the Bond Amendment became effective), 26.5 in 1952 (the first full year of a five judge court) to 39.8 in 1956-1957 for each of the regular judges of the Court. In addition the number of opinions on applications for leave to appeal in habeas corpus cases has increased from 45 in 1947 to 86 in 1956-1957. More significantly the total number of appeals thus far docketed to the 1957-1958 term with another six weeks still to go has been 254 and the total number of applications for leave to appeal in habeas corpus cases thus far filed in the same term has been 116. If we assume that there will be the same proportion of appeals dismissed without opinion, it would appear that the total number of opinions excluding habeas corpus cases for the 1957-1958 term will be somewhere in the neighborhood of 245, or more than it has been at any time in the history of the Court. This means an average of 49 opinions per judge for the current term.

Notwithstanding this increase in its work load the Court has been able to keep its docket current. As indicated in the second annual report of the Administrative Office of the Courts,[17] the Court com-

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[13] Division of Vital Records and Statistics, Maryland State Department of Health Monthly Bulletin, Vol. 29, No. 1, January, 1957.

[14] "The Court of Appeals of Maryland — A Five-Year Case Study", Herbert M Brune, Jr. and John S. Strahorn, Jr., 4 M.L.R. 343.

[15] Annex B.

[16] Annex C.

[17] Second Annual Report of the Administrative Office of the Courts, p. 17.

pleted the disposition of all cases docketed during the October Term 1956 before adjournment, the last opinion being filed on July 30, 1957. When the Court convened in September, 1957, there was no backlog of old cases other than one case held for re-argument and another case awaiting a decision in another jurisdiction. In the 1956-1957 term the average time between the docketing of a case and the hearing of argument was 4.1 months and the time lapse between the date of argument and the filing of an opinion was 1.4 months, which means that appeals were finally disposed of on the average of 5.5 months after they were docketed. The Court has been able to accomplish this only by extending its term, convening one month earlier and sitting one month later than heretofore. The Court convened the 1957-1958 term in September rather than October, 1957, and expects to sit through July, 1958, thus more than complying with the constitutional mandate to sit ten months in each year if the business of the Court requires it.

We have been unable to make a comprehensive statistical study to determine precisely why there has been this increase in the work load of the Court of Appeals in recent years, but it seems obvious that it results in great part at least from the steadily increasing growth in population and business activity in the State, and while there may be years in the immediate future when the number of appeals docketed will be less than at present, it seems much more likely that the number will increase each year. We have considered carefully the work load which a judge of the Court of Appeals can reasonably be expected to carry, and we are firmly of the opinion that the present work load is just about the maximum, and that if the work load increases to the point where a judge will be expected to write more than 40 opinions a year the efficiency of each individual judge and the caliber of work done by the Court will necessarily suffer. We are, therefore, of the opinion that something must be done and be done promptly to lessen the present burden on the judges of the Court of Appeals or at least to prevent any further increase in that burden. The solution to this problem, however, is not an easy one.

PRESENT OPERATION OF THE COURT

We have felt it desirable in our study of the problem to find out just how the Court operates at the present time, in order to determine, if possible, whether changes in the Court's present practices could furnish at least a partial solution to the problem. The judges have cooperated fully with us and have discussed with us very freely and frankly their present practices in the operation of the Court. A brief resume of these practices might be helpful at this point.

For some time past the Court has been following the practice of sitting for two weeks and then adjourning for two weeks. In the two weeks that the Court sits it will hear arguments in approximately 25 cases. Usually the Court does not sit on Mondays and Fridays and

regularly schedules arguments only on Tuesdays, Wednesdays and Thursdays of each week, four to five cases being assigned for argument on each of these days. The Court usually sits from 10:00 A.M. to 4:00 P.M. on the days when it hears arguments but quite frequently sits beyond 4:00 P.M. in order to conclude argument in a pending case so as to avoid the necessity of having counsel return the following day. At the conclusion of arguments each day the judges meet for a conference of from an hour to an hour and a half. Opinions are assigned essentially on a rotation basis, varied from time to time so that it is not possible to determine in advance just which judge will write the opinion in a particular case. When the Court is sitting, conferences are regularly held on each Friday and also on Thursday afternoons if the arguments of cases assigned for hearing that week have been concluded, but because of the present case load it has been necessary to use some Friday conference days for hearing cases. Occasionally conferences are held on Monday of the weeks during which the Court is sitting, but this is not a regular practice.

During the two week periods when the Court is not sitting the judges are working on the opinions which have been assigned to them. Each judge prepares the opinion assigned to him after study and after the preliminary conference of the Court following argument. Opinions are then circulated by mail to all judges and read by them in preparation for the next conference on opinions. At the conferences on opinions each opinion is read in its entirety by the judge preparing it and only after comment, discussion, criticism and revision is it finally released as the opinion of the Court. Thus the opinions are truly opinions of the Court and not "one-man opinions".

Consideration has been given to the possibility of reducing the time allowed for argument, but the Court does not believe this proposal is practicable and we concur. Counsel are now limited by rule to one hour of argument for each side. In addition counsel are required on the day of argument to file with the Clerk a form designating the order of counsel in speaking and the estimated time to be used. Experience to date indicates that on the whole counsel keep within the time estimated by them, and that this is usually less than the maximum time allowed by rule. In addition we think that the importance of oral argument cannot be overemphasized; the judges have indicated to us that they regard it as extremely important, and that they depend on it a great deal, particularly in view of their practice of reading briefs beforehand. In this connection it should be noted that the judges to some extent devote a portion of their summer vacations to reading briefs and appendices in advance, but most of them spend much of their evening hours while the Court is in session in reading or re-reading briefs in cases assigned for argument on the following day.

The work of the judges today is greatly facilitated by their secretaries and law clerks, but unfortunately the work load of the judges is increased by the fact that the quality of briefs and arguments is ofttimes poor. All the judges expressed the view that many briefs were not only poorly written but that most of them were inadequate and failed to cite cases closely in point, particularly recent Maryland cases. The judges, therefore, have been unable to depend on the briefs and arguments to the extent they should be able to and must in many cases do a considerable amount of original research. This situation is regrettable and one which this Association should condemn.

We have the strong conviction that the present practices of the Court with respect to the reading of briefs and appendices before argument, full oral argument of all cases, conferences of the judges immediately after argument, circulation of opinions among all the judges and full discussion and revision of them by the entire Court before they are filed, and the prompt disposition of all appeals are good practices which should continue to be followed. We do not think any of these practices should be abandoned because of the increasing pressure of the work load on the judges.

