MARYLAND

COURT OF APPEALS

Bond Commission and Other Miscellaneous Reports, Documents, Etc.

1942-1959

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#2

PROPOSALS TO CHANGE THE MARYLAND APPELLATE COURT SYSTEM

BY

WALTER H. BUCK

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PROPOSALS TO CHANGE THE MARYLAND APPELLATE COURT SYSTEM

By WALTER H. BUCK*

The legal profession in Maryland is greatly indebted to Herbert M. Brune, Jr., and to John S. Strahorn, Jr., for their exhaustive article, *The Court of Appeals of Maryland, A Five-Year Case Study* in the MARYLAND LAW REVIEW for June, 1940.[1]

In the same number of the REVIEW the Hon. Carroll T. Bond, the historian[2] of the Court of Appeals and its able Chief Judge, contributes a valuable paper out of his abundant experience, entitled *An Introductory Description of the Court of Appeals of Maryland.*[3]

Later, in the February, 1941, issue of the REVIEW, appears still another article, an unsigned editorial, entitled *The Pending Proposal to Reorganize the Court of Appeals of Maryland.*[4]

It is fortunate that we now have in the MARYLAND LAW REVIEW a forum in this State where legal subjects can be discussed by those who presumably know the most about them; namely, the members of the legal profession.

A question so important as ". . . an amendment to the State Constitution to re-constitute the Court of Appeals of Maryland in a fashion entirely different from that by which its members are now chosen and to have it function in a somewhat different manner from the present one . . ."[5] is not one to be considered hastily. Nor should such a proposal be submitted for approval at a meeting of the State Bar Association without full discussion and adequate notice

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[1] Brune and Strahorn, *The Court of Appeals of Maryland, A Five Year Case Study* (1940) 4 Md. L. Rev. 343.

[2] Judge Bond is the author of THE COURT OF APPEALS OF MARYLAND, A HISTORY (1928).

[3] Bond, *An Introductory Description of the Court of Appeals of Maryland* (1940) 4 Md. L. Rev. 333.

[4] Editorial, *The Pending Proposal to Reorganize the Court of Appeals of Maryland* (1941) 5 Md. L. Rev. 203.

[5] *Ibid.*, 203-204.

in advance.[6] It is plain, too, that such a question is ill-adapted to the "hurly-burly" and partisanship of a press campaign.

Now, that the proposed amendment has been defeated and an interval occurs when the legal profession has an opportunity to consider this important question more calmly, it may be well to take up the points urged in behalf of this proposal.

That, from time to time, the Court of Appeals of Maryland has been criticized for its decisions is nothing remarkable. All courts have been. To the extent that the criticism of the Court is honest and constructive, no one should object to it. Thoughtful men must believe in the theory of progress despite its halting ways. In an address on this subject before the American Law Institute in 1936,

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[6] A "special" meeting of the Maryland State Bar Association was held in Baltimore on January 11, 1941. No advance notice was given to the members of the Association that any proposal for changes in the Court of Appeals would be considered at the meeting. Nor did the Association have a Committee charged with the duty of reporting on that subject. However, when "new business" was reached in the order of the Association's proceedings, an elaborate written report was read to the members entitled: *Report on the Re-organization of the Maryland Court of Appeals.* Article XVIII of the Association's Constitution provides that no action on any such proposal shall be had by the Association until the subject matter thereof shall have been reported upon by the appropriate committee to which the same shall have been referred. However, though, as stated, there was no such committee, this Article was suspended, a formal resolution was thereupon offered which, in effect, approved the report, and the resolution was declared adopted. The report contained the following:

(1) That the Court of Appeals consist of five Judges elected by the entire State.

(2) That two of these Judges come from Baltimore City.

(3) That the Counties be divided into three designated districts, with one Judge coming from each district.

(4) That the jurisdiction of the Judges of the Court of Appeals be limited to appellate work, and that they be given specific power to make rules to govern the taking of appeals and the practice and procedure in the Court of Appeals, including the fixing of the number, time of beginning, and length of the terms of that Court.

(5) That the office of Chief Judge in each of the Circuits in the Counties be continued, but without such Chief Judges being members of the Court of Appeals, and that the present provision for the election by Baltimore City of one member of the Court of Appeals be repealed.

In creating the three new districts outside of Baltimore City, the report proposed that these districts be formed "by combining the present circuits and not to break up any of the circuits." Such districts were as follows:

The First District to be composed of the First, Second and Seventh Circuits, which Circuits comprise Worcester, Somerset, Dorchester,

the great Chief Justice of the United States, Charles Evans Hughes, said:

> "How amazing it is that, in the midst of controversies on every conceivable subject, one should expect unanimity of opinion upon difficult legal questions! In the highest ranges of thought—in Theology, Philosophy and Science—we find differences of view on the part of the most distinguished experts, theologians, philosophers and scientists. The history of scholarship is a record of disagreements. And when we deal with questions relating to principles of law and their application, we do not suddenly rise into a stratosphere of icy certainty."

Wicomico, Caroline, Talbot, Queen Anne's, Kent, Cecil, Prince George's, Charles, Calvert and St. Mary's Counties.

The Second District to be composed of the Third and Fifth Circuits, which Circuits comprise Baltimore, Harford, Carroll, Howard and Anne Arundel Counties.

The Third District to be composed of the Fourth and Sixth Circuits, which Circuits comprise Garrett, Allegany, Washington, Frederick and Montgomery Counties.

The resolution which was adopted, as aforesaid, proposed that the Court of Appeals of Maryland be re-constituted to consist of five judges, exercising appellate functions only, and that two of such judges should come from Baltimore City. The President of the Association was also authorized to appoint a committee of five of its members to draft a bill proposing a constitutional amendment to effect the changes, and such committee was to submit the bill to the Legislature and to endeavor to secure its approval "without further action by this Association."

For the above, see Transactions, Maryland State Bar Association, Vol. 46, pp. 17-30, 81-87.

On February 14, 1941, House Bill 347 was introduced and referred to the Committee on Judiciary. Instead of providing for five judges for the Circuits formed by combining the present circuits, and electing said judges by a State-wide vote, six judges were provided for to be elected by the respective voters of certain new so-called "Appellate" Judicial Circuits, which were to be established. The first four of these circuits were to comprise the following counties:

First Circuit: Cecil, Kent, Queen Anne's, Caroline, Talbot, Dorchester, Wicomico, Worcester and Somerset—One Judge.

Second Circuit: Harford, Baltimore, Howard and Carroll—One Judge.

Third Circuit: Prince George's, Charles, St. Mary's, Calvert and Anne Arundel—One Judge.

Fourth Circuit: Garrett, Allegany, Washington, Frederick and Montgomery—One Judge.

Fifth Circuit: Baltimore City—Two Judges.

This bill was amended in the House of Delegates by eliminating Howard County from the Second Appellate Judicial Circuit and adding said County to those comprising the Third Appellate Judicial Circuit.

After passing the House of Delegates as so amended, House Bill 347 went to the Senate, where amendments to it were made on March 28, 29, and 31, 1941; the bill, however, never came to a final vote in the Senate.

May the writer be permitted to say that after some years of practice in the Courts of Maryland, and in those of several other States, it is his deliberate judgment that the system of law as it is administered in Maryland is, on the whole, the least expensive to litigants, the most common-sense in its results and the promptest in the disposition of the business which comes before its courts. For this result, the Court of Appeals is entitled to the credit, for the Court gives direction to and pronounces finally on the law of Maryland.

Advocates of the proposed amendment, illogically enough, take pride in the present standing of the Court of Appeals. They say:

> "The proposal represents a much-needed reform and is one which most certainly ought to be passed by the General Assembly and approved by the voters of the State if the Court of Appeals of Maryland is to maintain its high position among the Country's appellate courts."[7]

The most desirable feature of the proposed change is said to be:

> ". . . that the Court of Appeals Judges shall exercise appellate functions only. In this aspect of the proposal lies most of the hope for the Court's continuance to maintain its traditional prestige."[8]

Here, it is suggested that not only does assertion take the place of argument, but, as will be shown later herein, the history of the appellate court in Maryland is directly to the contrary.

Reference is made in the same article to the fact that the Judges of the Court of Appeals write their opinions in their respective Circuits without adequate law libraries, without law clerks and stenographic assistance, and without the circulation of copies of their provisional opinions among their fellow-members of the Court prior to the consultations which are to follow. But, certainly, such facts would not justify the proposed constitutional amendment.

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[7] Editorial, *supra*, n. 4, 204.
[8] *Ibid.*, 205.

That there should be adequate law libraries throughout the State, and that there should be adequate stenographic service for the Judges of the Court of Appeals, is obvious, but this could and should be done by a mere legislative act.

The writer doubts very much the wisdom of law clerk assistance. It is the writer's view that on difficult questions of law the lawyer, himself, who is preparing his case, or the judge, himself, who is preparing his opinion, is the only person who can look up the law properly. It is also a part of the mental discipline which should go with the work of Appellate Judges.

The statement is made in the same article with respect to the Judges of the Court of Appeals that ". . . they are primarily trial judges and only secondarily, or ex-officio, appellate ones."[9]

No factual basis is given for that statement, and none, I submit, can be. It may be that in one or more of the Circuits of Maryland the Chief Judge does more trial work than should fall to his lot, but, again, that is no reason for the proposed Constitutional Amendment. The fact is well-known to be that at the present time we have more Judges in the State of Maryland than are needed for the work of our Courts. Thus, all that is needed to relieve the Appellate Judges of an undue amount of trial work would be an amendment to the Constitution whereby, under rules to be adopted by the Court of Appeals, Judges could be assigned, from time to time, to the particular Circuits where the work had accumulated.

The recent report on the cases in Baltimore City by the Clerks will show to what a great extent litigation has declined. With the right, therefore, to assign Judges as suggested, all that would be necessary to co-ordinate the appellate work would be a new practice on the part of the Judges of the Court of Appeals to meet more frequently in consultation and to distribute their proposed opinions to the various members of the Court prior to their consultations.

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[9] *Ibid.*, 204.

It has been suggested[9a] as another objection to our present system that the Judges of the Court of Appeals may be reluctant to reverse a case in which one of the members of that Court sat below. There never was any foundation for this suggestion, and it is now completely disposed of by Table VII in the Article of Messrs. Brune and Strahorn.[10]

One feature of the proposed amendment, which was slurred over in its public discussion, was obviously unsound. It has just been stated, and can easily be shown, that we have more than enough judges in Maryland for our judicial business at the present time. Yet, the proposed amendment would not only have retained the number of judges we now have, but would, in addition, have added a separate appellate court of six additional judges, together with the expenses which would go with such new court.

No matter, therefore, what opinions may be entertained of the proposed new appellate court of six judges to do appellate work only, chosen in the manner proposed, no one could justify the permanent retention of unnecessary judges as a part of the same proposal.

We come then to the argument of a "more equitable representation of Baltimore City on the Court[11] because the City contains one-half of the population of the State. What is meant by the argument that Baltimore City is entitled to a more "equitable" representation on the Court of Appeals? Has the Court of Appeals in any way dealt inequitably towards the City? If so, no illustrations have been given, nor, in the writer's judgment, could be given for such a contention, so that this is not an argument, but what appears to be a groundless assertion.

Moreover, there is nothing new in the present disproportion of population as between Baltimore City and the rest of the State. An examination of the census figures for six periods (1860-1910) shows that during such periods Baltimore City had at least one-third and sometimes one-

[9a] Elsewhere than in any of the treatments of the subject in the REVIEW.—Ed.

[10] Brune and Strahorn, *supra*, n. 1, 256.

[11] Editorial, *supra*, n. 4, 204.

half of the total population of the State. It has always, too, had a greater number of appeals than all the other Circuits combined. But it has never been suggested that representation on the Court of Appeals should be based on population or on the number of appeals. And no one would suggest, I imagine, that the size of the community in which the particular judge resides bears any relationship to that judge's understanding of the law, or to his ability to reason in a judicial manner.

The further argument is made, in favor of the proposal, that the areas of the present Circuits are in themselves too small to secure able members of the Court of Appeals from the Counties. This suggestion is, in the writer's opinion, untrue. Under our system it nearly always occurs that the Governor of the State in the first instance appoints the judges for our courts. If, therefore, the Governor is conscientious in the performance of his duty, making the inquiries which he should make, avoiding both partisan and factional politics and personal preferences, there can be no doubt that in every Circuit in this State good judges can be obtained for the Court of Appeals.

And here it should be emphasized that, whether we like it or not, law is made in the courts, and it is those lawyers who practice in the courts, and who study in the law libraries, who make good judges. Indeed, in England, only barristers, that is trial lawyers, are elevated to the Bench, and while the English system of solicitors (office lawyers) and barristers (trial lawyers) is not in effect here, the point is worth attention.

The mere tabulation of lawyers, therefore, in a large City like Baltimore is apt to lead to wrong conclusions. A great many of these lawyers are corporation employes, title examiners, real estate dealers or clerks of various kinds, whereas, in the Counties lawyers usually have had trial experience. The leading members in most of the large law firms in this City are to a great extent only business advisers, and as such advisers are important. But they do not study in the law libraries, and they seldom appear in the courts, either the trial courts or the Court

of Appeals, and this is easy to verify by examining the court records.

The history of the changes in the Court of Appeals of Maryland shows that Maryland has tried and rejected the plan of a separate Appellate Court. From 1778 to 1805 and from 1851 to 1867, the judges of the Appellate Court performed no Circuit, that is, trial court duties. By the Constitution of 1867, the original plan of 1805 was restored, save that the Appellate Judge from the City of Baltimore was given no Circuit duties to perform. We have the judgment on this point of the late Chief Judge James McSherry, who is acknowledged to be one of the greatest Chief Judges ever to sit on the Court of Appeals, and whose opinions were collected and published in 1914 by the late Judge N. Charles Burke. In an address entitled *Former Chief Justices of the Maryland Court of Appeals,* to be found in the Ninth Annual Report of the Maryland State Bar Association,[12] Judge McSherry had this to say:

> "The chief defect in an independent system lies in the fact that the Judges being wholly withdrawn from contact with the practice at *nisi prius* become more theoretical, and decisions are consequently apt to deal with abstract principles rather than with the practical application of them. The present system brings the members of the Bar and the Judges in closer touch, and that circumstance is of great advantage to both in the administration of justice. The practical side of a case is often as important to be considered as is its technical legal aspect and the Judge, who for years has been removed from the attrition of the trial Court, is liable to grow oblivious of conditions which ought to have their due weight in reaching just conclusions. I think I may safely say that the best and most satisfactory work which the Court's records disclose has been that done under the system first adopted in 1805."

It is difficult, too, in view of the successful Federal practice, where judges sit both above and below, to understand the position of those who, in terms, would prohibit

[12] Transactions, Maryland State Bar Association, Vol. 9, p. 106.

the judges of our Appellate Court from having the advantage of sitting in the trial courts at such times as can be spared from their appellate duties.

The plan of a small Appellate Court, withdrawn from the conflicts of the trial courts, pronouncing precise answers to the legal questions propounded to it, is attractive to a certain type of legal mind, which gets great pleasure from such apparent orderliness.

But, while certainty in the law is, and must remain the legal ideal, the fact is that in the complex situations so often presented to the courts, only harm can result by a failure to be acutely aware of the practical side of a case and by trying to attain certainty through forcing cases into legal Procrustean beds. Law is pragmatic, and the judges who apply it should not lose contact with reality.

In a small Appellate Court, too, there is a greater danger that one of the judges through the force of his dominant personality, or because of his legal reputation, may, in effect, control the decisions of the Court. Such a small Appellate Court with its members leading a club-like existence would be approved, no doubt, by some few Maryland lawyers who share such views, but such a court is not, in my opinion, demanded by the Bar of Maryland.

It is the writer's belief that the appellate judges should come from the different parts of the State, and should, in a sense, be localized there in order to know and understand the people and their problems in an intimate and personal way. But, whether the views expressed in this paper are sound or not, the Bar of Maryland ought to welcome a full discussion of this whole subject.