POSSIBLE CHANGES IN PRESENT PRACTICES OF COURT

The only present practice of the Court of Appeals which we would like to see changed is that of filing an extended opinion in every case. We believe that this is not only an unnecessary burden on the Court, but it is undesirable from the point of view of the Bar, the members of which necessarily devote a considerable amount of time to reading lengthy opinions which establish or settle no new points of law and are of no real interest to anyone but the litigants. The Constitution provides that in every case in the Court of Appeals "an opinion, in writing, shall be filed within three months after the argument, or submission of the cause." The Court of Appeals long ago decided that this provision did not require an opinion in cases of affirmance by a divided Court[18] and it also decided that the three months provision was directory and not mandatory.[19] We know of no reported decision discussing the question of whether the constitutional requirement that there be an opinion is directory or mandatory or whether a short *per curiam* qualifies as an opinion, or discussing the question of how long and detailed an opinion must be in order to qualify as an opinion in the constitutional sense. We understand, however, that this question has been discussed by the judges constituting the Court of Appeals from time to time and that the feeling of most has been that a full opinion discussing both law and facts is required; we also understand that the view has been expressed that this constitutional

[18] *Johns v. Johns,* 20 Md. 61.
[19] *McCall's Ferry Co. v. Price,* 108 Md. 112.

requirement applies even in action by the Court on applications for leave to appeal in habeas corpus cases. Be that as it may, the Court has traditionally observed the requirement for a full and detailed opinion.

The Court can, of course, of its own volition provide for shorter opinions but as has been many times observed it is ofttimes much more difficult to write a short opinion than a long one and the amount of time saved to the Court by writing shorter opinions might be questionable, although the Bar would no doubt welcome much shorter opinions.

It should also be observed that the writing of the opinion is an important and integral part of the judicial process on appeal without which there might conceivably be a tendency to decide cases on the basis of emotions rather than of the law, if not on the basis of whim or caprice. Then too, a judge may reach a conclusion in a case only to find that the opinion just won't write with the result that he changes his conclusion. We have been informed by the judges, however, that while this sometimes happens it is certainly an infrequent, if not a rare occurrence.

Notwithstanding these considerations, it is our opinion that in many instances cases in the Court of Appeals do not present new and novel questions and the opinions of the Court add nothing to the law. We think, therefore, that in such instances the Court ought not to be required to write an extensive opinion. It is our further belief that the Court is not required, even under the present Constitution, to file detailed and extended opinions in every case and that where appropriate a very short opinion of a few lines, either individual or *per curiam,* complies with the constitutional requirement. Some of the present judges of the Court of Appeals concur in this view but some have doubts about the matter in view of the long-standing tradition of the Court of Appeals in filing extended opinions in every case. To remove this doubt, we propose a constitutional amendment providing that in an appropriate case it shall not be necessary for the Court to file an extended and detailed opinion.

We have considered the suggestion of one of the judges that the Court, or some one judge designated by the Court, read all briefs and make a preliminary determination of whether there is probable justification for the appeal and whether oral argument should be permitted, and in the event the preliminary determination is that oral argument should not be permitted, that counsel be notified and unless they specifically request oral argument the case be disposed of on briefs, and if oral argument be specifically requested that the case be placed on the regular docket but with a very limited time allowed for oral presentation. We do not approve this suggestion. In the first place if such a preliminary determination is made by all judges we doubt that the work load would be appreciably diminished and if the Court

designates one judge to make the preliminary determination, the litigants are deprived of the full consideration by the entire Court to which we think they are entitled. Nor is it any answer to say that if counsel requests oral argument he will have the consideration of the entire Court because counsel would be put in a very awkward position to insist upon their right to argument after a preliminary determination that the case did not merit oral argument.

We have also considered a suggestion of another of the judges that the Court by rule create a Summary Docket with a very much shorter time being allowed for oral argument of cases on the Summary Docket, the idea being that the less complicated and less important cases be placed on the Summary Docket. This, however, would entail a preliminary review of all cases by at least one judge and we do not believe it would result in any appreciable saving of time for the Court. We, therefore, are in accord with the Rules Committee of the Court of Appeals which has likewise considered and rejected this suggestion.

POSSIBLE SOLUTIONS OF THE PROBLEM

As indicated above we think the increasing work load on the Court presents a problem for which an early solution must be found and except to the very limited extent that our recommendation as to opinions may help solve the problem, we do not think the solution can be found in changing the present practices of the Court nor do we think any effort should be made to do so. Obviously, therefore, the only possible solution is to reduce the work load by reducing the number of cases requiring the attention of each judge and reducing the number of opinions each judge must write. Very broadly speaking, there are two possible ways of accomplishing this, (1) by reducing the number of appeals or (2) by increasing the number of judges available to hear appeals, either by increasing the number of judges of the present Court or by establishing other appellate courts. Before considering either of these two possible avenues of approach, we should first consider and decide on precisely what function a court of last resort and particularly the Court of Appeals of Maryland is intended to perform.

Chief Judge John J. Parker of the United States Court of Appeals for the Fourth Circuit has stated the function of an appellate tribunal as follows:

> "The function of the reviewing court is: (1) to see that justice is done according to law in the cases that are brought before it, (2) to see that justice is administered uniformly throughout the State, and (3) to give authoritative expression to the developing body of the law."[20]

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[20] Parker, "Improving Appellate Methods", 25 N.Y. Uni. L. Rev. p. 1.

Or to put it another way, it may be said that there are two aspects to the function of a State court of last resort, (1) what may be called a private function, that is, to see that justice is done to the litigants in each individual case, and (2) what may be called a public function, that is, to settle and give authoritative expression to the developing body of the law. The amount of emphasis given to one or the other of these two aspects of the appellate function will determine to a large extent the kind of appellate tribunal which should be maintained and the kind of appeals which should be permitted. Obviously the Court of Appeals of Maryland must perform the "public function" but it is our opinion that the "private function" should not be ignored and that it is equally important in the judicial organization of the State of Maryland. It is equally obvious, however, that there is some point at which no appellate court, no matter how large or hard working, can possibly fulfill both functions fully. When this point is reached then the private function must give way but in Maryland, at least, we believe that in this event some substitute appellate procedure should be established. In seeking a solution we have, therefore, concluded that unless the work load of the Court can be sufficiently reduced by one or more of the means hereafter mentioned the establishment of an additional appellate court or courts is necessary, because we believe that every litigant should have the right to have his case reviewed by at least one appellate tribunal.

SOLUTIONS CONSIDERED BY THE COMMITTEE

We have considered all suggestions made to us as possible solutions of the problem and in addition have considered numerous other possible solutions suggested by members of the Committee. For the sake of brevity we will group these suggestions under the two headings above mentioned and make a brief comment as to each.

A. Reduction in the Number of Appeals

1. *Provide for compulsory arbitration in negligence cases or in certain types of negligence cases.*

This is a far reaching proposal adopted to a certain extent in some states[21] but one which primarily affects the congestion in the trial courts and only indirectly affects the Court of Appeals. The contention is that negligence cases constitute so large a part of the work of the Courts today and that they lie in such a specialized field that provision should be made for handling them by means of arbitration and not by court trial. This suggestion, however, involves substantial questions of public

[21] Compulsory Arbitration and Court Congestion — The Pennsylvania "Compulsory Arbitration Statute", Institute of Judicial Administration, July 1, 1956.
"Administrative Boards for Automobile Tort Cases — Workmen's Compensation Compared", Institute of Judicial Administration, May 15, 1956.
LaBrum, "Clearing Dockets by Arbitration", The Daily Record, October 27, 1956.

policy affecting substantive as well as procedural rights, and we feel that it is beyond the scope of the authority delegated to this Committee. We have, therefore, not given it any further consideration.

2. *Abolish appeals as a matter of right and provide for review by the Court of Appeals only on certification by the lower court or on certiorari by the Court of Appeals.*

Some of the judges have expressed the view that this is the real solution of the problem and that adequate protection is afforded to the litigant by provisions for certiorari and, if desirable, by certification by the lower court also. The Committee has very carefully considered this suggestion, but, as above indicated, has reached the conclusion that every litigant is entitled to at least one appeal and for this reason disapproves the suggestion.

3. *Eliminate appeals as a matter of right in cases involving only questions of title, mechanics liens cases, divorce and alimony cases and possibly other similar cases.*

The Committee agrees that there are certain cases which are really too trivial to occupy the time and attention of the Court of Appeals, but it is difficult to draw the line between those cases where there ought to be an appeal as a matter of right and those cases which everyone would agree should not take up the time of the Court of Appeals. We, therefore, disapprove this suggestion.

4. *Abolish the present broad review of facts by the Court of Appeals in non-jury law and criminal cases and in equity cases.*

The present broad review of facts by the Courts of Appeals in non-jury law and criminal cases is of recent origin.[22] It has been argued that there is no more reason why the verdict of a jury on the facts should be regarded as final and not subject to review by the Court of Appeals than that the verdict of a judge sitting without a jury, either at law or in equity, should be similarly regarded in the same kind of case. There are also, however, strong arguments which can be made to the contrary and your Committee has not sufficiently studied this question to make a definite recommendation.

5. *Provide by statute for a minimum amount to be involved in any case before there is a right of appeal.*

This suggestion would seem to have merit and has been adopted in some states. It is also one of the recommendations approved by the American Bar Association in 1938.[23] We have, therefore, given

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[22] Maryland Rule 886A adopted January 1, 1957 (first adopted as a Rule effective September 1, 1941), as to criminal cases, Maryland Rule 741C adopted January 1, 1957 (first adopted as a Rule effective January 1, 1950).

[23] Vanderbilt, "Minimum Standards of Judicial Administration", (1949), App. A, p. 592.

careful consideration to it, although we have been unable to determine statistically just how many appeals in recent years would have been eliminated if there had been a statutory minimum of $1,000. or $1,500. While it has not been possible to obtain this statistical information accurately, we have discussed the matter with the judges and all are agreed that the number of appeals which would be affected by such a statutory minimum would be very slight, possibly even less than one per cent of the total. Also there are some cases of great public importance which directly involve a very small amount of money, and it would be necessary to provide for review by certiorari of such cases where the amount directly involved was less than the statutory minimum. The Committee has, therefore, reached the conclusion that the adoption of a statutory minimum for appeal would affect the work load of the Court of Appeals to such a slight extent as not to be worth the trouble. We, therefore, disapprove the suggestion.

6. *Increase the jurisdiction of the Trial Magistrates and Peoples' Courts.*

This suggestion is akin to the previous one in that in effect it establishes a statutory minimum for appeal because there is no appeal to the Court of Appeals as of right from cases originating before Trial Magistrates or in the Peoples' Courts. This suggestion at first blush seemed to have merit, but here too we are very doubtful that there would be any substantial reduction in the number of appeals. Also in order to be efficacious the increased jurisdiction of Trial Magistrates and Peoples' Courts would have to be uniform throughout the State. This involves questions entirely separate and apart from the matter of appeals to the Court of Appeals, and we have concluded that it would be difficult, it not impossible, to persuade the Legislature to pass a bill, State-wide in application, increasing the jurisdiction of all Trial Magistrates and Peoples' Courts to $1,000. or $1,500. We, therefore, disapprove this suggestion.

7. *Eliminate appeals as a matter of right in administrative appeals, that is, cases in which the lower court is acting on appeal from an administrative agency.*

Although we feel that every litigant should have the right to at least one appeal, this does not necessarily mean that he should have the right to an appeal to the Court of Appeals, and it would seem to us that in cases of appeals from administrative agencies the requirement that there be at least one appeal is satisfied by the right of appeal from the administrative agency to the lower court. It, therefore, seems to us reasonable that in these cases involving administrative appeals such as appeals from Zoning Boards, the State Industrial Accident Commission, the State Tax Commission, the Public Service Commission, and the Comptroller's Office, the right of a further appeal to the Court of Appeals could be abolished. There should, however, be a

provision for the review of such cases by certiorari. Unfortunately, as will be seen by reference to Annex B, the number of such appeals is comparatively small, amounting to between 5% and 10% of the total number of appeals. This is enough, however, to lessen the work load on the Court of Appeals to some extent at least and we are, therefore, recommending that this suggestion be approved.

8. *Eliminate or modify the present statutory provisions for applications for leave to appeal in habeas corpus cases.*

Applications for leave to appeal in habeas corpus cases do impose a very substantial burden on the Court of Appeals, there being approximately 116 such applications filed thus far in the present term. Each of these requires careful consideration by a judge and the writing of an opinion which although usually very short, nevertheless, takes time. The whole practice is of recent origin, having been adopted by the Legislature in 1947. But as a result of the decisions of the Supreme Court of the United States in the past few years the number of such applications has enormously increased and seems destined to increase still more. The whole problem, however, has been carefully studied by numerous organizations in this country and by another committee of this Association which we understand is recommending to this Association that it approve the enactment of the Post Conviction Procedure Act. We are also recommending that this Act be approved and pending further action on it by this Association and by the Legislature we make no further recommendations with respect to applications for leave to appeal in habeas corpus cases.