Experienced lawyers having had the benefit of practicing under a judicial system acknowledged by the advocates of the proposed change to be of established "prestige", should be slow to believe that it is necessary, in order for the court to "maintain its traditional prestige", that it should be abolished.

Those who advocate the separate Appellate Court certainly have a heavy burden in maintaining their proposal in view of the history of the Appellate Court in Maryland.

In no event, have they the right to ask those who oppose it to do so by continuing the offices of the Chief Judges in the present Circuits when we already have judges enough.

Some re-arrangement of, and reduction in the number of Circuits outside of Baltimore City may well be considered, whereby those seven Circuits will be reduced to five and an additional Appellate Judge be provided from Baltimore City. Such a change may and probably will encounter political difficulties, but if it is sound, it should be advocated by the State Bar Association because of its soundness, and not for reasons of political expediency.

It would seem that in view of the success which has attended the Maryland system, the system itself should be retained, and that the industry and learning of the Bar of Maryland should be employed in an endeavor to make it still more successful. Suggestions have been made in this paper for such improvement. The Court of Appeals, too, should have but one term like the Supreme Court of the United States, so that its judicial business can be transacted to the best advantage and the costs of taking appeals should be reduced.

Our Court of Appeals has recently lost some of its ablest and sturdiest members; men who came up along the hard road of trial practice and the close application required in the study of the law. But, in the writer's judgment, the Court as now constituted, and as it can be constituted with proper selections in the next few years, will compare favorably with the Court at any time since the writer came to the Bar in 1907.

And to conclude with a quotation from the article by Messrs. Brune and Strahorn:[13]

> "More than once in its history, the entire personnel of the Court has been replaced at one time by a new set of Judges. At other times, as many as half of the members of the Court have ended their service within two or three years. But the quality of the Court has remained, and fears expressed that the new Judges would not live up to the standards set by their predecessors have always proved groundless."

[13] Brune and Strahorn, *supra*, n. 1, 378.

#3

INTERIM REPORT

OF THE

COMMISSION ON THE JUDICIARY ARTICLE

OF THE

CONSTITUTION OF MARYLAND

JUNE 1, 1942

INTERIM REPORT

OF THE

COMMISSION ON THE JUDICIARY ARTICLE

OF THE

CONSTITUTION OF MARYLAND

To His Excellency
Herbert R. O'Conor, Governor,
Annapolis, Maryland.

Your Excellency:

The commission appointed by you on November 1, 1941, to study and make recommendations concerning the Judiciary Article of the State Constitution is now far advanced in its work, but not yet finished. On some subjects, however, it has arrived at conclusions, and deems it desirable that these should be reported now in order that members of the public and the bar may be afforded an opportunity to reflect on them, and make criticisms.

In addition to the members appointed by you, Mr. Frederick W. Invernizzi, Assistant Professor at the University of Maryland Law School, voluntarily undertook to work with us as secretary, and by dint of his labors, the Commission was provided at the outset with compilations of figures of the amount of judicial work of the several kinds done in each of the courts of the State, and, for comparison, information as to the organizations of courts in other States, and other facts which might serve as guides.

Numerous meetings have been held, all attended by almost the whole membership, and the discussions have been prolonged to an extent that explains the delay in finishing all the work.

THE COURT OF APPEALS.

The organization of the Court of Appeals has been one of the principal subjects considered, and the commission has concluded to recommend that the court for the future be composed of five judges, two of them to be chosen from Baltimore City and three from the counties at large, and that they be confined to appellate work. This proposal, is of course not new in all its features. A special committee of the Bar Association of the State recommended in 1908 that the judges be limited to five in number, that they be limited to appellate work, and that they should be selected from the State at large. Again, in 1924, a commission appointed by Governor Albert C. Ritchie recommended that the court be composed of five judges, to be selected from the State at large, and that they be restricted to appellate work. Thirteen of the fourteen members of that commission favored making changes, but only eight agreed in the specific recommendations made. Still again, in 1941, the Bar Association of the State approved a resolution that the court be reorganized, that the number of judges be five, to be chosen from four specified districts of counties, and Baltimore City, and that they be restricted to appellate work. Bills prepared for presentation to the General Assembly changed the number of judges to six, to meet changes in the divisions of the State then in mind. With the short time allowed for consideration the bills were not passed.

The court has during its history been composed of various numbers of judges, four, five, six and eight. Before the Revolution and after the Revolution until 1806, the judges had no circuit duties. From 1778 to 1806 there were five judges appointed from the State at large. In 1790 the county courts were grouped in judicial districts, and in 1806 the Court of Appeals and the county courts were reorganized so that the Court of Appeals consisted of the chief judges of the six judicial districts. Both of these changes no doubt were suggested by the federal Judiciary Act of 1789; the reorganization of 1806 closely approximated the federal system. The justices of the Supreme Court continued to "ride circuit" regularly until 1869, when circuit judges were appointed. In Maryland, this system continued from 1806 to 1851. From 1851 to 1867, under the Constitutions of 1851 and 1864, the judges of the Court of Appeals had no circuit duties. Under

the Constitution of 1867, the judge from Baltimore City has had no circuit duties but the other seven judges have been the Chief Judges of their respective circuits.

The commission has given due consideration to the benefits said to result from combining regular circuit duties with the duties of judges of the Court of Appeals as such. In Maryland, however, the benefits of circuit duties have never been so marked as in the federal courts. At present any such benefits are quite outweighed by the generally recognized need for concentration on appellate work by appellate judges. The evergrowing mass of decisions, statutes and other legal and non-legal literature and data with which appellate judges must have more or less familiarity increasingly emphasizes the need for intensive scholarship on the part of appellate judges. Judges who have served on the Court of Appeals and who are members of this commission report that the individual judges are not giving to every case the study they would like to give. They should be given ample time to study and reflect. Their decisions affect not only cases immediately before them but all similar cases which may come up in the future, and for which the law is to be defined, and the work needs as much careful thought on all cases as can be given it. In some jurisdictions this need has been recognized by the practice, begun in the federal courts almost thirty years ago, of selecting as appellate judges law professors who may have had substantially no trial experience at all.

Maryland is virtually the only state in which the judges of the highest court have regular trial duties. Delaware seems similar to Maryland in this respect, but Delaware is too small a state to furnish business for an independent appellate court; the appellate court is practically only the trial courts sitting *en banc*. The Chief Justice of that State reports that for some years an effort has been made to have a separate Supreme Court established. New Jersey has a complicated system of courts which involves combinations of appellate work and trial work, but is not comparable with the Maryland system and indeed is unique. And a commission in that state has just recommended a new constitution under which the judges of the highest court would do only appellate work. In Maine, Massachusetts, Connecticut and Pennsylvania appellate judges may be, but in

Connecticut and Pennsylvania seldom are assigned to trial work. In Maine and Massachusetts such assignments customarily are made for a part of each year. In the other 41 states appellate judges do only appellate work.

ASSIGNMENTS OF JUDGES:

This commission recommends, however, that while the judges of the Court of Appeals are given no regular circuit duties, they be included in a general provision for assignment of judges from one court to another on special occasions. One of the unusually rigid features of the present Constitution is the total absence of any provision for special assignments of judges from one court to another.

The commission recommends provision by constitutional amendment whereby the Chief Judge of the Court of Appeals (1), in case of a vacancy or of illness, disqualification or other absence of one or more judges of the Court of Appeals may designate any judge of any of the trial courts in the counties or Baltimore City to sit in any case or for a specified period as a judge of the Court of Appeals in lieu of a judge of that court, and (2) may designate to sit as a judge of a trial court in any county or Baltimore City in any case or for a specified period any judge of the Court of Appeals or of any other trial court. Such constitutional provisions should be subject to such rules and regulations, if any, as the Court of Appeals may make.

DISTRIBUTION OF APPELLATE JUDGES:

With respect to the sections or districts from which judges of the Court of Appeals are chosen, it is to be observed that they do not represent constituencies; they never divide on sectional lines. They should be selected from the counties wherever the best available material is to be found. Selections would not in any event be made without regard for geographical distribution; as a practical matter distribution will naturally exist under any future constitution as it did under a past constitution which provided for selections from the State at large. The first judges appointed in 1778 were from Harford, Baltimore, Calvert, Queen Anne's, and Dorchester Counties. But restriction to hard and fast lines should not be made in the Constitution. In theory perhaps all five judges should be selected from the

entire state at large. Judges are so selected in 39 states of the Union. When, however, half the population of a state is concentrated in one large city, it seems only reasonable to provide that a majority of the judges shall not be selected from the city.

NUMBER OF JUDGES:

The volume of work of the Court of Appeals at present and for some years past indicates that five judges without regular circuit duties is an ample number. This conclusion is confirmed by comparisons with other states which have approximately the same population and have five judges or with the largest states which have seven judges but have much more business. And it is common in States which have the greatest number of judges to have them sit in sections of three or more.

The present number of judges on the Maryland Court of Appeals, eight, seems clearly to have been adopted to meet a condition which has passed. From the provincial period before the Revolution, the court had been carrying an accumulation of unheard cases, and regularly adjourned its terms leaving this mass of unfinished business. The fact did not disturb the people of the State, apparently, before the Civil War. In 1864, the new Constitution required the appointment of one additional judge, making the total number five, in an effort to overcome the arrears. But the improvement was not satisfactory, and it was in this situation that a return was made to the circuit system now in force, with the seven chief judges and one judge from Baltimore City to sit as the Court of Appeals. In addition to that measure, the Constitution directed that the judges sit ten months in the year if the business demanded it. The court sat for a time during nine months of the year but the extra work removed the arrears in ten years or more, and now all cases on the docket of each term of court are heard and decided before adjournment of the term.

The commission recommends that until the number of judges is reduced to five through occurrence of vacancies, the elected appellate judges in office on December 31, 1944, continue to be judges of the Court of Appeals for the residue of the terms for which they were elected. Seven of the eight judges will be elected in November, 1942, and, with the exception of those who reach the retirement age earlier,

will hold office until November, 1957. On January 1, 1945, three of the appellate judges from the counties should be designated by the Governor as regular judges of the Court of Appeals without regular circuit duties. The remaining elected county appellate judges then in office (not exceeding three) should be additional judges of the Court of Appeals, and should also continue as Chief Judges of their respective circuits. Vacancies among the three regular judges from the counties (except upon expiration of the term of a judge before 1957) should be filled by designation by the Governor of one of the additional judges as a regular judge until the number of judges is reduced to five. This exception would make Judge Johnson (whose term will expire in 1949) eligible for another term. It seems improbable that the number of judges would fail to reach five before 1957.

It would be improper to cut off or reduce the term of any duly elected judge, and the above plan has been adopted with a view of accomplishing a much needed reform without doing an injustice to a judge elected by the voters of the counties before the effective date of the proposed change.

SELECTION OF APPELLATE JUDGES:

As to the method of selecting these judges, the commission after thorough discussion recommends that they be selected in the first instance by appointment by the Governor, and that after appointment they serve at least one year, but at the next general election (whether for State or National officers) after the expiration of that year they stand for election. And, incidentally, it is recommended that, by statute, at all elections of judges the names of the sitting judges, designated as such, be put on the ballots, and that (as at present) the ballots bear no party designation of sitting judges or any other candidates.

The commission also recommends provision by statute for election of judges of the Court of Appeals without primary elections, and that names of candidates other than the sitting judges be put on the ballots only on petition of at least five thousand qualified voters. Substantially this recommendation was made, by a majority vote, in the 1924 commission report. This method of election would tend to discourage judicial candidacies based on mere partisan or personal reasons, but

would furnish ample opportunity for giving effect to any genuine public sentiment against election of a sitting judge who is not a satisfactory judge.

The method recommended for selection of the judges of the Court of Appeals is not a great departure from the method now actually in force. Under the present system the larger number of judges take their seats on the court in the first instance by appointment, for they usually fill vacancies, and vacancies seldom occur at the exact times of election. Even at the end of a full fifteen-year term there is always a vacancy to be filled by appointment for a year until the next election; and there is a healthy inclination on the part of the voters to continue appointed judges in office if their work has been satisfactory.

Appointment in the first instance has the advantage that the selection is made by an agency well informed as to the qualifications and abilities of eligible men, while more and more, as population increases, especially in the cities, these qualifications and abilities are unknown to voters, except to a small and negligible number of them.

A considerable part of the commission has been so impressed with the advantages of selection by appointment, that they would urge that there be no election of judges at all. But the vote has been to recommend that there be a continuation of the opportunity for election by the voters generally, or an opportunity for rejection. Not only is the method of election a familiar, and among many citizens a preferred method, but its disadvantages have been ameliorated in practice both by combination of appointment with election and also by development of sound public sentiment as to selection of judges. A custom has grown up of selecting party candidates with the approval of the bar. This custom, together with support of good candidates by the newspapers, has given good judges to the bench. The commission believes that further improvement is feasible and that satisfactory results may be expected.

At present judges are appointed to fill vacancies until the next Gubernatorial election, *i. e.*, for one year after expiration of a fifteen-

year term and in other cases for a period ranging from a few days to almost four years. The commission believes that better results, more satisfactory to the voters, would be obtained by the election of judges at the two year intervals instead of election of the present long tickets of judges once in four years. In this way every vacancy would be filled by appointment for not less than one nor more than three years, and at every election the voters would have an opportunity to vote for a sitting judge.

THE TRIAL COURTS.

THE COURTS OF BALTIMORE CITY:

At intervals over a period of thirty years, the Bar Association of Baltimore City has vainly sought to bring about the consolidation of the courts of Baltimore City. There are six such courts, three of substantially concurrent common law jurisdiction, two of identical equity jurisdiction, and a criminal court. Each of these wholly independent courts has its own separate clerk and clerk's office. The common law courts sit in two or more parts. The criminal court likewise sits in two or more parts. The eleven judges of the Supreme Bench of Baltimore City assign themselves to these various courts and their several parts.

In each of the counties of the state there is but one court, the circuit court for that county, which has all of the jurisdiction and exercises all of the powers together possessed by the six courts of Baltimore City. And the Federal trial courts have always exercised all these powers together. The reasons for the separate existence of these six courts in the city were purely historical and have long ceased to have any validity or force. They should be consolidated, and the commission so recommends.

Such a consolidation will bring the constitutional provision for courts in Baltimore City into harmony with that prevailing throughout the rest of the state. It will greatly promote economy, efficiency and dispatch in the administration of justice in the City, and will effectively cure certain evils in that administration that have not proved capable of eradication under the existing system. Indeed, if there is a single valid objection to the proposed consolidation it has not come to the attention of the commission.

An examination of the trend of the judicial business transacted by the present courts of Baltimore City has led the commission to the inescapable conclusion that the number of judges sitting there can without detriment be reduced by at least one and it, accordingly, so recommends. It is satisfied that such a reduction will not cast too great a burden upon the remaining judges or retard the orderly and

expeditious administration of justice in the courts of Baltimore. Such a reduction can be effected in a manner that would not displace any sitting judge during his existing term.

THE CIRCUIT COURTS OF THE COUNTIES:

In its effort to reach a conclusion as to whether there should be any change in the present judicial circuits or the number of judges sitting therein, the commission has considered the volume of work presently imposed upon such judges, the convenience of litigants and others concerned with the functions of those courts and the suggestion that there be created a separate court for each county to be presided over by a resident judge. The result of its inquiry into these matters will be more fully set forth in the final report of the commission by way of supporting its recommendation that it finds no valid reason to increase the present aggregate number of circuit judges or to establish a system providing for a judge in each county.

A compilation of relevant data dealing with the volume of work in the various circuits indicates quite clearly that the same can readily be taken care of by the present number of judges (including the three who will serve temporarily on the Court of Appeals and continue to be available for nisi prius work), particularly if, as heretofore suggested, the Chief Judge of the Court of Appeals is empowered to assign a member of that court or of some other circuit court to a particular locality where the then pending amount of work may be unusually heavy.

So far as county lines are concerned, the present circuit courts are, in reality, county courts. Thus, there is a session of court in each county and a court house where there is conducted a clerk's office and where appropriate records are contained. Likewise, there are few counties in which at the present time there is not a resident judge, and lawyers and litigants located in such counties certainly experience little inconvenience in getting into contact with a judge in a nearby county.

Questions concerning the selection of trial judges, and of the exercise of the jurisdiction over probate of wills and the administration of estates now lodged in the Orphans' Courts, are reserved for further discussion.

JUVENILE COURT AMENDMENT.

Since the commission began its work the Baltimore City Bar Association has requested that it consider the subject of the Juvenile Court, and make recommendations; and the desirability of answering this request promptly furnishes one of the principal reasons for making this interim report.

As the Juvenile Court constitutional amendment proposed by Chapter 824 of the Acts of 1941 will be submitted to the voters at the election in November, 1942, it seems appropriate that the commission include in its report some recommendation to the voters concerning the proposed amendment and also other recommendations concerning legislation on the subject.

The commission recommends the rejection of the proposed amendment. It believes that Juvenile Courts with adequate powers and jurisdiction can be constitutionally provided by statute and that there is no necessity of a constitutional amendment. The present uncertainty in the definition of the jurisdiction to be exercised should be clarified. The commission believes this should be done by a statute explicitly granting to such Courts a non-criminal jurisdiction over juvenile delinquents and not merely over "minors without proper care and guardianship", as the law now provides. (Code Art. 42, Sec. 19).

The commission recommends that the jurisdiction be exclusive over all proceedings involving crimes or offenses by minors below the age of 18 years, as well as delinquency, dependency and minors without proper care, but the Court should be given adequate power to determine in each instance whether the matter should be retained by that Court or sent to the Criminal Court, or in appropriate cases to the Traffic Court for trial there. In the opinion of the commission the Juvenile Court Law of the District of Columbia enacted in 1938 is a model law.

The commission believes, however, that as a practical matter in order to avoid the multiplication of the Courts, such a Juvenile Court in Baltimore City should be a branch of the Supreme Bench and that a Judge of that Bench qualified for such work should continue to serve in juvenile matters without rotation in order to promote the most effective administration.

This recommendation is not intended as a reflection on any of the Juvenile Court Magistrates, past or present, but is in line with the aim of the commission to consolidate the courts and to prevent, not merely duplication of the machinery and expenses of the courts, but conflict of jurisdiction. Adoption of this suggestion may make academic the matter of age, because the Juvenile Court judge in his discretion could determine whether the minor should be treated as a juvenile delinquent or sent to the Criminal Court for trial because his age, or his character, or the nature of the offense was such that a formal court trial was more consistent with the public interest.

The recommendations made apply to the juvenile jurisdiction in Baltimore City only, and they would be especially pertinent if there should be a court devoted to all domestic relations cases, as, according to the information given the commission, has been proposed.

The counties, the commission is informed, are satisfied with their present methods of caring for the juvenile problem. Some have a Juvenile Court similar to that now in Baltimore City, while in others, this jurisdiction has by statute been transferred to the Circuit Courts.

All of which is respectfully submitted.

CARROLL T. BOND,
CHARLES MARKELL,
F. W. C. WEBB,
WALTER C. CAPPER,
SAMUEL J. FISHER,
S. MARVIN PEACH,
ELI FRANK,
HARRY N. BAETJER,
J. HOWARD MURRAY,
CLARENCE W. MILES,
JOSEPH BERNSTEIN,
G. C. A. ANDERSON,
EDWARD D. E. ROLLINS.

June 1, 1942.

Judge Urner concurs in the report except the statement as to an inclination of the voters.

Judge F. Neal Parke adds the following statement.

I do not subscribe to this report.

In my judgment this report is premature. The judicial system should be wrought into a consistent and harmonious whole and then thus presented for consideration.

A report which excludes such related and necessary subject matters, for instance, as the method of selection of the trial judges and, the Orphans' Court of Baltimore City and the counties, ignores serious problems which are intimately connected with the proper administration of justice and gravely compromises the adequate consideration of the two subject matters dealt with in the report.

One of the grounds of my objection to the report is that it advocates depriving the members of the appellate bench of the advantage of continued experience in the actual application of the principles of law and its procedure, of observing their incidence in litigation and in the prosecution of crime, and of being brought in contact with the practical affairs of finance, commerce and life. The attendance of the Chief Judge of the Circuit has always been subordinate to his appellate duties but his presence has been of incalculable weight and satisfaction to the public in the assurance his prestige gave to the maintenance of confidence in the just, fearless and impartial administration of the law.

All these benefits are lost in lessening the number of judges in the Court of Appeals to five. Of course, the reduction of the number of judges from eight to five will not of itself improve the judicial qualifications of the survivors. There is room for a difference of opinion as to whether five is an adequate number. An increase in labor is bound to come under the new rules which require the court to pass upon questions of fact when the trial court sits as a jury. Again, should the grievous cost of an appeal be corrected, there would be a large increase in the number of the appeals.

Not only is the membership of the Court of Appeals to be restricted to five members without trial work, but the proposed plan

eventually will leave the four counties of the First Judicial Circuit with two trial judges; the five counties of the Second Judicial Circuit with three judges; the three counties of the Fifth Judicial Circuit with two judges; and the four counties of the Seventh Judicial Circuit with three judges. So reduced, how would it be practicable for some of these Circuits to be sufficiently provided with judges for the adequate administration of the law?

Again, the power of selection and appointment by the Governor of the members of the Court of Appeals is not for life, but for a period of not less than one year and until the next general election. The appointee's name is then to go on the ballot, and no one may be nominated by primary or convention to run against him, but any one may who obtains 5,000 qualified voters to a petition. It would be difficult to induce the best qualified, competent and established lawyer to give up his practice for a short period with the prospect of encountering at the polls the nominee of 5,000 men and women whose only qualification may be that of the right to vote. The power of appointment is limited in its operation to those who will accept. For these and other reasons I am convinced that the proposed method will not prove satisfactory.

FRANCIS NEAL PARKE.

BOND REPORT IS ATTACKED BY MARBURY

State Bar Seeking To Usurp Control Of Appeals Court, Charge

Jurist Says Proponents Act In Contempt Of Rights Of People

By LOUIS J. O'DONNELL

[Annapolis Bureau of The Sun]

Annapolis, March 4—A charge that the Maryland State Bar Association wants to usurp control of the Court of Appeals from the hands of the people was made today before a Senate committee by Judge Charles C. Marbury, of Prince George's county.

Appearing before the Senate's Judicial Proceedings Committee as an opponent of the Bond Commission's plan for reorganization of the appellate bench, Judge Marbury asserted that those who designed the proposal for the organization and selection of the Court of Appeals had acted in "contempt for the rights of the people."

Assails Proposal

"It seems to me," he said, "that the capstone of the Bond Commission report is the portion dealing with reconstituting the Court of Appeals, and I would venture to say that those who are interested in this reorganization would gladly jettison the whole report if they thought the Legislature would pass this portion, hoping that the Baltimore Sun would put it through in the election.

"Undressed, this proposition amounts to nothing more than the

(Continued on Page 10, Column 2)

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#4

REPORT

OF THE

COMMISSION ON THE JUDICIARY ARTICLE

OF THE

CONSTITUTION OF MARYLAND

OCTOBER 21, 1942

REPORT

OF THE

COMMISSION ON THE JUDICIARY ARTICLE

OF THE

CONSTITUTION OF MARYLAND

To His Excellency,
Herbert R. O'Conor, Governor of Maryland,
Annapolis, Maryland.

Your Excellency:

This commission, having finished its deliberations, now submits this report of its conclusions and recommendations. Drafts of constitutional amendments to carry out the commission's recommendations will be submitted later.

Summary.

The subjects considered comprise: (1) Reorganization of the Court of Appeals and separation of the duties of judges of the Court of Appeals and judges of the Circuit Courts for the counties; (2) Consolidation of the courts of Baltimore City; (3) Selection of judges; (4) Number, distribution and assignment of judges; and procedure; (5) Abolition of the Orphans' Courts. Juvenile Court jurisdiction is related to several of these subjects. It involves details which, though beyond the original scope of the commission's work, have been considered because of the need for legislation instead of the pending Juvenile Court constitutional amendment.

The commission's recommendations comprise those previously submitted in its interim report, dated June 1, 1942, with two additions, (1) the same method of selection of judges for the trial courts as for the Court of Appeals and (2) abolition of the Orphans' Courts. Consequently this report is principally a reaffirmance of the interim report.

None of the commission's recommendations are revolutionary; all are closely related to experience in Maryland and elsewhere. As to the organization of the Court of Appeals and the trial courts the commission's recommendations are a unification of existing provisions for Baltimore or for the several counties. In Baltimore, since 1851, judges of the Court of Appeals have *not* been judges of the local courts; the commission recommends that like provision be made for the counties. In the counties, since 1851, one trial court has exercised all legal, equitable and criminal jurisdiction; the commission recommends that like provision be made for Baltimore. In both respects the commission's recommendations are in accord with the best practice, long established (now, but not in 1867) in England, in the federal courts and in most of the state courts.

In Maryland, since 1867, judges have been selected by a system combining appointment and election; since 1941, party designations on the ballots have been abolished. The commission recommends that this system be strengthened by making it more uniform and by abolishing primary elections—a logical corollary to abolition of party designations.

In Maryland no provision whatever is made for assignment of judges to different localities in emergencies; but for years there have been complaints that there are more judges than are needed. In the federal courts and in the best organized state judicial systems flexible provision is made for utilizing judicial "man-power" by assignment of judges from one locality to another, when needed. The commission recommends that such provision be made for economy of judicial "man-power".

In 1851, when the Court of Chancery was abolished and the local courts were given all legal, equitable and criminal jurisdiction, reasons for the separate existence of the Orphans' Courts ceased. In the Constitutional Convention in 1851 both the majority and the minority committee reports recommended abolition of the Orphans' Courts. The commission now makes this recommendation, which is in accord with practice long established (now, but not in 1851) in England, in the District of Columbia and in many states.

Although the five subjects above mentioned can conveniently, and will, be separately discussed, obviously they are all closely related and must be coordinated. This the commission has tried to do.

COURT OF APPEALS.

Most of the criticisms of our judicial system have referred to the organization and work of a Court of Appeals, or court for reviewing decisions of trial courts. The commission has considered this subject first. As previously announced, it has concluded to recommend that such a court be composed of five judges, two to be chosen from Baltimore City, and three from the counties at large, and that these judges be confined to appellate work as a rule, with a provision for assignment to trial work upon occasion.

The principal needs that require this recommendation are (1) concentration of the efforts of appellate judges upon appellate work by relieving them of regular trial work in circuits and (2) removal of narrow territorial limitations upon the selection of judges. Incidentally removal of such limitations will effect a readjustment to the large and increased proportion of the lawyers of the state in Baltimore City. Baltimore now contains about half the population of the state and far more than half the lawyers. The greater growth of the city has made the limitation to one judge from Baltimore out of eight more and more unreasonable.

To many of the members of the commission, perhaps to a majority of them, there appeared to be weighty advantages in selection of all judges from the state at large, without restriction of any to geographical sections. Judges are so selected in 39 states. But the peculiar distribution of the population of Maryland—about half in one large city and the rest in rural districts or comparatively small towns and cities—has seemed to justify a limitation of the city of Baltimore to a minority of the judges. Otherwise there might be fear (whether justified or not) that the concentrated city vote would dominate the selection of all the judges, from the counties as well as from the city.

It is recommended that the three county judges be chosen from the counties at large and not from smaller sections of the state. No section needs representation, because the judges do not act in representation of sections, and never in fact divide in opinion according to sections. There should be no compulsory distribution which might deny to the state the services of two desirable judges who might happen to reside in any one group of counties. In practice there would ordi-

narily be a distribution among lawyers of different sections, but this should not be compelled at all times by a rigid constitutional provision.

At the coming November election seven of the eight judges of the Court of Appeals will be elected. Every citizen of Maryland is interested in the election of each of these seven judges. No citizen, however, is permitted to vote for more than one. None of the seven will be elected by a majority of the population. One will be elected by 47 per cent., one by less than 5 per cent., each of the others by less than 11 per cent. This sectional method of selection should be abolished.

Five judges would be an ample number for the work to be done. Judges in this state, in common with judges in all other jurisdictions, have in recent years seen their dockets considerably reduced. In all state courts, and in all federal courts below the Supreme Court, litigation has been falling off. In the year from October 1, 1941 to October 1, 1942 there have been 118 cases presented for decision in the Maryland Court of Appeals, and these, equally distributed among five judges, would require the writing of not more than 24 opinions by each. The judges would have time to study other cases more thoroughly, and to confer together frequently without interruption, instead of occasionally at intervals. Some members of the commission are of the opinion that five judges could work with better cooperation, and a greater feeling of responsibility for all cases, than is possible with eight. Five is the number in several states with dockets much larger than can be expected in Maryland, and where the number of opinions to be written by each judge is correspondingly larger.

The separation of trial work and the work of review is recommended by the experience of all the states of the country except Delaware, and in that state there has long been a desire expressed by the bar that the combination of the two be discontinued. In New Jersey, where the judges have engaged in both kinds of work to a limited extent, the recently appointed commission on a proposed new constitution has recommended complete separation. The principal reason for adopting a like course in Maryland is that work on the trial circuits interferes with the proper performance of duties on appeal. The appellate judges are not giving to cases, other than those assigned to them respectively for the writing of opinions, the study and reflection they would like to give, and which the bar and people of

the state would like them to give. And it is reported by judges who have sat on the court for some years that complaint of delay in writing opinions, because of circuit court work, is too frequently heard from the judges.

The work of reviewing decisions in trial courts, with the incidental establishment of the law for future cases, requires much time for undisturbed reflection by the judges and consultation among themselves; they should not be disturbed by distracting duties. Nor should the work of expounding the conclusions of the court in opinions, with the necessary effort at clearness and definiteness, be done hurriedly. Furthermore, the principles of law which the judges are to apply, and the practical effect of their application in the several states of the country, are nowadays made subjects of constant study and exposition in legal periodicals and text books. The appellate judges must acquaint themselves with this material, and also with much current non-legal literature.

The commission recommends that until the number of judges is reduced to five through occurrence of vacancies, the elected judges in office continue to be judges of the Court of Appeals for the remainder of their terms. Three of the county judges would be designated by the Governor as the permanent three judges, without regular circuit duties. The others (not exceeding three) would be additional judges of the Court of Appeals and also continue to be Chief Judges in their circuits. As vacancies occur, each additional judge would be designated as one of the three judges. The three judges and the additional judges would have precisely the same powers, duties and status as judges of the Court of Appeals.

Opinions.

It was urged upon the commission that the existing requirement of a written opinion upon every decision of the Court of Appeals be relaxed by leaving it to the judges themselves to determine whether or not an opinion should be filed. That recommendation was not adopted. The three members of the commission who had sat on the court bore witness to the fact that the desired thoroughness of comprehension of a case is attained only by having an opinion worked out, and the commission considers it a measure necessary to the satisfaction of litigants, in which justice largely consists. It is valuable as a dem-

onstration that the case pro and con has been heard, and dealt with, even if decided wrongly. It was concluded that the evil of excessive publication of opinions which is piling shelves with too many books, must be met without sacrificing the advantages of explanatory opinions, and that, possibly, a more stringent prohibition against publishing all, indiscriminately, might accomplish this. But so far no satisfactory device for it has been found, and the suggestion has brought no action.

THE TRIAL COURTS OF BALTIMORE CITY.

The Court of Appeals suffers from combination of incompatible duties of appellate judges and trial judges. The Baltimore trial courts suffer from an opposite evil—useless multiplication of courts.