B. Increase in the Number of Appellate Judges or in the Number of Appellate Courts.

1. *Provide for the appointment of Commissioners or Masters for certain types of cases such as divorce, mechanics liens, habeas corpus, etc.*

In some states there is a system of Commissioners or Masters who hear appeals in certain types of cases and prepare opinions which are then subject to exception or objection by the respective parties who are then entitled to a hearing before the appellate court. The system is similar to the system of Masters prevailing in some of our equity courts in Maryland. In other states there are Commissioners who hear cases with the Court, and although they do not participate in the vote on the decision of a case, do prepare opinions for the judges, such opinions, of course, being subject to review and corrections by the judges. We feel that either of these systems would be cumbersome and not very well adapted to the Maryland practice. The opinions of such Commissioners and Masters even though adopted by the Court would not, in our opinion, carry the same weight as an opinion of the judges. In addition we feel that the writing of opinions by the judges is an

important and integral part of the judicial process in deciding the case and that it is not a function which can be delegated by the judges to someone else. We, therefore, disapprove this suggestion.

2. *Assignment of nisi prius judges to sit with the Court of Appeals as a matter of regular practice.*

The Court of Appeals has from time to time assigned *nisi prius* judges to sit with it in the consideration of appeals, thereby relieving regular appellate judges for brief periods of time. To the limited extent that it has been used, this practice has worked well, but it has not been followed regularly nor has it been used extensively. The suggestion has been made that the Court adopt the practice of having one *nisi prius* judge sit with it regularly, thereby giving one appellate judge additional time to work on opinions and study cases in the argument of which he has sat with the Court. In effect this means creating a Court of Appeals of six judges with five sitting at any one time and with the sixth judgeship rotating among the *nisi prius* judges. Neither the judges of the Court of Appeals nor the members of the Committee approve of this idea. In the first place, if this were done on a regular basis problems would inevitably arise in the selection of the *nisi prius* judges to sit with the Court and there would be resulting interference with the regular duties of the *nisi prius* judges. In addition the Bond Amendment is based on the definite principle that the judges of the Court of Appeals should have appellate duties only and we do not think that there should be a departure from this principle. We, therefore, disapprove this suggestion.

3. *Increase the number of judges of the Court of Appeals from five to seven.*

This is essentially the proposal reported on by the Miles Committee in 1951 which after very lengthy debate at two successive meetings of this Association was disapproved. The proposal is also strongly disapproved by all the present judges of the Court of Appeals who have stated to this Committee that they are "absolutely and unalterably opposed to an increase in the number of judges of the Court". Of the seven other judges who have served on the Court of Appeals since the Bond Amendment became effective one, former Chief Judge Markell, publicly stated his opposition to the proposal in a lengthy letter to the Miles Committee,[24] but four, Chief Judge Marbury and Judges Grason, Delaplaine and Collins, have stated that they favored the proposal. We do not know the views of former Chief Judge Sobeloff and Judge Melvin on this question. The result is that of the ten remaining judges who have served on the Court of Appeals since the Bond Amendment became effective four have favored the proposal and six have been opposed. It should also be observed that three of

[24] Transactions of the Maryland State Bar Association, Vol. 56, pp. 172-177.

the judges who favored the proposal had served successively on a Court of eight, seven, six and five members and the other on a Court of eight, seven and six members and that one of those opposed had served successively on a Court of eight, seven, six and five, one had served on a Court of seven, six and five, and the other four have served only on a five man Court. Three of the five judges who have served on both a seven and a five man Court favor a seven man Court, and the other two favor a five man Court.

Those favoring the proposal argue that the addition of two judges reduces by approximately one-third the number of opinions each judge is required to write and thereby very substantially lessens the work load of the judges. Those opposed to the proposal contend that the writing of opinions is only a part of the work of the appellate judge, that the number of cases to be heard and briefs and records to be read and considered would still be the same and that the time consumed in conferences and consideration of opinions with a seven judge court would be greater than with a five judge court, so that in the end there would be no reduction of the work load of the judges. In addition, if the work load in the Court continues to increase at the rate experienced since 1955, in a few years the number of opinions filed will reach or exceed 280, in which event the average number of opinions per judge would be 40 or more (approximately the current average), even with a seven judge Court.

On the other hand, your Committee desires to call attention to the fact that no state, other than Maryland, in which the highest Court delivers 200 or more opinions a year, has so few judges on that Court as five. Three smaller states have three, fifteen have five and three have six. Twenty-one have seven, one has eight and five have nine. Of the twenty-one states having seven judges are such strong appellate Courts as those of Illinois, Massachusetts, New York, Pennsylvania, Ohio and Wisconsin. These examples, show, at least, that these twenty-one states conduct their appellate work with seven judges.

Your Committee has concluded not to recommend this proposal at the present time but because the Committee is not unanimous on this point, we have decided to present the matter to the Association for further discussion in conjunction with the other proposals of the Committee at the mid-winter meeting.

4. *An increase in the number of judges from five to seven but with provision that the Court sit in panels or divisions of three.*

This proposal would undoubtedly very appreciably lessen the work load of the judges, and it would not have the disadvantages cited by those who are opposed to a seven judge court. However, in the opinion of your Committee, the proposal has many more serious disadvantages, the primary one being that there would be no finality to the decisions of the Court of Appeals even if the practice of some states were fol-

lowed of having the Chief Judge sit with each panel or division. Your Committee is unanimously of the opinion that this proposal should be disapproved.

5. *Increase the number of judges of the Court of Appeals from five to seven but with the requirement that only five judges sit at a time.*

This proposal would reduce by nearly one-third the number of opinions per judge without increasing the time expended in conference and in circulating opinions. It would leave two judges free to work on opinions while the other five judges were hearing arguments, thus giving each judge two to three days per month additional time for opinions and yet continuity in the personnel of the Court would still be maintained. Undoubtedly there would be some administrative problems in the assignment of judges but the Committee does not believe that they would be insuperable. The proposal is thus quite different from the proposal to increase the number of judges from five to seven with all seven sitting in each case and is also quite different from the proposal for a larger Court to sit in panels or divisions. The advantage of having one Court sitting in one division instead of having separate Courts or divisions is retained. Nor is it likely that one group of five out of seven judges would reach a different conclusion on the same point of law than another group of five out of the same seven judges. If in any one case there were a 3 to 2 division, it is true that the two dissenting judges with the two judges not sitting would then form a majority of the Court and might in another case involving the same point reach a different conclusion on either a 4 to 1 or 3 to 2 division. However, there have been only a few 3 to 2 decisions by the Court of Appeals in the past five years and the problem does not, therefore, seem to be a large one.