It is again recommended that the six courts of Baltimore City, with their distinct clerks' offices, be consolidated. The distinctions have been preserved for many years out of good will for the clerks, or those who might become clerks, solely to provide the extra offices and salaries. But candor compels anyone faced with a question of justifying the present separation of the courts to answer that it is not supported by any acceptable reason, and is an abuse. When the separate courts were provided by the Constitution of 1851, it was considered that the several judges would each constitute a court. Such was the general conception of a court. But in the convention of 1867 it was agreed that this was undesirable, and the judiciary committee recommended consolidation, under the name of the Supreme Court of Baltimore City. After debate the subject was referred to the delegates from the city, and these, by a majority vote, offered the compromise plan adopted, namely, that the judges be consolidated, under the name of the Supreme Bench of Baltimore City, for service in all the courts, while the distinctions be retained in the clerks' offices. That the several branches of the law can be administered from one clerk's office is made manifest by the fact that it is done in all the counties of Maryland, in cities of other states, and in all the United States District Courts.

For a single consolidated court the Commission recommends the name of the Superior Court of Baltimore City, which would correctly describe its jurisdiction as superior to that of the People's Court, without appropriating the misdescriptive name of Supreme, which the

commission concludes might well be left to the Supreme Court of the United States.

The commission recommends that the clerk of the consolidated court be appointed by the Court, but that for the remainder of the terms of the six clerks in office, one of them shall be designated as the clerk of the new court and the other five shall be deputy clerks. In these capacities they could serve more usefully than as clerks of six separate courts. Without multiplying law records in three offices and equity records in two, the clerk's office would doubtless maintain separate law, equity and criminal records, besides the Record Office and the license bureau. These five departments would furnish more useful occupation for one clerk and five deputies than six separate courts.

MODE OF SELECTING JUDGES.

It is recommended that all judges of the Court of Appeals, and of the trial courts in Baltimore City and the counties, be appointed in the first instance by the Governor, and that they be assured of one year of service by virtue of the appointment, and then, after that year, at the time of the next election in the state, either for national or state officers, be required to stand for election by popular vote if they wish to continue. In the opinion of the commission the term of office of those elected should continue to be fifteen years, as under the present constitution.

Appointments in the first instance are recommended out of a desire to commit the selections at that stage to some responsible agency who could act with knowledge of the individual lawyers and their qualifications. It will be agreed that a place on the bench is one for a skilled man of high character; to satisfy the people of the state with the dispensation of justice, the judges must be men who will give it that character, and the court should have approximately the best material for judges that the state affords. But the voters of the state cannot reasonably be expected to initiate a choice of such men from the bar, because they lack the expert knowledge to enable them to judge of their qualifications. The Governor of the state seems to be the proper representative for that purpose. After a judge has been acting for a length of time sufficient to disclose his fitness then a popular election may have an office to perform, and the commission

has concluded that a year's service would be sufficient, and that the appointed judge should then stand for election or rejection. It is recommended that the names of appointed judges, designated as such, be placed on the ballots without contest in primary elections, but that facility for proposal of names of other candidates who may reasonably expect support by a substantial number of voters shall be preserved. To this end, the commission recommends that the names of opposing candidates be placed upon the ballots only upon petitions of 5,000 voters in the case of trial judges in Baltimore City and all judges of the Court of Appeals, and of 1,500 voters in the case of trial judges in the county circuits.

The method recommended does not differ greatly from that actually prescribed and practiced under the Constitution of 1867. Even at the expiration of a fifteen-year term the Constitution requires an appointment for a year until the next election. Most of the judges are added to the courts to fill vacancies caused by retirement or death of predecessors, and as those events seldom occur at the exact times of elections succeeding judges are appointed by the Governor to serve until the next state election. As the interval between state elections is four years, the service under the appointments lasts for various periods short of that time limit. This seems to the commission too long if the judges are to hold office ultimately by election.

The members of the commission have not overlooked the advantages of appointment alone as a method of selecting judges; many, perhaps a majority, thought that in Maryland, as in some other states and in the federal jurisdiction, that method might procure the best judges in the long run, but they also felt that the people of the state would prefer to have the ultimate power of election, and the effort has been made to retain the opportunity for this.

It is trite, but true, that no method of selection will assure satisfactory judges unless the selection of such judges is actively urged and supported by a vigilant public sentiment, led by the bar and the press. In appointing judges a Governor will seldom flout such a sentiment. When the sentiment exists, a petition of 1,500 or 5,000 voters will be of little avail to a mere self-seeking or partisan candidate against a capable judge, but will furnish ample opportunity to displace an unfit judge by a candidate supported by a genuine public opinion.

In its interim report, the commission recommended provision for this method of selection of judges of the Court of Appeals, and reserved for further discussion questions concerning the selection of trial judges. The commission now recommends the same method of selection of trial judges; no valid ground for differentiation has been seen. The commission recommends provision by constitutional amendment for this method of selection of *all* judges.

NUMBER, DISTRIBUTION AND ASSIGNMENT OF JUDGES—PROCEDURE.

For many years there have from time to time been complaints that in parts of the State there are too many judges.

An excessive number of judges is a natural consequence of the total absence of any provision for special assignments of judges from one court to another. This is an unusually rigid feature of the Maryland constitution. In the past, while the number of judges in Baltimore was inadequate, there were too many judges in some of the counties.

The commission recommends provision that the Chief Judge of the Court of Appeals (1) in case of a vacancy or of absence may designate any judge of a trial court to sit in lieu of a judge of the Court of Appeals and (2) may designate to sit as a judge of any trial court any judge of the Court of Appeals or of any other trial court.

At present, both in Baltimore and in the counties, there are more trial judges than are needed. Baltimore, with about half the population of the state and more than half the business, has eleven trial judges. The counties have about twice as many as Baltimore, viz., eighteen full-time associate judges and seven part-time chief judges (who are also judges of the Court of Appeals). The commission is satisfied, from observation and from expressions by judges and lawyers, that the work now done in Baltimore by eleven could be well done by eight.

The commission's conclusion that there are too many judges in the counties is supported by study of the volume of business of the courts in the several counties. The commission will hereafter submit a summary of some statistical information collected by it, concerning the volume of such business.

Incidentally, study of the volume of business indicates that in a number of counties establishment of trial magistrates, with jurisdiction increased to $200 or $250 or $300, has worked so well that magistrate appeals have greatly decreased. The commission recommends for the consideration of the General Assembly the question whether the jurisdiction of the People's Court in Baltimore should not be similarly increased by statute. The present limit to cases involving $100 (Code, Art. 52, sec. 7) was first fixed in 1852, (Act 1852, Chapter 239), when it was increased from a previous limit of $50.

The commission recommends (1) that the number of trial judges be limited to ten in Baltimore and an aggregate of twenty-one in the counties, *i. e.*, the present number of associate judges, plus the maximum number of additional judges of the Court of Appeals (and the Circuit Courts) during the transition period, (2) that within these *maximum* limits the Legislature be empowered from time to time to decrease or increase the number in Baltimore or in any particular county circuit, and (3) that no decrease in number of judges shall shorten the term of any elected judge. In recommending this decrease in Baltimore the commission assumes that transfer of Juvenile Court jurisdiction and Orphans' Court jurisdiction will each consume approximately full time of one judge.

The commission recommends no present regrouping of counties in circuits, but is aware that disparities in the amount of business in the different circuits require some redistribution of the number of judges among the different circuits and further redistribution may be needed from time to time hereafter. For instance, the smallest circuit in population and volume of business has three associate judges; several larger circuits have only two.

The commission suggests that trial judges residing in the more sparsely populated counties spend less time sitting together in ordinary cases and more time (if necessary) in periodic attendance in other counties to sign routine orders and hear equity cases.

The commission recommends to the Legislature that judges specially assigned outside their own circuits—and also judges while in attendance outside their own counties but within their own circuits —be allowed their actual expenses (not exceeding a specified *per diem*) for travel and maintenance.

The commission proposes that the present complicated constitutional provision as to residence of judges be simplified so as to provide that no county shall have more than two trial judges (except possibly Baltimore County during the transition period) and none other than Baltimore, Montgomery, Prince George's and (if the number of judges in the Fourth Circuit is increased) Allegany Counties shall have more than one.

The commission recommends that the present powers of the Court of Appeals to make rules of practice and procedure be reaffirmed and also be enlarged so as to cover other details, *e. g.*, terms of the Court of Appeals and of trial courts, now governed by statute. The best practice in England, in the federal courts and in modernized state courts is to leave matters of procedure to the courts themselves, to be regulated by rules of court. The commission likewise recommends, in accord with approved practice elsewhere, that the Chief Judge of the Court of Appeals be made the administrative head of the judicial system of the State, subject to rules and regulations of the Court of Appeals.

THE ORPHANS' COURTS.

Consultation of members of the commission with lawyers and others from various parts of the state has disclosed a widespread opinion that the jurisdiction over matters of probate and the administration of estates of deceased owners should now be committed to the trained judges of the trial courts, and that the Orphans' Courts should be abolished. Plainly the work of the courts of untrained laymen in the counties causes dissatisfaction. This is the opinion of members of the commission, and they recommend that the change be made, both in the counties and in Baltimore City, effective January 1, 1947, when the terms of the judges elected in the November, 1942, election will expire.

The use of persons untrained in the law as judges of the Orphans' Courts is a survival of the practice existing before the Revolution, when trained lawyers were not required on any court of the province, although the need of training was in fact bringing lawyers to the higher courts before 1776. Beginning with the constitution of that year, all other courts of the state were by the year 1805 equipped with trained judges, but although the problems to be disposed of in probate

and administration of estates were of no lesser importance and difficulty lawyers have not been required to preside over Orphans' Courts. The result has been that the regular courts of law and equity have been made available to aid in the disposition of special matters, and this division and duplication of machinery still exists. In recognition of the need for it, the Orphans' Court of Baltimore City has in practice been equipped with trained lawyers in recent years; three of them have been exercising the restricted powers of these old courts, whereas one trained judge, without the restrictions appropriate to untrained judges, could effectually dispose of the problems presented. The jurisdiction, freed from the restrictions of the special tribunals, should be placed in the ordinary trial courts. The commission is of opinion that one judge might well be permanently assigned to the work in Baltimore City, but that any such assignment should be left to the discretion of all the judges of the city courts together.

JUVENILE COURT JURISDICTION.

The commission reaffirms (without repeating) what was said in its interim report under the caption "Juvenile Court Amendment".

A sub-committee of this commission, together with representatives of other groups and organizations especially interested in or affected by Juvenile Court problems, is now engaged in drafting proposed legislation. This commission will hereafter submit such a draft of proposed legislation embodying its recommendations as to clarification and transfer of Juvenile Court jurisdiction.

CONSTITUTIONAL AMENDMENTS TO BE SUBMITTED.

It is the opinion of the commission that the present Judiciary Article of the Constitution is needlessly and inconveniently long. Comparison with other states, and especially the constitution recommended by the commission in New Jersey, confirms this opinion.

The commission will hereafter submit drafts of four separate constitutional amendments to carry out its recommendations: (1) for reorganization of the Court of Appeals, including all other recommendations *except* consolidation of the Baltimore courts and abolition of the Orphans' Courts; (2) for consolidation of the Baltimore courts; (3) for abolition of the Orphans' Courts; and (4) a blanket amend-

ment, rewriting the entire Judiciary Article and including *all* the commission's recommendations and some additional abbreviations or simplifications. The blanket amendment, if adopted, would supersede the others. The commission recommends that four such amendments be submitted by the General Assembly to the people.

All of which is respectfully submitted.

The signature of Judge Hammond Urner to this report is lacking because of his death on September 27, 1942. Until that time he had been an active worker on the problems dealt with by the commission, and the work had so far progressed then that his wisdom and long experience in the judicature of the state were brought to bear in all of them. He concurred in the commission's interim report, all the recommendations in which are now reaffirmed.

CARROLL T. BOND,
CHARLES MARKELL,
F. W. C. WEBB,
WALTER C. CAPPER,
SAMUEL J. FISHER,
S. MARVIN PEACH,
ELI FRANK,
HARRY N. BAETJER,
J. HOWARD MURRAY,
CLARENCE W. MILES,
JOSEPH BERNSTEIN,
G. C. A. ANDERSON,
EDWARD D. E. ROLLINS.

October 21, 1942.

THE OBJECTION OF F. NEAL PARKE, A MEMBER OF THE COMMISSION.

I do not concur in the major conclusions and recommendations of the Commission.

It is my conviction that any change in the judiciary structure of the State should not be made unless the proposed change be unquestionably an improvement of the long established provisions of the Constitution of 1867.

The proponents of the proposed constitutional amendment bear the burden of showing a clear advantage in the changes advocated by the Report of the Commission. Unless these changes will result in providing a sufficient number of appellate and trial judges efficiently to dispatch the affairs of the courts; and in procuring judges of greater capacity, learning and independence than under the subsisting Constitution, no change is justifiable. It is respectfully submitted that the Commission does not achieve this result. While the objections now to be stated have been rejected by the Commission, it is to be hoped that it will not be regarded as presumptious for some of them to be submitted for consideration.

1. The Report reduces the number of the appellate judges to five and practically confines these judges to appellate work.

One of the grounds of objection to the Report is that it would deprive the members of the appellate bench of the advantage of continued experience in the actual application of the principles of law and its procedure, of observing their incidence in litigation and in the prosecution of crime and of being brought in contact with the practical affairs of finance, commerce and life. By presiding in the circuit the appellate judge brings the law straight from the appellate tribunal into the circuit, and thereby assures to the litigants and the accused the application of the existing law as fixed by the latest decisions, and this produces a certainty and satisfaction with the administration of the law which reduces the number of appeals and the expense of litigation.

The attendance of the Chief Judge of the Circuit has always been subordinate to his appellate duties, but his presence has been of incalculable weight and satisfaction to the public in the assurance given to

vigor in the enforcement of the law and the elimination of any exhibition of local prejudice, passion or subservience. It is no light matter to deprive the administration of the law of this element of confidence in the just, fearless and impartial administration of the law.

All these benefits are lost in lessening the number of judges of the Court of Appeals to five. The reduction in number does not of itself improve the judicial qualifications of the surviving number. Nor is there any certainty that five will be an adequate number. An increase in labor necessarily arises. Again, more appellate work will result under the new rule which requires the court to pass upon questions of fact when the trial court sits as a jury. Should the heavy cost of an appeal be corrected, there would be a large increase in the volume of appeals.

The Report limits the number of judges for service in the circuits of the State. With the distances to be traveled between the several county seats of the court and with the added jurisdiction contemplated in probate and other fields, it is submitted some of the judicial circuits would not be provided with sufficient judges for the adequate administration of the law. The error should be in providing more judges than not enough judges.

2. The gravest objection is in the method urged in the selection of all judges. The Report advocates the ultimate appointment of the judges of the appellate and trial courts by the Governor, and that they be assured one year of service by virtue of the appointment, and then, after that year, at the time of the next election in the State, either for national or state officers, be required to stand for election for a term of fifteen years by popular vote, if they wish to continue. At the expiration of this period, the name of the appointed judge, unless he decline, shall be put on the ballot for election. The only way in which an opponent may contest his election is a nomination by petition of 5,000 voters in the case of the trial judges in Baltimore City and all judges of the Court of Appeals, and of 1,500 voters in the case of trial judges in the County circuits.

The product of this union of the appointive and elective systems of selection is a hybrid method which, with all possible deference to the judgment of the other members of the Commission, will fail to achieve the beneficial results desired.

The nomination by primary or convention is denied in favor of nomination by petition of 5,000 qualified voters for judges of the Court of Appeals and judges of Baltimore City, and 1,500 qualified voters for trial judges in the counties.

Nomination by petition is political action in its most crude and irresponsible form. It is most open to abuse, fraud, perjuries and personal manipulation. Its integrity and genuineness is most vulnerable to attack, as is notorious.

Signatures in Baltimore City, and in the counties of the State and the judicial circuits could easily be obtained in the required number when the only requisite is that the men and women who sign have the right to vote. The method is thus open to any social, political, religious group, faction or party. No one who accepts the appointment by the Governor could be certain he would not meet this opposition.

It would be difficult to induce the best qualified, competent and established lawyer to give up his practice for a short period with the prospect of encountering at the polls the nominee of men and women whose only qualification may be that of the right to vote. The power of appointment is limited in its operation to those who will accept.

Thus it would seem that the proposed method would tend to exclude the most desirable and approved lawyers from elevation to the Bench.

For these and other reasons, I am unable to concur in the Report.

F. NEAL PARKE.

PRESS OF
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11-15 E. SARATOGA ST.
BALTIMORE, MD

DRAFTS

OF

CONSTITUTIONAL AMENDMENTS

SUBMITTED BY THE

COMMISSION ON THE JUDICIARY ARTICLE

OF THE

CONSTITUTION OF MARYLAND

NOVEMBER 30, 1942

COMMISSION ON JUDICIARY ARTICLE

of the

MARYLAND CONSTITUTION

November 30, 1942.

Honorable Thomas E. Conlon,
Chairman of the Legislative Council of Maryland,
c/o Dr. Horace E. Flack,
Department of Legislative Reference,
City Hall,
Baltimore, Maryland.

My dear Mr. Conlon,

The Governor of the State has requested that drafts which according to the report of the Commission on the Judiciary Article of the Constitution dated October 21, 1942, are to be prepared to embody recommendations made by it, should be sent directly to yourself as Chairman of the Legislative Council. Accordingly that commission now submits four constitutional amendments which would carry out those recommendations: (1) for reorganization of the Court of Appeals, including all other recommendations *except* consolidation of the Baltimore courts and abolition of the Orphans' Courts; (2) for consolidation of the Baltimore courts; (3) for abolition of the Orphans' Courts; and (4) a blanket amendment, rewriting the entire Judiciary Article and including *all* the commission's recommendations. The blanket amendment, if adopted, would supersede the others. The commission recommends that four such amendments be submitted by the General Assembly to the people.

Since 1867 many provisions of the Judiciary Article have been amended, some expressly, some by the effect of amendments of other provisions. A number of provisions, originally of a temporary nature, have become obsolete. In the blanket amendment now submitted the commission undertakes to coordinate all its own recommendations and also the permanent provisions of the original Judiciary Article and of all amendments made, expressly or by implication, since 1867. The Judiciary Article is, in the opinion of the commission, needlessly

long and detailed, but a general revision in connection with the commission's recommendations is not deemed feasible. With the exception of some obvious abbreviations and simplifications, chiefly in provisions inserted by previous amendments, it seems advisable to retain the wording of the present provisions where no change in meaning is intended.

Respectfully submitted,

CARROLL T. BOND,

Chairman.

A BILL

ENTITLED

AN ACT to propose an amendment to Article IV of the Constitution of Maryland, title "Judiciary Department", amending Section 5 (under sub-title "Part I—General Provisions"), Section 14 (under sub-title "Part II—Court of Appeals"), and Section 21 (under sub-title "Part III—Circuit Courts"), and adding a new section, to follow Section 18 (under sub-title "Part II—Court of Appeals") and to be designated Section 18A; providing for a Court of Appeals of five judges and relating to the number, selection, qualifications and duties of the judges of the Court of Appeals and other courts; and to provide for the submission of said amendment to the qualified voters of the State of Maryland for adoption or rejection.

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 an amendment to Article IV of the Constitution of Maryland, title "Judiciary Department", amending Section 5 (under sub-title "Part I—General Provisions"), Section 14 (under sub-title "Part II—Court of Appeals"), and Section 21 (under sub-title "Part III—Circuit Courts"), and adding a new section, to follow Section 18 (under sub-title "Part II—Court of Appeals") and to be designated Section 18A, the same, if adopted by the legal and qualified voters of the State, as herein provided, to supersede and stand in the place and stead of Sections 5, 14 and 21 of Article IV of the Constitution of Maryland.

PART I—GENERAL.

SEC. 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. 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. At all elections of judges the names of the judges then in office, designated as such, shall be put on the ballots, and the ballots shall bear no party designation of any candidates. The names of candidates other than the judges in office shall be put on the ballots only on petition of at least fifteen hundred qualified voters, or in the case of judges of the Court of Appeals and judges in Baltimore City, five thousand such voters, and not by primary elections. Any laws regulating elections in force on November 6, 1944 are hereby repealed or amended only to the extent of any inconsistency with the provisions of this section and, as so amended, shall continue in force until further amended or repealed by law. From and after January 1, 1945, the number of judges for any of the circuits may from time to time be increased or decreased by law, but no such decrease shall become effective so as to shorten the term for which any judge shall have been elected, and the total number of judges shall never be increased above ten for the eighth circuit, shall never exceed twenty-one (including any additional judges of the Court of Appeals) for the other seven circuits in the aggregate, and shall be hereby reduced to ten for the eighth circuit. If on December 31, 1944 there is no vacancy among the eleven judges for the eighth circuit, the one last appointed shall not continue to hold office thereafter.

Part II—Court of Appeals.

Sec. 14. Until January 1, 1945 the Court of Appeals shall be composed of the judges in office on November 7, 1944. From and after January 1, 1945, the Court of Appeals shall be composed of five judges, two from the City of Baltimore and three from the remainder of the State of Maryland, and during the continuance in office of judges who were in office before January 1, 1945, not exceeding three additional judges. Three of the elected judges from circuits other than the eighth circuit in office on December 31, 1944 shall be designated by the Governor as the three judges from the counties, shall hold office for the

residue of the respective terms for which they were elected, and shall cease to be the chief judges of their respective circuits, and no successors shall be appointed or elected as judges of said circuits. Any elected judges from circuits other than the eighth circuit in office on December 31, 1944, other than the three designated by the Governor as judges of the Court of Appeals, shall be additional judges of the Court of Appeals and shall continue to be the chief judges of their respective circuits, and shall hold office for the residue of the terms for which they were elected. No successor to any such additional judge, as judge of the Court of Appeals or as judge of his circuit, shall be appointed or elected, but any such additional judge shall be eligible to appointment as one of the three judges from the counties. Any vacancy among the three judges from the counties occurring otherwise than by expiration of the term of a judge in office before January 1, 1938, shall be filled by designation by the Governor of one of the additional judges, if any, to hold office as one of the three judges from the counties for the residue of the term for which he was originally elected. Upon his appointment or designation as one of the three judges of the Court of Appeals from the counties such additional judge shall cease to be the chief judge of his circuit. The judges of the Court of Appeals shall be elected by the qualified voters of the City of Baltimore or of the remainder of the State, as the case may be. 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 be co-extensive with the limits of the State and such as now is or may hereafter be prescribed by law. It shall hold its sessions in the City of Annapolis on the second Monday in January in the year 1945, and thereafter 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. When the number of judges shall have become reduced to five, three of the judges shall constitute a quorum, and the concurrence of a majority of a quorum shall be sufficient for the decision of any cause.

SEC. 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, 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, designate any judge of any of the Circuit Courts for the counties or of the Supreme Bench of Baltimore City to sit in any case or for a specified period as a judge of the Court of Appeals in lieu of a judge of that court, 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 any other Circuit Court or of the Supreme Bench of Baltimore City. 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 21. From and after January 1, 1945, there shall be (in addition to the additional judge of the Court of Appeals, if any) two judges for the first, fourth and fifth circuits, and three judges for the second, third, sixth and seventh circuits, to be styled judges of the Circuit Court, to be elected or appointed as herein provided, the aforesaid number for any of the circuits being subject to increase or decrease by law as herein provided. The senior judge in length of service shall be the chief judge of the circuit (unless there is an additional judge of the Court of Appeals); the other judge or judges shall be associate judges. No two of said judges of the Circuit Court

shall at the time of their election or appointment, or during the term for which they may have been elected or appointed, reside in any one county other than Baltimore, Montgomery, Prince George's or (if the number of judges in the fourth circuit shall have been increased above two) Allegany County, and not more than two in any county except (if there is an additional judge of the Court of Appeals) Baltimore County. In case any candidate or candidates for judge at any election shall receive sufficient votes to cause such candidate or candidates to be declared elected, but the election of such candidate or candidates would cause more judges than herein permitted to reside in any county of the circuit, then and in that event there shall be declared elected only that candidate or those candidates residing in said county, in the order of the votes received, whose election would provide the permitted number of judges from said county, and also the candidate or candidates residing in some other county, and not similarly disqualified, who shall have the next highest number of votes in said election. If, by reason of such a condition or by reason of an equal vote for two or more candidates a sufficient number of judges duly qualified as to residence shall not be elected at any election, then it shall be the duty of the Governor to order a new election for such unfilled office or offices. The said judges shall hold such terms of the Circuit Court in each of the counties composing their respective circuits, at such times, as are now prescribed or may hereafter be prescribed by rules or regulations by the Court of Appeals or otherwise by law. One judge in each of said seven circuits shall constitute a quorum for the transaction of any business; and the said judges, or any of them, may hold special terms of their Courts, when in their discretion, the business of the several counties renders such terms necessary.

All provisions of the Constitution of Maryland and all acts of the General Assembly relating to the Court of Appeals or any other courts, and all rules heretofore adopted by the Court of Appeals, not inconsistent with the provisions of the sections amended or added by this amendment, shall remain in full force and effect unless and until amended or repealed by proper authority. All salaries now prescribed by law for associate judges of the Circuit Courts shall continue to apply to all judges (including chief judges) of the Circuit Courts who are not judges of the Court of Appeals. No member of the General Assembly at which this amendment was proposed, if otherwise

qualified, shall be ineligible for appointment or election as judge of the Court of Appeals or any other court by reason of his membership in such General Assembly. All appeals and other matters pending in the Court of Appeals on January 1, 1945 shall be proceeded with and determined by the Court as hereby constituted. In the event and to the extent of any inconsistency between the provisions of any section amended or added by this amendment and any of the other provisions of this Constitution or the provisions of any existing law, the provisions of the sections amended or added shall prevail, and such other provisions shall be repealed or abrogated to the extent of such inconsistency, except Section 35A of Article III of this Constitution; provided, however, that in the event of any inconsistency between the provisions of the sections thus amended or added and any of the other provisions of this Constitution as amended by any other amendments which may be adopted at the same time as this amendment, *i. e.,* at the election held in November, 1944, the changes made by this amendment and all such other amendments to this Constitution shall all be given effect.

SECTION 2. *And be it further enacted,* That the foregoing sections hereby proposed as an amendment to the Constitution of Maryland shall, at the election to be held in November, 1944, be submitted to the legal and qualified voters of the State 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 Article XIV of the Constitution and further proceedings had in accordance with said Article XIV.

A BILL

ENTITLED

AN ACT to propose an amendment to Article IV, title "Judiciary Department", of the Constitution of Maryland by repealing and re-enacting sub-title "Part IV—Courts of Baltimore City" thereof so as to consolidate the common law, criminal and equity courts of Baltimore City into one Court with one clerk; and to provide for the submission of said amendment to the qualified voters of this State for adoption or rejection.

SECTION 1. *Be it enacted by the General Assembly of Maryland* (three-fifths of all the members of each of the two Houses concurring), that the following amendment to Article IV, title "Judiciary Department", be and the same is hereby proposed as an amendment to the Constitution of Maryland, and if adopted by the legal and qualified voters thereof, as herein provided, it shall supersede and stand in place and stead of "Part IV—Courts of Baltimore City" of said Article IV, to wit:

PART IV—COURTS OF BALTIMORE CITY.

SECTION 27. Until January 1, 1945 there shall be in the Eighth Judicial Circuit the courts in existence on November 6, 1944, which Courts and the judges and the clerks thereof respectively shall have and exercise all the jurisdiction, powers, duties and authority they had on November 6, 1944. From and after January 1, 1945 there shall be in the Eighth Judicial Circuit one court, to be styled the Superior Court of Baltimore City.

SECTION 28. The Superior Court of Baltimore City shall have and exercise all the power, authority and jurisdiction, original and appellate, which the Supreme Bench of Baltimore City, the Superior Court of Baltimore City, the Court of Common Pleas, the Baltimore City Court, the Circuit Court of Baltimore City, the Circuit Court No. 2 of Baltimore City and the Criminal Court of Baltimore on December 31, 1944 had and exercised, or which may hereafter from time to time be prescribed by law.

SECTION 29. It shall be the duty of the judges of the Superior Court of Baltimore City, immediately after December 31, 1944, and from time to time thereafter, to provide by rules adopted *in banc* for the exercise of all the power, authority and jurisdiction vested in the Superior Court of Baltimore City, to the end that all the business of the Court and the Clerk's office may be dispatched with efficiency, expedition and the greatest possible convenience and with the least expense and delay. Such rules may provide for the holding of said Court in as many divisions or parts as may be deemed expedient and may designate the particular classes of jurisdiction to be exercised by the respective divisions or by the Court *in banc* and may provide for the trial or hearing of cases of any kind pending in said Court before such judge or judges in such manner as may best promote justice and expedition in the disposition thereof. Unless otherwise provided by law, the Court *in banc* shall hear and determine all motions for a new trial in criminal cases and all motions in arrest of judgment, or upon any matters of law, determined by any judge or judges in such cases. Said judges shall likewise provide by such rules for such changes in the method of selecting jurors and assigning jury panels and the number of names to be drawn, as may be deemed necessary or desirable to adapt the method now or hereafter prescribed by law to the changes in the Courts of Baltimore City effected by the consolidation of said Courts into the Superior Court of Baltimore City. The rules from time to time adopted by the Superior Court of Baltimore City, as herein provided, shall have the force of law until rescinded, changed or modified by the Court or otherwise by law. They shall be subject to all rules heretofore or hereafter prescribed by the Court of Appeals pursuant to this Constitution or otherwise pursuant to law.

SECTION 30. The Chief Judge of the Supreme Bench of Baltimore City and the Associate Judges in office on December 31, 1944, and their successors, shall constitute and be the Chief Judge and Associate Judges of the Superior Court of Baltimore City. The judges in office on December 31, 1944 shall hold their offices for the terms for which they were theretofore respectively elected or appointed, at the expiration of which terms their respective successors shall be elected for the term of fifteen years, or appointed, subject to the provisions of this Constitution with regard to the number, election, appointment and qualifications of judges, the termination of their terms

and their removal from office. The compensation of each of said judges shall be that which is now or may hereafter be prescribed by law, provided that the amount of such compensation shall not be diminished during the continuance of said judge in office. Authority is hereby given to the Mayor and City Council of Baltimore to pay to each of said judges such annual sum as an addition to their respective salaries as the Mayor and City Council of Baltimore shall from time to time deem right and proper; provided, that any such sum being once granted shall not be diminished during the continuance of said judges in office.

SECTION 31. A quorum of the judges of said Court, when sitting *in banc*, shall consist of such number of the judges, not less than five, as may be prescribed by the rules of said Court.

SECTION 32. There shall be a clerk of the Superior Court of Baltimore City who shall be appointed by said Court and shall hold office at the pleasure of said Court. Unless otherwise provided by law, the salary of said clerk shall be six thousand dollars a year, and he shall be entitled to no other perquisites or compensation. The said clerk shall appoint, subject to confirmation by the said Court, as many deputies or assistants under him as the Court shall deem necessary to perform, together with himself, the duties of said office, all of whom shall hold their positions at the pleasure of the Court. Until otherwise provided by the Court or by law, the clerk shall give bond in the penalty of one hundred thousand dollars which bond shall contain such conditions as may be prescribed by the Court or by law. The persons who on November 7, 1944 held the offices of clerks of the several Courts of Baltimore City shall for the remainder of the terms for which they were respectively elected be one of them, designated by the Court, the clerk of said Court, the others deputy clerks of said Court; these deputy clerks shall perform such duties as may be assigned to them by the Court and shall receive during the time that they shall act as such deputy clerks during the remainder of the terms for which they were respectively elected, the same compensation as was prior to November 7, 1944 allowed to them by law.