The Committee had tentatively reached the conclusion that it would recommend this proposal to the Association but a discussion with the Court demonstrated that all five judges are just as much opposed to this proposal as to the proposal merely to add two additional judges to the Court. They point out that while it may be true that there have been only a few published opinions in which there were 3 to 2 divisions of the Court, nevertheless, the Court has frequently had 3 to 2 divisions in the initial conference following the argument of a case and that in practically all instances the 3 to 2 division has been avoided by further discussion among the judges. They fear that this would not be the result if the 7-5 proposal were adopted.

We would like to point out, however, just how this might save the judges, not only the writing of opinions, but also a great deal of preparation work. Thus, if the Chief Judge would say to Judges A and B — "We will consider 25 cases in September. You stay home and work on the briefs and appendices in the 25 October cases and forget about the September cases, because you will have no part in them."

The same thing would happen to these two Judges A and B in December and in March. They would, therefore, be relieved of work on 75 cases, and the same would be true of the other four associate judges. The saving of work on 75 out of 250 cases would clearly help to relieve the present burden on the judges.

The Committee is not now recommending this proposal but is presenting the matter to the Association for discussion in conjunction with the other proposals of the Committee at the mid-winter meeting.

6. *Establishment of an intermediate appellate court or courts.*

The Committee has considered the establishment of (1) one new intermediate court of appeals, (2) four new intermediate courts of appeal, one for each appellate judicial circuit, and (3) four new intermediate courts of appeal, one for each appellate judicial circuit, manned by existing *nisi prius* judges on a rotating basis. The Committee feels that the second and third proposals are unworkable and that while the first proposal is feasible, there are serious doubts as to whether an intermediate court of appeals should be established in Maryland at this time.

It is clear that if the number of appeals continues to increase then the establishment of an intermediate court or courts of appeals is the only way in which the work load of the Court of Appeals can be kept within reasonable limits. Thirteen states today have intermediate courts of appeal but most of these states are much larger and have a heavier volume of litigation than does Maryland. Obviously an intermediate court of appeals would have to sit in divisions because otherwise one would be creating a new Court of Appeals with exactly the same problems as confront the present Court. This would mean a Court of at least six and possibly seven judges sitting in divisions of three each. There would necessarily have to be review of the decisions of this court by the Court of Appeals, but this could be by certiorari rather than by appeal. Considerable expense would also be involved not only for the salary of the additional judges but also for their law clerks and clerical assistants and possibly also for a separate Clerk of the Court, although the Committee has been considering whether one Clerk could serve both the intermediate court of appeals and the present Court of Appeals. In any event, any proposal for an intermediate court of appeals is one which requires much more careful study and consideration than we have thus far been able to give. But because the proposal is the only permanent solution to the problem (if we assume that the volume of appellate business will continue to increase) the Committee would like to continue its study of this matter and report further at the June meeting of the Association. We desire, however, at this time to bring the matter to the attention of the Association so that it can be considered and discussed in conjunction with the other proposals at the mid-winter meeting.

7. *Establish a separate but coordinate court of appeals to hear certain types of cases.*

One of the disadvantages of an intermediate court of appeals is that there are two appeals in many cases and therefore an increase in the overall appellate burden. This result could be avoided if a separate but coordinate court of appeals were established with jurisdiction in certain types of cases as, for instance, criminal cases, domestic relations cases and possibly probate cases. The existing Court of Appeals would then have no jurisdiction to hear appeals in such cases. This would reduce the number of appeals to the present Court of Appeals by perhaps 25% to 35% which would probably be a sufficient reduction to solve the problem. On the other hand, the volume of business for the new court would perhaps not be sufficient to justify its existence just at present, although if such a court consisted of three judges only, they might be kept reasonably busy; or, if not, the jurisdiction could be broadened.

We have not completed our study of this proposal and report it to the Association at this time so that it can be discussed and considered in conjunction with the other proposals at the mid-winter meeting.

RECOMMENDATIONS FOR ACTION AT MID-WINTER MEETING

We make the following recommendations for action by the Association at the mid-winter meeting.

1. We recommend that Section 15 of Article 4 of the Constitution of Maryland be amended by adding the following proviso after the provision that "in every case an opinion, in writing, shall be filed within three months after the argument or submission of the cause":

> "provided, however, that in any case in which the Court deems a full opinion unnecessary, an opinion merely stating the conclusion of the Court shall suffice."

A draft of Section 15 as thus amended is appended hereto as Annex D.

2. We recommend that the law be amended so as to provide for review by the Court of Appeals on certiorari only, and not by appeal, of judgments of *nisi prius* courts when *nisi prius* courts are acting on appeal from administrative agencies such as Zoning Boards, the State Industrial Accident Commission, the Public Service Commission, the State Tax Commission, and the Comptroller's Office. A draft of a new section to be added to Article 5 of the Code to accomplish this purpose is appended hereto as Annex E.

3. We recommend that the Association adopt the report of the Committee on Laws approving the enactment by the Legislature of the Post-Conviction Procedure Act.

MATTERS FOR DISCUSSION, FURTHER CONSIDERATION AND FURTHER REPORT

As indicated in the foregoing report there are certain proposals to which we desire to give further consideration and study, and report finally thereon at the June, 1958 meeting. We suggest, however, that there be a full discussion of these and certain related proposals as follows:

1. Whether the size of the Court should be increased from five to seven.
2. Whether the size of the Court should be increased from five to seven but with the provision that not more than five judges should sit in any case.
3. Whether an intermediate court or courts of appeals should be established.
4. Whether a coordinate court of appeals having jurisdiction in certain types of cases such as domestic relations, criminal and probate cases should be established.

It is our present intention, unless otherwise directed by the Association, to give further consideration and study only to the last two of the above proposals. We think, however, that it would be desirable, if time permits, for the Association to discuss each of the four proposals at the mid-winter meeting and that the sense of the Association as to each proposal separately be taken by vote.

CONCLUSION

We express our great appreciation to the judges of the Court of Appeals for their advice and assistance, their willingness to discuss these problems with us frankly and freely, and for giving unstintingly of their time to the matter. We also wish to express our appreciation to Frederick W. Invernizzi, Esq., Director of the Administrative Office of the Courts, who has very kindly acted as Secretary of the Committee and has assembled for us the published material and the statistical information which were so necessary for our consideration of the matter assigned to us for study. His assistance to this Committee has been invaluable and we are deeply indebted to him.