SECTION 33. Unless otherwise provided by law, the Clerk of the Superior Court of Baltimore City shall have all the authority with respect to the issuance of licenses and the recordation of papers required or authorized by law to be recorded, and all other duties and

powers on December 31, 1944 by law vested in or imposed upon the clerks of any and all of the several Courts consolidated into said Court.

SECTION 34. The General Assembly may provide by law, or the said Court by its rules, for requiring any causes in said Court to be tried before a judge or judges thereof without a jury, unless the litigants or some of them shall within such reasonable time or times as may be prescribed, elect to have their causes tried before a jury. And the General Assembly may change, diminish or enlarge the jurisdiction of the Superior Court of Baltimore City.

SECTION 35. When application shall be made for the removal of any civil case pending in the Superior Court of Baltimore City, such case shall forthwith be sent for trial to the Circuit Court for one of the counties, if in the opinion of the judge or judges by whom under the rules of the Superior Court of Baltimore City such application is then passed upon, the applicant cannot have a fair and impartial trial in Baltimore City; otherwise such application shall not be finally acted upon until such case has been assigned for trial to some particular judge or judges of said Superior Court of Baltimore City, and (if such case be designated for trial before a jury) until the list of names from which the jury is to be chosen shall have been furnished to the parties to the case; and thereupon, in the discretion of the judge or judges finally acting upon said application under the rules of the Court, said case may be sent for trial to the Circuit Court for one of the counties or shall be assigned for trial before some other judge or judges of said Superior Court of Baltimore City than the judge or judges to whom the same was so assigned for trial, and, if in the latter event, such case be a jury case, a new list of names from which the jury is to be chosen shall be furnished, containing none of the names which were included in the list previously furnished.

All matters pending in any of the Courts of Baltimore City on December 31, 1944 shall thereafter be proceeded with and determined by the Superior Court of Baltimore City. Whenever in any existing provision of law reference is made to the Supreme Bench of Baltimore City, the Superior Court of Baltimore City, the Court of Common Pleas, the Baltimore City Court, the Criminal Court of Baltimore, the Circuit Court of Baltimore City or the Circuit Court No. 2 of Baltimore City or to any one or more of them, the term "Superior Court of Baltimore City" shall be taken as substituted therefor with the

same force and effect as if said term had originally been inserted therein. No member of the General Assembly at which this amendment was proposed, if otherwise qualified, shall be ineligible for appointment or election as judge of the Superior Court of Baltimore City or any other court by reason of his membership in such General Assembly. In the event and to the extent of any inconsistency between the provisions of any section amended by this amendment and any of the other provisions of this Constitution, or between the provisions of this amendment and the provisions of any existing law, the provisions of this amendment shall prevail, and such other provisions shall be repealed or abrogated to the extent of such inconsistency, except Section 35A of Article III of this Constitution; provided, however, that in the event of any inconsistency between the provisions of the sections thus amended and any of the other provisions of this Constitution as amended by any other amendments which may be adopted at the same time as this amendment, *i. e.,* at the election held in November, 1944, the changes made by this amendment and all such other amendments to this Constitution shall all be given effect.

SECTION 2. *And be it further enacted,* That the foregoing sections hereby proposed as an amendment to the Constitution of Maryland shall, at the election to be held in November, 1944, be submitted to the legal and qualified voters of the State 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 Article XIV of the Constitution and further proceedings had in accordance with said Article XIV.

A BILL

ENTITLED

AN ACT to propose an amendment to Article IV of the Constitution of Maryland, title "Judiciary Department", amending Section 40 (under sub-title "Part V—Orphans' Courts") so as to abolish the Orphans' Courts and transfer their powers to the Circuit Courts for the several counties, the Circuit Court of Baltimore City and the Circuit Court No. 2 of Baltimore City, and to provide for the choice of the Register of Wills for Baltimore City; and to provide for the submission of said amendment to the qualified voters of the State of Maryland for adoption or rejection.

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 section be, and the same hereby is, proposed as an amendment to Article IV of the Constitution of Maryland, title "Judiciary Department", amending Section 40 (under sub-title "Part V—Orphans' Courts"), the same, if adopted by the legal and qualified voters of the State, as herein provided, to supersede and stand in the place and stead of Section 40 of Article IV of the Constitution of Maryland:

PART V—ORPHANS' COURTS.

SEC. 40. In November, 1946, no judges of the Orphans' Courts shall be elected, but the judges then in office shall continue in office until January 1, 1947. On January 1, 1947 the Orphans' Courts shall be abolished. Thereafter the Circuit Courts for the several counties, the Circuit Court of Baltimore City and the Circuit Court No. 2 of Baltimore City shall have all the powers (hereinafter referred to as probate powers) vested on December 31, 1946 in the Orphans' Courts, subject to such changes as may be prescribed by law, and the Registers of Wills shall have all the powers vested in them on December 31, 1946 (including powers exercisable only when the Orphans' Court is in recess), subject to changes prescribed by law; appeals from Orphans' Courts to Circuit Courts and the Superior Court of Baltimore City shall be abolished. In connection with the exercise of probate powers said Courts may at the same time make any appropriate exercise of their

powers and jurisdiction as courts of equity relating to the subject matters before them. The Court of Appeals from time to time shall make rules and regulations to regulate and revise the practice and procedure in the exercise of probate powers, which shall have the force of law until rescinded, changed or modified by the Court of Appeals or otherwise by law; unless and until changed or repealed by law, all provisions by law, in force on December 31, 1946, for trial by jury on trial of issues shall be preserved, whether in any court exercising probate powers or in a separate court of law. Pursuant to such rules or regulations or otherwise pursuant to law, any administrative or other routine powers and duties vested on December 31, 1946 in the Orphans' Courts may be delegated to the Registers of Wills. The Register of Wills for Baltimore City shall be chosen in the same manner as the clerks of the courts of law and equity for Baltimore City, but this provision shall not in any event shorten the term of office of the incumbent elected in 1942. The judges of the Circuit Courts and the Supreme Bench of Baltimore City shall receive no *per diem* or other special or additional compensation for performance of the duties now performed by the judges of the Orphans' Courts.

All provisions of the Constitution of Maryland and all other provisions of law relating to Orphans' Courts, not inconsistent with the provisions of this amendment, shall be taken as referring to the courts to which the powers of the Orphans' Courts are transferred. All matters pending in the Orphans' Courts on January 1, 1947 shall be proceeded with and determined by the courts to which the powers of the Orphans' Courts are transferred. No member of the General Assembly at which this amendment was proposed, if otherwise qualified, shall be ineligible for appointment or election as judge of any court by reason of his membership in such General Assembly. In the event and to the extent of any inconsistency between the provisions of Section 40 as amended by this amendment and any of the other provisions of this Constitution or the provisions of any existing law, the provisions of Section 40 as amended shall prevail, and such other provisions shall be repealed or abrogated to the extent of such inconsistency, except Section 35A of Article III of this Constitution; provided, however, that in the event of any inconsistency between the provisions of Section 40 as amended and any of the other provisions of this Constitution as amended by any other amendments which may be adopted at the same time as this amendment, *i. e.*, at the election held in Novem-

ber, 1944, the changes made by this amendment and all such other amendments to this Constitution shall all be given effect.

SECTION 2. *And be it further enacted,* That the foregoing sections hereby proposed as an amendment to the Constitution of Maryland shall, at the election to be held in November, 1944, be submitted to the legal and qualified voters of the State 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 Article XIV of the Constitution and further proceedings had in accordance with said Article XIV.

A BILL

ENTITLED

AN ACT to propose an amendment to Article IV, title "Judiciary Department", of the Constitution of Maryland by repealing and reenacting said entire Article; providing for a Court of Appeals of five judges, consolidation of the common law, criminal and equity courts of Baltimore City into one Court with one clerk, abolishing the Orphans' Courts and transferring their powers, making provisions concerning the number, qualifications and duties of the judges of the Court of Appeals and other courts and appointment of the Register of Wills for Baltimore City, and generally revising and amending said Article as an entirety.

SECTION 1. *Be it enacted by the General Assembly of Maryland* (three-fifths of all the members of each of the two Houses concurring), that the following amendment to Article IV, title "Judiciary Department", be and the same is hereby proposed as an amendment to the Constitution of Maryland, and if adopted by the legal and qualified voters thereof, as herein provided, it shall supersede and stand in the place and stead of "Article IV, Judiciary Department", to wit:

ARTICLE IV.

Judiciary Department.

PART I—GENERAL PROVISIONS.

SECTION 1. The judicial power of this State shall be vested in a Court of Appeals, Circuit Courts, the Superior Court of Baltimore City, People's Courts, and Justices of the Peace and until January 1, 1947 Orphans' Courts; all said Courts other than People's 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 has heretofore been practised in this State, or may hereafter be prescribed by law. In this Article the term superior courts includes all said Courts other than People's Courts and Orphans' Courts.

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 or portion of the State, as the case may be, for which or from which they may be respectively elected or appointed, but judges of the Court of Appeals who reside at the seat of government shall continue to be eligible for election or reappointment and reelection from the portion of the State from which they were originally appointed or elected. 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 in this State, and who are most distinguished for integrity, wisdom and sound legal knowledge.

SECTION 3. The judges of the said several superior courts shall be elected by the qualified voters in their respective judicial circuits or portions of the State as hereinafter provided, at the Congressional elections held on the Tuesday after the first Monday in November. As used in this Article, the term Congressional election means any biennial general election for Representatives in Congress. 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 appointed and qualified, or until he shall have attained the age of seventy years, whichever may first happen, and be reeligible 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 4. Any judge shall be removed from office by the Governor, on conviction in a court of law, of incompetency, of wilful neglect of duty, misbehavior in office or any other crime, or on impeachment, according to this Constitution, or the laws of the State; or on the address of the General Assembly, two-thirds of each House concurring in such address, and the accused having been notified of the charges against him, and having had opportunity of making his defence.

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 of a superior court, or creation of the office of any such 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. His successor shall be elected at the first Congressional election after the expiration of the term of fifteen years (if the vacancy occurred in that way) or the first Congressional 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. At all elections of judges the names of the judges then in office, designated as such, shall be put on the ballots, and the ballots shall bear no party designation of any candidates. The names of candidates other than the judges in office shall be put on the ballots only on petition of at least fifteen hundred qualified voters or, in the case of judges of the Court of Appeals and judges in Baltimore City, five thousand such voters, and not by primary elections. Any laws regulating elections in force on December 31, 1944 are hereby repealed or amended only to the extent of any inconsistency with the provisions of this section and, as so amended, shall continue in force until further amended or repealed by law.

SECTION 6. All judges shall, by virtue of their offices, be conservators of the peace throughout the State; and no fees, or perquisites, commission or reward of any kind, shall be allowed to any judge in this State, besides his annual salary, for the discharge of any judicial duty.

SECTION 7. No judge shall sit in any case wherein he may be interested, or where either of the parties may be connected with him by affinity or consanguinity within such degrees as now are or may hereafter be prescribed by law, or where he shall have been of counsel in the case.

SECTION 8. The parties to any cause may submit the same to the Court for determination, without the aid of a jury. In all suits or actions at law, issues from the Orphans' Court or from or in any court sitting in equity or exercising the jurisdiction of Orphans' Courts,

and in all cases of presentments or indictments for offenses which are or may be punishable by death, pending in any of the Circuit Courts or in the Superior Court of Baltimore City, upon suggestion in writing under oath of either of the parties to said proceedings, that such party cannot have a fair and impartial trial in the court in which the same may be pending, the said court shall order and direct the record of proceedings in such suit or action, issue, presentment or indictment, to be transmitted for trial from the Circuit Court to the Circuit Court for some other county or the Superior Court of Baltimore City, or (except as provided in Section 35 of this Article) from the Superior Court of Baltimore City to any Circuit Court; but in all other cases of presentment or indictment pending in any Circuit Court or in the Superior Court of Baltimore City, in addition to the suggestion in writing of either of the parties to such presentment or indictment that such party cannot have a fair and impartial trial in the court in which the same may be pending, it shall be necessary for the party making such suggestion to make it satisfactorily appear to the court that such suggestion is true, or that there is reasonable ground for the same; and thereupon the said court shall order and direct the record of proceedings in such presentment or indictment to be transmitted for trial from the Circuit Court to the Circuit Court for some other county or the Superior Court of Baltimore City, or from the Superior Court of Baltimore City to any Circuit Court. The court to which the record of proceedings in such suit or action, issue, presentment or indictment may be so transmitted, shall hear and determine the same in like manner as if such suit or action, issue, presentment or indictment had been originally instituted therein. The General Assembly shall make such provision by law as may be necessary to regulate and give force to the provisions of this Section.

SECTION 9. The judge or judges of any superior court may appoint such officers for their respective courts as may be found necessary. It shall be the duty of the General Assembly to prescribe by law a fixed compensation for all such officers. Said judge or judges shall from time to time investigate the expenses, costs and charges of their respective courts, with a view to a change or reduction thereof and report the result of such investigation to the Chief Judge of the Court of Appeals, who shall transmit such report, with his recommendations, to the General Assembly for its action.

SECTION 10. The clerks of the several superior courts and the Registers of Wills shall have charge and custody of the records and other papers, and shall perform all the duties, of their respective offices, as now or hereafter provided by law. The offices and business of said clerks and Registers of Wills, in all their departments, shall be subject to the visitorial power of the judges of their respective courts, who shall exercise the same, from time to time, so as to insure the faithful performance of the duties of said offices; and it shall be the duty of the judges of said courts, respectively, to make from time to time such rules and regulations as may be necessary and proper for the government of said clerks and Registers, and for the performance of the duties of their offices, which shall have the force of law until repealed or modified by the Court of Appeals or by the General Assembly.

SECTION 11. The election for judges hereinbefore provided, and all elections for clerks, Registers of Wills and other officers provided in this Constitution, except State's Attorneys, shall be certified and the returns made by the clerks of the Circuit Courts for the Counties, and the clerk of the Superior Court of Baltimore City, respectively, to the Governor, who shall issue commissions to the different persons for the offices to which they shall have been, respectively, elected; and in all such elections the person having the greatest number of votes shall be declared to be elected.

SECTION 12. If in any case of election for judges, or clerks and Registers of Wills, the opposing candidates shall have an equal number of votes, it shall be the duty of the Governor to order a new election; and in case of any contested election, the Governor shall send the returns to the House of Delegates, which shall judge of the election and qualification of the candidates at such election; and if the judgment shall be against the one who has been returned elected, or the one who has been commissioned by the Governor, the House of Delegates shall order a new election within thirty days.

SECTION 13. All public commissions and grants shall run thus: "The State of Maryland, etc." and shall be signed by the Governor, with the Seal of the State annexed; all writs and process shall run in the same style, and be tested, sealed and signed as heretofore, or as may hereafter be provided by law.

PART II—COURT OF APPEALS.

SECTION 14. The Court of Appeals shall be composed of five judges, two from the City of Baltimore and three from the remainder of the State of Maryland, and during the continuance in office of judges who were in office before January 1, 1945, not exceeding three additional judges. Three of the elected judges from circuits other than the eighth circuit in office on December 31, 1944 shall be designated by the Governor as the three judges from the counties, shall hold office for the residue of the respective terms for which they were elected, and shall cease to be the chief judges of their respective circuits, and no successors shall be appointed or elected as judges of said circuits. Any elected judges from circuits other than the eighth circuit in office on December 31, 1944, other than the three designated by the Governor as judges of the Court of Appeals, shall be additional judges of the Court of Appeals and shall continue to be the chief judges of their respective circuits, and shall hold office for the residue of the terms for which they were elected. No successor to any such additional judge, as judge of the Court of Appeals or as judge of his circuit, shall be appointed or elected, but any such additional judge shall be eligible to appointment as one of the three judges from the counties. Any vacancy among the three judges from the counties occurring otherwise than by expiration of the term of a judge in office before January 1, 1938, shall be filled by designation by the Governor of one of the additional judges, if any, to hold office as one of the three judges from the counties for the residue of the term for which he was originally elected. Upon his appointment or designation as one of the three judges of the Court of Appeals from the counties such additional judge shall cease to be the chief judge of his circuit. The judges of the Court of Appeals shall be elected by the qualified voters of the City of Baltimore or of the remainder of the State, as the case may be. 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 be co-extensive with the limits of the State and such as now is or may hereafter be prescribed by law. It shall hold its sessions in the City of Annapolis on the second Monday in January in the year 1945, and thereafter at such time or times as it shall from time to time by rule prescribe. 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.

SECTION 15. When the number of said judges shall have become reduced to five, three shall constitute a quorum and until that time four; no cause shall be decided without the concurrence of a majority of a quorum; but the judge 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; and the judgment of the court shall be final and conclusive; and all cases shall stand for hearing at the term during which the record is transmitted or the first term thereafter.

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 17. There shall be a clerk of the Court of Appeals, who shall be appointed by and shall hold his office at the pleasure of the Court of Appeals.

SECTION 18. 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 Superior Court of Baltimore City, 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, designate any judge of any of the Circuit Courts or of the Superior Court of Baltimore City to sit in any case or for a specified period as a judge of the Court of Appeals in lieu of a judge of that court, and may designate, to sit as a judge of the Circuit Court for any county or of the Superior Court 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 any other Circuit Court or of the Superior Court of Baltimore City. 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. Such rules and regulations concerning appeals shall include, among other things, the periods within which appeals may be taken, what shall constitute the record on appeal, the manner in which appeals shall be brought to hearing or determination, abolition and avoidance of unnecessary costs and expenses and, when deemed advisable, reductions in fees and expenses in the Court of Appeals. All powers 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 19. The State shall be divided into eight Judicial circuits, in manner following, viz: The Counties of Worcester, Somerset, Dorchester and Wicomico, shall constitute the first circuit; the Counties of Caroline, Talbot, Queen Anne's, Kent and Cecil, the second; the Counties of Baltimore and Harford, the third; the Counties of Allegany, Washington and Garrett, the fourth; the Counties of Carroll, Howard and Anne Arundel, the fifth; the Counties of Montgomery and Frederick, the sixth; the Counties of Prince George's, Charles, Calvert and St. Mary's, the seventh; and Baltimore City, the eighth.

SECTION 20. A court shall be held in each county of the State, to be styled the Circuit Court for the County in which it may be held. The said Circuit Courts shall have and exercise, in the respective counties, all the power, authority and jurisdiction, original and appellate, which the present Circuit Courts of this State now have and exercise, or which may hereafter be prescribed by law.

SECTION 21. There shall be (in addition to the additional judge of the Court of Appeals, if any) two judges for the first, fourth and fifth circuits, and three judges for the second, third, sixth and seventh circuits, to be styled judges of the Circuit Court, to be elected or appointed as herein provided. The number of judges for any of said seven circuits may from time to time be increased or decreased by law, but no such decrease shall become effective so as to shorten the term for which any judge shall have been elected, and the total number of

judges shall never exceed twenty-one (including any additional judges of the Court of Appeals) for the seven circuits. The senior judge in length of service shall be the chief judge of the circuit (unless there is an additional judge of the Court of Appeals); the other judge or judges shall be associate judges. No two of said judges of the Circuit Court shall at the time of their election or appointment, or during the term for which they may have been elected or appointed, reside in any one county other than Baltimore, Montgomery, Prince George's or (if the number of judges in the fourth circuit shall have been increased above two) Allegany County, and not more than two in any county except (if there is any additional judge of the Court of Appeals) Baltimore County. In case any candidate or candidates for judge at any election shall receive sufficient votes to cause such candidate or candidates to be declared elected, but the election of such candidate or candidates would cause more judges than herein permitted to reside in any county of the circuit, then and in that event there shall be declared elected only that candidate or those candidates residing in said county, in the order of the votes received, whose election would provide the permitted number of judges from said county, and also the candidate or candidates residing in some other county, and not similarly disqualified, who shall have the next highest number of votes. If, by reason of such a condition or by reason of an equal vote for two or more candidates a sufficient number of judges duly qualified as to residence shall not be elected at any election, then it shall be the duty of the Governor to order a new election for such unfilled office or offices. The said judges shall hold such terms of the Circuit Court in each of the counties composing their respective circuits, at such times, as are now prescribed or may hereafter be prescribed by rules or regulations by the Court of Appeals or otherwise by law. One judge in each of said seven circuits shall constitute a quorum for the transaction of any business; and the said judges, or any of them, may hold special terms of their Courts, whenever in their discretion the business of the several counties renders such terms necessary.

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 all the judges of the Circuit, who shall constitute a Court in *banc* for

such purposes; 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 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.

SECTION 23. The judges of the respective Circuit Courts of this State, and the Superior Court of Baltimore City, shall render their decisions in all cases argued before them, or submitted for their judgment, within two months after the same shall have been so argued or submitted.

SECTION 24. The salary of each judge of the Circuit Court who is not a 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.

SECTION 25. There shall be a clerk of the Circuit Court for each County, who shall be elected by a plurality of the qualified voters of said County, and shall hold his office for four years from the time of his election, and until his successor is elected and qualified, and be re-eligible, subject to be removed for wilful neglect of duty or other misdemeanor in office, on conviction in a court of law. In case of a vacancy in the office of clerk of a Circuit Court, the judges of said Court shall have power to fill such vacancy until the general election for Delegates to the General Assembly, to be held next thereafter, when a successor shall be elected for the term of four years.

SECTION 26. The said clerks shall appoint, subject to the confirmation of the judges of their respective Courts, as many deputies under them as the said judges shall deem necessary to perform,

together with themselves, the duties of the said office, who shall be removable by the said judges for incompetency, or neglect of duty, and whose compensation shall be according to existing or future provisions of the General Assembly.

PART IV—SUPERIOR COURT OF BALTIMORE CITY.

SECTION 27. There shall be in the Eighth Judicial Circuit one court, to be styled the Superior Court of Baltimore City.

SECTION 28. The Superior Court of Baltimore City shall have and exercise all the power, authority and jurisdiction, original and appellate, which the Supreme Bench of Baltimore City, the Superior Court of Baltimore City, the Court of Common Pleas, the Baltimore City Court, the Circuit Court of Baltimore City, the Circuit Court No. 2 of Baltimore City and the Criminal Court of Baltimore on December 31, 1944 had and exercised, or which may hereafter from time to time be prescribed by law.

SECTION 29. It shall be the duty of the judges of the Superior Court of Baltimore City, immediately after December 31, 1944, and from time to time thereafter, to provide by rules adopted in *banc* for the exercise of all the power, authority and jurisdiction vested in the Superior Court of Baltimore City, to the end that all the business of the Court and the clerk's office may be dispatched with efficiency, expedition and the greatest possible convenience and with the least expense and delay. Such rules may provide for the holding of said Court in as many divisions or parts as may be deemed expedient and may designate the particular classes of jurisdiction to be exercised by the respective divisions or by the Court in *banc* and may provide for the trial or hearing of cases of any kind pending in said Court before such judge or judges in such manner as may best promote justice and expedition in the disposition thereof. Said judges shall likewise provide by such rules for such changes in the method of selecting jurors and assigning jury panels and the number of names to be drawn, as may be deemed necessary or desirable to adapt the method now or hereafter prescribed by law to the changes in the Courts of Baltimore City effected by the consolidation of said courts into the Superior Court of Baltimore City. The rules from time to time adopted by the Superior Court of Baltimore City, as herein provided, shall have the force of law until rescinded, changed or

modified by the Court or otherwise by law. There shall be one Chief Judge and nine Associate Judges of the Superior Court of Baltimore City.

SECTION 30. The Chief Judge of the Supreme Bench of Baltimore City and not exceeding nine Associate Judges in office on December 31, 1944, shall be the Chief Judge and Associate Judges of the Superior Court of Baltimore City. If on December 31, 1944 there was no vacancy among the eleven judges of the Supreme Bench of Baltimore City, the one last appointed shall not continue to hold office thereafter. The number of judges may from time to time be decreased or increased by law to any number not exceeding ten, but no such decrease shall become effective so as to shorten the term for which any judge shall have been elected. The elected judges in office on December 31, 1944 shall hold their offices for the terms for which they were respectively elected. The compensation of each of said judges shall be that which is now or may hereafter be prescribed by law, provided that the amount of such compensation shall not be diminished during the continuance of said judge in office. Authority is hereby given to the Mayor and City Council of Baltimore to pay to each of said judges such annual sum as an addition to their respective salaries as the Mayor and City Council of Baltimore shall from time to time deem right and proper; provided, that any such sum being once granted shall not be diminished during the continuance of said judges in office.

SECTION 31. A quorum of the judges of said Court, when sitting in *banc*, shall consist of such number of the judges, not less than five, as may be prescribed by the rules of said Court.

SECTION 32. There shall be a Clerk of the Superior Court of Baltimore City who shall be appointed by said Court and shall hold office at the pleasure of said Court. Unless otherwise provided by law, the salary of said Clerk shall be six thousand dollars a year, and he shall be entitled to no other perquisites or compensation. The said clerk shall appoint, subject to confirmation by the said Court, as many deputies or assistants under him as the Court shall deem necessary to perform, together with himself, the duties of said office, all of whom shall hold their positions at the pleasure of the Court. Until otherwise provided by the Court or by law, the clerk shall give bond in the penalty of one hundred thousand dollars which

bond shall contain such conditions as may be prescribed by the Court or by law. The persons who on December 31, 1944 held the offices of clerks of the several Courts of Baltimore City shall for the remainder of the terms for which they were respectively elected be, one of them, designated by the Court, the clerk of said Court, the others deputy clerks of said Court; these deputy clerks shall perform such duties as may be assigned to them by the Court and shall receive during the time that they shall act as such deputy clerks during the remainder of the terms for which they were respectively elected, the same compensation as was prior to December 31, 1944 allowed to them by law.

SECTION 33. Unless otherwise provided by law, the clerk of the Superior Court of Baltimore City shall have all the authority with respect to the issuance of licenses and the recordation of papers required or authorized by law to be recorded, and all other duties and powers on December 31, 1944 by law vested in or imposed upon the clerks of any and all of the several Courts consolidated into said Court.

SECTION 34. The General Assembly may provide by law, or the said Court by its rules, for requiring any causes in said Court to be tried before a judge or judges thereof without a jury, unless the litigants or some of them shall within such reasonable time or times as may be prescribed, elect to have their causes tried before a jury. And the General Assembly may change, diminish or enlarge the jurisdiction of the Superior Court of Baltimore City.

SECTION 35. When application shall be made for the removal of any civil case pending in the Superior Court of Baltimore City, such case shall forthwith be sent for trial to the Circuit Court for one of the counties, if in the opinion of the judge or judges by whom under the rules of the Superior Court of Baltimore City such application is then passed upon, the applicant cannot have a fair and impartial trial in Baltimore City; otherwise such application shall not be finally acted upon until such case has been assigned for trial to some particular judge or judges of said Superior Court of Baltimore City, and (if such case be designated for trial before a jury) until the list of names from which the jury is to be chosen shall have been furnished to the parties to the case; and thereupon, in the discretion of the judge or judges finally acting upon said application

under the rules of the Court, said case may be sent for trial to the Circuit Court for one of the counties or shall be assigned for trial before some other judge or judges of said Superior Court of Baltimore City than the judge or judges to whom the same was so assigned for trial, and if, in the latter event, such case be a jury case, a new list of names from which the jury is to be chosen shall be furnished, containing none of the names which were included in the list previously furnished.

PART V—ORPHANS' COURTS.

SECTION 36. In November, 1946, no judges of the Orphans' Courts shall be elected, but the judges then in office shall continue in office until January 1, 1947. On January 1, 1947 the Orphans' Courts shall be abolished. Thereafter the Circuit Courts for the several counties and the Superior Court of Baltimore City shall have all the powers (hereinafter referred to as probate powers) vested on December 31, 1946 in the Orphans' Courts, subject to such changes as may be prescribed by law, and the Registers of Wills shall have all the powers vested in them on December 31, 1946 (including powers exercisable only when the Orphans' Court is in recess), subject to changes prescribed by law; appeals from Orphans' Courts to Circuit Courts and the Superior Court of Baltimore City shall be abolished. In connection with the exercise of probate powers said courts may at the same time make any appropriate exercise of their powers and jurisdiction as courts of equity relating to the subject matters before them. The Court of Appeals from time to time shall make rules and regulations to regulate and revise the practice and procedure in the exercise of probate powers, which shall have the force of law until rescinded, changed or modified by the Court of Appeals or otherwise by law; unless and until changed or repealed by law, all provisions by law, in force on December 31, 1946, for trial by jury on trial of issues shall be preserved, whether in any court exercising probate powers or in a separate court of law. Pursuant to such rules or regulations or otherwise pursuant to law, any administrative or other routine powers and duties vested on December 31, 1946 in the Orphans' Courts may be delegated to the Registers of Wills. The judges of the Circuit Courts and the Superior Court of Baltimore City shall receive no *per diem* or other special or additional compensation for performance of the duties now performed by the judges of the Orphans' Courts.

SECTION 37. There shall be a Register of Wills in each county of the State, and the City of Baltimore, to be elected in each county by the legal and qualified voters of said counties respectively, who shall hold his office for four years from the time of his election, and until his successor is elected and qualified; he shall be re-eligible, and subject at all times to removal for wilful neglect of duty or misdemeanor in office in the same manner that the Clerks of Courts are removable. In the City of Baltimore the Register of Wills shall be appointed by the Superior Court of Baltimore City and shall hold office at the pleasure of said Court, but the term of office of the incumbent elected in 1942 shall not be shortened. In the event of any vacancy in the office of the Register of Wills in any county, said vacancy shall be filled by the judges of the Circuit Court for the county in which such vacancy occurs, until the next general election for Delegates to the General Assembly, when a Register shall be elected to serve for four years thereafter.

PART VI—PEOPLE'S COURTS.

SECTION 38. There shall be a People's Court of Baltimore City. Said Court shall consist of a chief judge and two associate judges; the number of such judges may be increased or decreased by law but no such decrease shall affect the term of any judge then in office or his right to stand for election for further terms as hereinafter provided. The judges of said Court shall have practised law in the City of Baltimore for a total period of at least five years; shall hold office subject to the provisions of Section 3 of this Article with regard to retirement; and shall receive from the Mayor and City Council of Baltimore City such compensation as shall be fixed by law by the General Assembly, which shall not be diminished during continuance in office.

The Governor appointed to said Court one associate judge for a term which expired December 31, 1942, one associate judge for a term which expired December 31, 1944, and a chief judge for a term expiring December 31, 1946; and, upon the creation of any additional office on said Court by increase in the number of judges pursuant to this Section, shall appoint an associate judge for such term, not exceeding eight years and expiring on the thirty-first day of December immediately following a Congressional election, as the law creating such office shall prescribe. If any vacancy occurs during any such original term,

the Governor shall appoint a successor to serve for the remainder of such term. After the expiration of said original terms, the terms of office of said judges shall be for eight years from the expiration of the preceding term, and shall be filled as follows:

(1) Any incumbent judge of said Court shall be eligible, at the Congressional election immediately preceding the expiration of his period of appointment or term, for election or re-election to succeed himself (a) for a full term of eight years, except as provided in (b) hereof; or (b) for the unexpired remainder of the current eight year term, if his appointment will expire before the end of such term. No person other than an incumbent judge shall be eligible for election to said Court.

(2) Whenever a vacancy shall occur on said Court from any cause the Governor shall appoint to said Court a judge who shall hold office under such appointment until the thirty-first day of December immediately following the first Congressional election occurring six months or more after the date of his appointment. No judge of said Court, who has stood for election to succeed himself and not been elected, shall thereafter be appointed to said Court, and no judge of said Court, who has failed to stand for election when eligible, shall be appointed to succeed himself.