Respectfully submitted,

COMMITTEE TO STUDY CASE LOAD
OF COURT OF APPEALS

E. DALE ADKINS, JR.,
First Circuit

WILLIAM H. ADKINS, II,
Second Circuit

JOHN GRASON TURNBULL,
Third Circuit

DAVID W. BYRON,
Fourth Circuit

C. FERDINAND SYBERT,
Fifth Circuit

RALPH G. SHURE,
Sixth Circuit

OGLE MARBURY,
Seventh Circuit

H. VERNON ENEY,
Eighth Circuit,
Chairman

ANNEX A

Copies of Letters from Judges of the Court of Appeals

November 25, 1957

H. Vernon Eney, Esq., Chairman,
Committee on Work Load of the
Court of Appeals,
1409 Mercantile Trust Building,
Baltimore 2, Maryland.

Dear Mr. Chairman:

The members of the Court of Appeals are very appreciative of the time, thought and effort which the members of the State Bar Association Committee on the Work Load of the Court of Appeals have devoted to this problem, and we were also very glad to have the opportunity to discuss the whole matter with the Committee. This is the first opportunity that I have had since that conference to put down on paper my understanding of the present situation and such suggestions as I can offer which would not seem inconsistent with the conclusions of the Committee thus far reached. I understand that some, if not all, of the views of the Committee are tentative, but that some, at least, are fairly definite. I regret that I have not had time to submit this statement to my colleagues. I am sending each of them a copy, with the request that they advise you and me as promptly as possible of any different views which they may hold.

I take it that both the Committee and the Court are agreed that some step or steps should be taken to lessen the present work load of the Court of Appeals and to prevent its increase. The rub comes in finding a satisfactory means of accomplishing these results. I also take it that the Committee is rather firmly of the opinion that every litigant should be entitled *as of right* to at least one appeal.

That conclusion rules out any present, general plan by which all review by the Court of Appeals would be on a certiorari basis. It also seems an inescapable corollary of this conclusion that the necessary judicial manpower must be provided to handle appeals adequately.

It appears probable at this time that the Court of Appeals will be required to hear and to render opinions in approximately 250 cases on its regular docket for the September Term, 1957. In addition, the Court will also have to act upon probably 110 to 125 applications for leave to appeal in habeas corpus cases. It is my belief that if the General Assembly approves the Post Conviction Procedure Act, the burden of habeas corpus and similar work will be reduced for both the Trial Judges and the Court of Appeals and that these cases can be better handled than under existing law.

For reasons with which I think the Committee is thoroughly familiar, the present Court of Appeals does not consider an increase in the number of judges from five to seven as anything more than a temporary palliative, and certainly not as a cure, for the situation created by the great present and prospective increase in the number of appeals on the regular docket. I shall not amplify these reasons, but I shall try to restate them briefly. First, there is a limit to the number of cases which can be heard and to the solution of which each judge can give his best efforts during the course of a year. Second, cases involving no novel or difficult questions of law and of relatively little importance to anyone but the litigants directly concerned, unavoidably consume a great deal of time which could better be devoted to the determination of novel or difficult questions, by using the time for research, for reflection and for conference; and a vast number of cases tends to foster one-man opinions. This tendency would be somewhat reduced, but would not be eliminated, by the reduction in the number of opinions per judge. Even this temporary relief would be washed away as the number of appeals increased; and on the basis of recent experience, a further substantial increase seems probable in the next few years. See "Minimum Standards of Judicial Administration" (1949), edited by Arthur T. Vanderbilt, pp. 438-443, especially at p. 439.

The suggestion which the Committee has considered of increasing the number of judges from five to seven, with a provision for each case being heard by only five of the seven, seems to offer little more hope of a permanent solution than would the simple increase in the number of judges from five to seven, with all sitting in each case. The administrative difficulties would, I think, be serious. Among them would be the problem of fitting together times for conferences on opinions in cases in which different groups of judges had participated. The actual saving of time would seem to me problematical, and the difficulties inherent in the panel system would also seem to be almost as great in a five-out-of-seven rotating system as in a more conventional panel system in which less than a majority of the Court would normally hear each case. A panel system, I think, materially enhances the prospect of divergences of opinion and of conflicting, or at least inconsistent, opinions within the same court. Since there are still more matters in which the decision of the court of last resort of a State may be final, a panel system for such a court seems to me, and, I believe, to my colleagues, to be undesirable.

It is my own belief that the problem which we now face, and which I believe to be acute, can be solved satisfactorily and effectively for any substantial number of years only by one of two methods: first, limit appellate review in all (except capital) cases to a certiorari form of review; or, second, provide an appellate court or courts intermediate between the present trial courts and the Court of Appeals,

whose judgments would be final, except that an appeal to the Court of Appeals should be allowed as a matter of right if there were a dissent in the intermediate appellate court, and that a judgment should also be reviewable on a certificate (in the nature of a certificate of probable cause) of the intermediate appellate court or on certiorari granted by the Court of Appeals. I do not favor a monetary limit, although there are a few cases per year in which such a limit might prove desirable.

I realize the improbability of the early adoption of the full certiorari alternative, and I am also aware that Maryland is somewhat small in population for an intermediate appellate court. I believe that if, in accordance with one of the proposals now before your Committee, review by the Court of Appeals of cases originating before administrative bodies were to be permitted only on certiorari, and if, further, the Post Conviction Procedure Act were to be adopted, some temporary relief could be obtained. I also believe that further and full consideration should be given to a long-range solution.

As a result of a good deal of thought about the matter, and after considering both the existence of a good deal of sentiment in favor of one appeal as of right and of the time required to study adequately requests for review on certiorari, I am coming more and more to the belief that an intermediate appellate court, with further appellate review limited as suggested in this letter, is the preferable long-range solution of the problem. Such a court must, of course, have enough judges to handle the work; and it should, I think, be authorized to sit in panels and to sit at different points throughout the State. The number of judges, the places of their sittings and the geographical bases for their selection should, I think, be determined from time to time by the General Assembly, perhaps with some constitutional provision that not less than some specified number should come from each of the appellate judicial circuits. Because of the wide variations in the volume of business as well as of population in the various appellate circuits, and for reasons of economy, I think that a single, statewide court, sitting in panels, would be preferable to several separate courts.

I am fully in agreement, and I am sure that every member of the Court is fully in agreement, with the Committee as to the desirability of short opinions and of the undesirability of long and detailed recitals of fact or testimony. Such recitals are, however, often hard to avoid when one is pressed for time and when the case turns upon the sufficiency of evidence to sustain the judgment or decree appealed from. Also, from a practical point of view, a short opinion may well require more time to write than a long one.

Unless the Committee should wish me to do so, I shall not, at this time, discuss the merits of the constitutional provision requiring that an opinion be filed in each case argued or submitted. In connection

with that requirement, it may not be amiss, however, to observe that the Court has at times sought to relieve the problems resulting from the sheer number and length of opinions by designating certain opinions as "Not to be Officially Reported." Sometimes the selection of cases for this distinction of obscurity has not proved altogether happy, and the difficulties in connection with such efforts are not lessened by the practice of the publishers of the Atlantic Reporter of including in that publication cases designated as not to be officially reported. The practice of so designating opinions has, largely for these reasons, I think, fallen into disuse.

Provisions for the review by the Court of Appeals, on certiorari only, of cases originating before administrative bodies and later heard by a Trial court and the Post Conviction Procedure Act are, of course, matters which could be covered by statute, and so could limitation of appellate review generally to certiorari proceedings. On the other hand, the establishment of an intermediate appellate court would require a constitutional amendment. I would suggest for the consideration of your Committee an amendment authorizing the General Assembly to establish such a court. Such a power could be exercised as and when the General Assembly thought it advisable to do so.

I hope that these views, despite their length, may be of some assistance to your Committee. I wish to express again my appreciation of the Committee's undertaking the work which it has in hand and to express my earnest personal hope that its efforts will accomplish results for both the immediate and the long range future which, I believe, are essential to the Court's doing and continuing to do the best work of which it is capable.

Yours very sincerely,

/s/ FREDERICK W. BRUNE,
Frederick W. Brune,
Chief Judge

December 5, 1957

Honorable Frederick W. Brune
620 Court House
Baltimore 2, Maryland

Dear Judge Brune:

The snow storm has disrupted my working schedule to such a point that I am not sure I can be at the meeting with the sub-committee of the State Bar Committee tomorrow afternoon or that I will not be late. For these reasons I am writing my views so that if I cannot get to the meeting they can be presented.

Personally, I am absolutely and unalterably opposed to an increase in the number of Judges of the Court. An increase might afford a partial relief in the work load for a short time by cutting down the number of opinions each Judge would have to write; however, even for this short time and always thereafter, the number of cases that would have to be heard would be the same with a five man or seven man Court and so would the number of briefs and records that would have to be read and the number of conferences that would have to be participated in, as well as the number of opinions that would have to be checked and either concurred in or dissented from. Therefore, the work load would not, if it is done properly, be substantially lessened. Over and above this, it seems to me that a Court of five Judges is almost exactly the right size. There is sufficient variety of past experience, views, specialties, etc. to afford a proper review to litigants and the number of Judges is not so unwieldy as to interfere with the truly composite judicial effort. I think this would not be true of a larger court or, at least, not to as great and as efficient an extent.

I very much hope that the Committee will not recommend an increase in the size of the Court. My first hope is that the number of cases will be limited. If necessary, this could be done by selling the Legislature first on the idea of using certiorari for specialized classes of cases and, if the system worked well, it could later on be extended. If that suggestion proves impossible of achievement, the next that I would hope for is Judge Brune's suggestion for a constitutional amendment to permit intermediate courts to be adopted.

As I am sure all of the other Judges of the Court are, I am very appreciative of the work of the Committee and I know that they understand that I offer my views as candidly as I do in an effort to achieve what all of us are seeking — the best solution to the problem.

Sincerely yours,

/s/ HALL HAMMOND
Hall Hammond

November 27, 1957

H. Vernon Eney, Esq., Chairman,
Committee on Work Load of the Court of Appeals,
1409 Mercantile Trust Building,
Baltimore 2, Maryland.

Dear Mr. Eney:

Judge Brune has sent me a copy of his letter of November 25, last, to you, with the request that I inform you of my views concerning the same. After reading over his letter carefully, I am of the opinion that he has fully and capably analyzed the situation relating to the case load in the Court of Appeals and possible solutions that might alleviate, to some

extent, the case load; therefore I would like to say I am in full accord with his letter.

Kindly permit me, also, to express my personal appreciation for the time and efforts spent, and being spent, by the members of your Committee in attempting to solve what is apparent to all, a very pressing and complex problem.

With kindest personal regards to you and the members of the Committee, I am

Sincerely,

/s/ STEDMAN PRESCOTT

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29 November, 1957

H. Vernon Eney, Esq., Chairman
Committee on Work Load of the
Court of Appeals
1409 Mercantile Trust Building
Baltimore 2, Maryland

Dear Mr. Eney:

Reference is made to the letter of Chief Judge Brune to you as Chairman of the Committee on Work Load of Court of Appeals under date of November 25, 1957. I concur with all that Judge Brune says with one or two minor exceptions which are barely worth mentioning here.

I heartily concur that the desirable steps to be taken are (i) gradually limit appellate review, except capital cases and cases in which a constitutional question or statutory construction affecting the whole State is involved, to applications for certiorari, and (ii) a constitutional amendment authorizing the legislature to provide intermediate appellate court or courts, whenever the legislature may deem it advisable, with a right to a further appeal to the Court of Appeals in some instances.

This excludes, so far as I am concerned, a seven man court with only five judges sitting at any one time.

Sincerely,

/s/ WILLIAM R. HORNEY

June 10, 1958.

HON. G. C. A. ANDERSON, *President,*
Maryland State Bar Association,
Baltimore, Maryland.

DEAR MR. ANDERSON:

The Committee to Study the Case Load of the Court of Appeals presents herewith its second interim report to the State Bar Association, its first interim report dated January 15, 1958, having been presented to and considered by the Association at its mid-winter meeting in Baltimore on January 25, 1958. We indicated in that report that we hoped to present a final report with our recommendations to the June 1958, meeting of the Association; however, for the reasons hereinafter stated we would like to continue our study of the matter and present our final report with recommendations to the Association at a later date.

We appended to our first report as Annex B certain statistics as to the number of opinions and the number of appeals in the Court of Appeals of Maryland each year from 1940 through the court year 1956-57, and as Annex C appended to that report we showed the subject matter classification of opinions of the Court of Appeals during the same period. There was also appended a table showing for each court year from 1947-48 through 1956-57 the number of applications for leave to appeal in habeas corpus cases and the number of opinions filed on denial of such applications. We append hereto as Annexes A and B to this report tables showing for the court year 1957-58 statistics similar to those shown for the earlier years in Annexes B and C to our first report. Since the term has not yet ended, these figures are not complete but have been compiled as of May 31, 1958. As anticipated in our first report the case load in the Court of Appeals during the current term has substantially increased.

The number of appeals docketed increased about 20% over the 1956-57 term. The average number of opinions per judge *thus far filed* is nearly equal to the average for the entire 1956-57 term and is in excess of the average for the entire term in each of the preceding four years. The court expects to conclude arguments in all cases docketed to the present term by June 11th and will probably have all opinions filed before the end of July. The present indications are that the total number of opinions filed by the regular members of the court for the present term will be 225 or an average of 45 per judge, not counting the *per curiam* opinions (7) or the opinions by specially assigned judges (6).

The problem will apparently be even more acute in the 1958-59 term. The total number of cases docketed to the 1957-58 term from

March 1 to May 31, 1957, (not including applications for leave to appeal in habeas corpus cases) was 65. The total number of cases docketed to the 1958-59 term during the same period of 1958 (not including applications for leave to appeal in habeas corpus cases) was 79 or an increase of approximately 21.5%. If this rate of increase persists, the total number of appeals docketed to the 1958-59 term will probably exceed 360 and on the assumption that the same proportion of appeals will be dismissed, the total number of opinions to be filed will probably be close to 300.

These figures indicate that the case load in the past few years has been increasing at the rate of more than 20% per year and the indicated case load for the 1958-59 term will, therefore, be between 40% and 50% more than during the 1955-56 and 1956-57 terms. This also means an increase of about 50% in the number of opinions to be filed in the 1958-59 term as compared with the 1955-56 and 1956-57 terms. The figures are even more startling when contrasted with those for each year from 1945, when the Bond Amendment became effective, to date. We append hereto as Annex C a tabulation showing the number of appeals docketed, the total number of opinions filed and the average number of opinions per judge in each of these years.

In our first report we submitted three recommendations for action by the Association at the mid-winter meeting in January, 1958. Briefly stated these recommendations were:

1. That the Constitution be amended to provide that in any case in which the Court of Appeals deemed a full opinion unnecessary, an opinion merely stating the conclusion of the court should suffice.

2. That the law be amended so as to provide for review by the Court of Appeals on certiorari only, and not by appeal, of judgments of *nisi prius* courts acting on appeal from administrative agencies such as Zoning Boards, the State Industrial Accident Commission, the Public Service Commission, the State Tax Commission and the Comptroller's Office.

3. That the Association approve the enactment by the Legislature of the Post-Conviction Procedure Act.

The Association approved the first and third recommendations but referred the second recommendation back to this Committee for further study and report.

Pursuant to the action of the Association your Committee had introduced in the Legislature a bill to amend the Constitution in accordance with the first recommendation, the form of the amendment being set forth as Annex D to our first report. The bill was referred to the Senate Committee on Judicial Proceedings which conducted a full

hearing thereon. From the discussion at the hearing it was apparent that most of the members of the Senate Committee thought that the proposed constitutional amendment was unnecessary and the bill was never reported out. Since that time the Court of Appeals has adopted the practice of filing a brief *per curiam* opinion in appropriate cases, seven such *per curiam* opinions having been filed up to May 31, 1958. This largely accomplishes the purpose of the proposed constitutional amendment, and your Committee therefore is of the opinion that further action on this recommendation is unnecessary.

The Legislature, on the recommendation of this Association and other Bar Associations in the State, enacted the Post-Conviction Procedure Act (Laws 1958, Ch. 44) which became effective June 1, 1958. A companion Act (Laws 1958, Ch. 45) repealed the statutory provisions for applications for leave to appeal in habeas corpus cases. This will, of course, eliminate such applications and appeals resulting therefrom. It is too early, however, to predict how much of this saving will be offset by additional appeals under the Post-Conviction Procedure Act. Your Committee does not believe that the net reduction in the case load will be sufficiently great to affect appreciably the problem presented to the Committee for study.

In addition to the above mentioned three specific recommendations, we also presented in our first report four proposals which at that time were still under consideration by this Committee, although we stated that unless otherwise directed by the Association we would give further consideration and study only to the last two of the four proposals. These last two proposals were as follows:

1. Whether an intermediate court or courts of appeals should be established.

2. Whether a coordinate court of appeals having jurisdiction in certain types of cases such as domestic relations, criminal and probate cases should be established.

We have given further consideration and study to these proposals and also to the other proposals mentioned in our first report, including our previous recommendation that the law be amended so as to provide for review by the Court of Appeals on certiorari only, and not by appeal, of judgments of *nisi prius* courts acting on appeal from administrative agencies. In addition, we have considered and discussed a number of other suggestions submitted to us by various members of the Bar. We have tentatively decided to withdraw our previous recommendation as to the review on certiorari only in appeals from administrative agencies, and we have also tentatively decided that the proposal for a coordinate court of appeals having jurisdiction in certain types of cases is not feasible.

The Committee is unanimous in approving the following basic principles to be kept in mind in searching for a solution to the problem. Some of these were stated in our first report, others were not.

1. There are two aspects to the function of the Court of Appeals as a court of last resort: (a) What may be called the private function; that is, to see that justice is done to the litigants in each individual case; and (b) what may be called the public function; that is, to settle and give authoritative expression to the developing body of the law. The two functions are of equal importance in the judicial system of Maryland.

2. 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". The case load ought not to be so great as to prevent this.

3. There ought to be at least one appeal as a matter of right in every case except possibly in cases where the amount or the issues involved are too trivial to justify such an appeal.

4. The Court of Appeals should sit as one court and not in panels or divisions as otherwise there would be no finality to its decisions.

5. In considering the various solutions to the problem, the cost to the people of the State is important and should not be overlooked, but it should not be controlling because it is the duty of the State to provide an adequate judicial system.

Although agreed that these basic principles should be followed, your Committee has as yet been unable to agree upon specific recommendations to present to this Association as its solution of the problem. We believe that the matter is of great importance to the Association and one which should be considered by the members of the Association only after they have had ample opportunity to study and consider a final report of this Committee with specific recommendations including in detail any proposed constitutional amendments or legislation. We, therefore, recommend:

1. That this Committee be directed to continue its study of the matter and present its final report as soon as practicable.

2. That the final report of this Committee with its specific recommendations, including detailed drafts of any proposed constitutional amendments or legislation be printed and sent to each member of this Association at least 30 days before the 1959 mid-winter meeting.

3. That such report be made the special order of business at the afternoon session of the 1959 mid-winter meeting.

Respectfully submitted,

COMMITTEE TO STUDY CASE LOAD OF COURT OF APPEALS.

E. DALE ADKINS, JR.,
First Circuit.

WILLIAM H. ADKINS, II,
Second Circuit.

JOHN GRASON TURNBULL,
Third Circuit.

DAVID W. BYRON,
Fourth Circuit.

C. FERDINAND SYBERT,
Fifth Circuit.

RALPH G. SHURE,
Sixth Circuit.

OGLE MARBURY,
Seventh Circuit.

H. VERNON ENEY,
Eighth Circuit,
Chairman.