(3) In order to qualify for election or re-election an incumbent judge shall file with the Supervisors of Elections of Baltimore City not later than thirty days before the date of the applicable election a certificate signed and duly acknowledged, stating the basis of eligibility and the term or remainder of term for which he is eligible for election. Thereupon, the name of such judge, together with a statement of the term or remainder of term for which he is eligible, shall be placed upon the ballot to be used in said City in such election, with no party designation whatever and with no opposing candidate, with space provided to permit any voter to cast his vote for or against the continuance in office of such judge; if the votes cast for the continuance in office of such judge represent a majority of all the votes cast for or against his continuance in office, such judge shall hold office for the unexpired remainder of the term or for the full term of eight years, as the case may be.

Unless his office shall have been abolished pursuant to this Section, each judge of said Court shall continue to hold office after the expira-

tion of his period of appointment or term until a successor shall qualify.

Said Court shall have such jurisdiction (which may be made exclusive as to any class or classes of civil cases in Baltimore City), with such right of appeal therefrom, and the chief judge and associate judges thereof shall have such powers and duties, as the General Assembly shall prescribe from time to time by law. The judges of said Court shall have full power to regulate by rules the administration, procedure and practice of said Court; such rules shall have the force of law until rescinded or modified by said judges or the General Assembly. Unless otherwise provided by law, (1) all powers granted by this Section or by law to said Court or the judges thereof as a body may be exercised by a majority of the judges thereof, and (2) said Court shall not be a court of record.

There shall be a Chief Constable of said Court, who shall perform therein the duties prescribed for clerks of court by Section 10 of this Article and such other duties as shall be prescribed by law or by rule of said Court. Such Chief Constable shall be appointed in the manner hereinafter prescribed, by the judges of said Court; and such Chief Constable shall appoint, in the manner hereinafter prescribed, all original, subsequent and additional constables and clerks employed pursuant to this Section, and shall supervise and direct the work of all such constables and clerks. There were appointed originally fourteen such constables and sixteen such clerks; the number of either may, on the joint recommendation of said Court and said Chief Constable, be increased by the Mayor and City Council of Baltimore City; no vacancy in the position of any constable or clerk, however arising, shall be filled by said Chief Constable unless the judges of said Court and the said Chief Constable shall expressly find that the filling of such vacancy is necessary for the efficient operation of said Court. The positions of said Chief Constable and all such constables and clerks shall be positions in the Classified City Service of Baltimore and the provisions of the charter of said City with respect to said City Service are hereby expressly made applicable thereto, provided that the Chief Constable at the time this provision first became effective is hereby made a member of said Classified City Service of Baltimore; all such positions shall be classified by the City Service Commission and all appointments, promotions, transfers, re-

instatements, and removals with respect to such positions shall be made only in accordance with the provisions, rules and regulations of said Classified City Service in force from time to time. Such Chief Constable and all of such other constables and all such clerks shall receive from the Mayor and City Council of Baltimore City such compensation as said Mayor and City Council shall prescribe. Such constables and clerks shall perform such duties as may now or hereafter be prescribed by law or rule of Court.

SECTION 39. The General Assembly shall have power by law to establish a People's Court in any county or any part thereof, incorporated city or town in this State, except Baltimore City, and to prescribe and from time to time to alter (1) the number, qualifications, tenure, and method of selection of the judges of any such court, and their powers, duties and compensation, except that the term of office or compensation of any judge shall not be reduced during his continuance in office; (2) the jurisdiction of any such court (which may be made exclusive as to any class or classes of civil cases in such county, or any part thereof, city or town) and the right of appeal therefrom; (3) the number, qualifications, tenure, method of selection, duties, and compensation of all constables, clerks or other employees for such court; and (4) all other matters relating to such court.

PART VII—JUSTICES OF THE PEACE.

SECTION 40. The Governor, by and with the advice and consent of the Senate, may appoint not exceeding such number of justices of the peace, for the several counties or election districts thereof and the City of Baltimore or wards thereof, and the County Commissioners of the several counties may appoint not exceeding such number of constables, for the several counties or election districts thereof, as are now or may hereafter be prescribed by law; and justices of the peace and constables so appointed shall be subject to removal by the judge or judges of the superior court for the county or city, for incompetency, wilful neglect of duty, or misdemeanor in office, on conviction in said Court. The justices of the peace and constables so appointed and commissioned shall be conservators of the peace; shall hold their office for two years, and shall have such jurisdiction, duties and compensation, subject to such right of appeal in all cases from the judgment of justices of the peace, as has been heretofore exercised, or shall be hereafter prescribed by law.

SECTION 41. In the event of a vacancy in the office of a justice of the peace, the Governor may appoint a person to serve as justice of the peace for the residue of the term; and in case of a vacancy in the office of constable, the County Commissioners of the county in which the vacancy occurs may appoint a person to serve as constable for the residue of the term.

PART VIII—SHERIFFS.

SECTION 42. There shall be elected in each county, and in the City of Baltimore, in every fourth year, one person, resident in said County or City, above the age of twenty-five years, and at least five years preceding his election, a citizen of this State, to the office of sheriff. He shall hold his office for four years, and until his successor is duly elected and qualified. In the counties, but not in the City of Baltimore, he shall be ineligible for four years thereafter. He shall give such bond, exercise such powers, and perform such duties as now are or may hereafter be fixed by law. In case of a vacancy by death, resignation, refusal to serve, or neglect to qualify, or give bond, or by disqualification, or removal from the County or City, the Governor shall appoint a person to be Sheriff for the remainder of the official term. The sheriff for the City of Baltimore shall receive such salary, not exceeding six thousand dollars per annum and such expenses necessary to the conduct of his office, as may be fixed by law, to be paid in such manner and at such times as may be prescribed by law.

This amendment shall take effect on January 1, 1945 and shall repeal any other amendments to Article IV which may be adopted at the same time as this amendment, *i. e.*, at the election held in November, 1944, and take effect before January 1, 1945. All acts of the General Assembly, and all rules heretofore adopted by the Court of Appeals, not inconsistent with the provisions of this amendment, shall remain in full force and effect unless and until amended or repealed. Whenever in any existing provision of law reference is made to the Supreme Bench of Baltimore City, the Superior Court of Baltimore City, the Court of Common Pleas, the Baltimore City Court, the Criminal Court of Baltimore, the Circuit Court of Baltimore City or the Circuit Court No. 2 of Baltimore City or to any one or more of them, the term "Superior Court of Baltimore City" shall be taken

as substituted therefor with the same force and effect as if said term had originally been inserted therein. All provisions of law relating to Orphans' Courts, not inconsistent with the provision of this amendment, shall be taken as referring to the courts to which the powers of the Orphans' Courts are transferred. No member of the General Assembly at which this amendment was proposed, if otherwise qualified, shall be ineligible for appointment or election as judge of the Court of Appeals or any other court by reason of his membership in such General Assembly. All appeals and other matters pending in the Court of Appeals on December 31, 1944 shall thereafter be proceeded with and determined by the Court as hereby constituted; all matters then pending in any of the Courts of Baltimore City shall thereafter be proceeded with and determined by the Superior Court of Baltimore City. All matters pending in the Orphans' Courts on January 1, 1947 shall be proceeded with and determined by the courts to which the powers of the Orphans' Courts are transferred. In the event and to the extent of any inconsistency between the provisions of this amendment and the provisions of any existing law, the provisions of this amendment shall prevail, and such provisions of law shall be repealed or abrogated to the extent of such inconsistency.

SECTION 2. *And be it further enacted,* That the foregoing sections hereby proposed as an amendment to the Constitution of Maryland shall, at the election to be held in November, 1944, be submitted to the legal and qualified voters of the State 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 Article XIV of the Constitution and further proceedings had in accordance with said Article XIV.

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A SURVEY OF THE MOVEMENT TO REORGANIZE MARYLAND'S JUDICIAL SYSTEM, THE REPORT OF THE BOND COMMISSION, AND THREE BILLS PENDING IN THE GENERAL ASSEMBLY

By

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A Survey Of The Movement To Reorganize Maryland's Judicial System, The Report Of The Bond Commission, And Three Bills Pending In The General Assembly

By SAMUEL K. DENNIS

THE SUBJECTS TREATED ARE OF SUPREME IMPORTANCE TO ALL CITIZENS OF MARYLAND.

OBJECTIVES

The report of the Bond Commission, which finds expression in Senate Bill 213 and House Bills 243 and 244, proposes constitutional amendments to provide that:

The Court of Appeals shall be composed of *five* judges, two from Baltimore and three from the counties, who shall do no nisi prius work, instead of a court of eight, as now; one from Baltimore and seven from the counties, being the Chief Judges of the seven county circuits, the latter doing both appellate and nisi prius work.

That the equity, criminal and common law courts of the Supreme Bench be consolidated into one court under a new name, viz., The Superior Court of Baltimore City.

That the Clerks of the courts and Registers of Wills in the counties continue as now, elective, constitutional officers; whereas the Clerks of the courts and Register of Wills in Baltimore City be abolished as elective constitutional officers; that there be but one Clerk of the Court who, like the Register of Wills, shall be appointed by the new Court.

That the office of the seven Chief Judges of the county circuits be abolished so soon as the present incumbents die, resign, face 70 or expired terms, and that the Supreme Bench of Baltimore be reduced from a membership of 11 to 10.

That the 72 judges of the 24 Orphans' Courts be abolished when their present terms expire, and that all probate work, which is heavy, requires daily sessions of the Orphans' Court, be taken over by the depleted Supreme Bench of Baltimore; and the probate work in the counties be taken over by the depleted Circuit Courts of the counties.

That Baltimore City shall *never* have more than ten judges, regardless of changed conditions.

That the counties shall *never* have more than 21 judges, regardless of their necessities.

The machinery for eliminating the Chief Judgeships now held by Judge Johnson, Judge Collins, Judge Grason, Judge Melvin, Judge Marbury, Judge Delaplaine and Judge Sloan is exceedingly complicated, and the difficulty of interpreting it accurately offers too many risks of error to be attempted.

It is a monumental educational job to make the voters understand the vast, complicated scheme.

BACKGROUND

Doubtless the sole object of proponents and opponents of this proposed plan is to secure the best possible judiciary, to make the way to the Bench and work on the Bench attractive to the ablest and most independent lawyers at the Bar now and hereafter. One side feels that the Bench will be strengthened; the other, of whom I am one, feels certain the plans proposed will inevitably weaken the Bench, destroy its independence and quality.

Maryland has had several judicial systems.

Under the Constitution of 1776, the Court of Appeals consisted of five judges elected by the Legislature, until changed by amendment, and thereafter they were appointed by the Governor from sections of the State. They did no nisi prius work.

From 1806 to 1851, the Court consisted of six judges, each from a "judicial district," appointed by the Governor.

The Constitution of 1851 set up a court of four judges, one each *eleeted* from four judicial divisions, who exercised appellate jurisdiction only.

The Constitution of 1864 created a court of five judges, one *elected* from each of the five judicial districts of the State.

The Constitution of 1867 set up the Court of Appeals and Circuit Courts as they are today.

On January 11th, 1941, the present movement to reorganize the Court of Appeals—and that Court only—was begun publicly at the meeting of the State Bar Association. The plan put to the Bar was to have a Court of Appeals of *five* judges (all new men), two from Baltimore, and one each from three "Districts," all to be elected by voters from ther respective sections. No judges or courts were to be abolished or consolidated.

A committee headed by Mr. Frederick W. C. Webb was appointed to consider the subject, and prepare the necessary bills. The above plan was in part repudiated by the Webb Committee. It recommended a Court of *six* judges —five of them new blood—two from Baltimore and one each from four "Appellate Judicial Circuits." They were to do no nisi prius work, were to be nominated and elected by the voters of their respective sections. The seven Chief Judges of the county circuits were to be retained, but to be relieved of work upon the Court of Appeals. The Webb Committee prepared House Bills Nos. 347 and 348, session of 1941, to carry out its ideals. Those bills failed, though they were much less hurtful to the judiciary than the instant proposal expressed in S. B. 213.

Now we have the third plan emanating from the same sources, in the main, looking to the reorganization of the Court of Appeals, embodied in Senate Bill 213. That proposes a Court of Appeals of five members as heretofore stated.

Each of the above plans in its day was urged as the end product of mature thought. All can not be the best; and to inquire if any is sound is a legitimate right of citizens.

The Bond Report, we were told by Mr. Webb at the last January meeting of the Bar Association, did not meet with the unanimous approval of the Commission members. In fact, he said, no feature met with unanimous approval, and some features were adopted by a narrow margin. Judge F. Neal Parke, a member of the commission, filed a dissenting report. So, serious internal fissures can be detected under the surface of the report which bears marks of internal strain and schism.

The late beloved and revered Judge Bond himself gave no public expression at least which is recalled of any dissatisfaction with the Court of Appeals, or of any Maryland court, until January 11, 1941, when he had then served as a member of the Supreme Bench 13 years, and of the Court of Appeals for 17 years. He stated at the Bar Association meeting of January 11, 1941, that he was heartily in accord with the general outline of the plan there proposed, a plan never accepted as proposed even by Mr. Webb's committee. On the contrary, Judge Bond in his book on the Court of Appeals (p. 195) said:

> "It is commonly assumed by thoughtful men that under a system of choosing judges by popular election there must be a falling off in quality of those chosen, and consequently in respect for the courts and the law which the judges administer, but whatever variation in ability there may have been, there seems to have been in general no perceptible change in the character of the men chosen for the Court of Appeals since the inauguration of the system of election in this State."

No witnesses were invited to appear before the Bond Commission; and none of the people most intimately affected, and in some instances best equipped to aid the Commission, were heard.

Inasmuch as violent changes are proposed it is reasonable to expect those urging such changes to supply sound reasons therefor.

THE EFFECT OF SENATE BILL 213 UPON THE COURT OF APPEALS AND OTHER COURTS

S. B. 213 proposes that the Court of Appeals be composed of *five* judges, two of them from Baltimore and *three from the counties of the State at large.* But the Court is not to be manned at once

by a new stock of men (except one), as the original plan sprung on the Bar Association, and as the proposed (and defeated) constitutional amendment of 1941, contemplated, but by four of the eight judges now sitting plus one additional Baltimore City man. The Body is to be sweated down from eight plus an additional judge from Baltimore to five and three of the present chief judges selected ad interim to sit on the Court of Appeals until succeeded by new men as death, or age, overtake the present seven county judges, leaving five men, all new stock, to be the Court of Appeals judges.

A Straddle

The scheme is a frank straddle, and it adopts State-wide or semi-State-wide and appointive provisions as its foundation which were long ago tried and discarded by our ancestors. A geographical distribution of judges has been the mode here for 135 years, is followed in Federal and State jurisdictions. The defeated proposal of 1941 embraced that idea. Now it is to be abandoned in the face of universal precedent and experience in America, for no assigned reason.

In the abstract, it would make no difference in what part of the State a judge of the Court of Appeals lives. Practically, it makes a distinct difference. There are concrete ends to be served by the courts. Practical experience is needed to make many statutes understandable. A working knowledge, first hand, of economic, social and other sectional conditions throughout the State is needed by a balanced Court; hence, a geographical distribution of the appellate court judges is desirable; a truth everywhere admitted except by the Bond Commission.

The proposed plan adheres in the whole to no existing system. It does not embrace the geographical location of judges, a system followed since the judges of the first Court of Appeals, paid $533.33 per year and sat only at long intervals, were elected by the Legislature from the State at large. Even when under no pressure, they were distributed. In 1805 the Constitution was amended to make distribution sure and systematic; judicial districts were set up; a judge should be *appointed* from each district. In 1851 the judges were elected by the voters of each section or district from their respective districts.

Nor does the commission's plan adopt in the whole the abstract principle that it is a matter of indifference where judges live. It divides the State into two judicial divisions; the City, the counties. It confines two judges to Baltimore, a recognition of the universal system in part; and as to the counties it destroys all lines, a return to the 1776 plan in part. So late as the Legislature of 1941, the proponents of the plan thought it best to follow the traditional, historic plan of electing judges from sections by the voters of the candidates' residential sections. No reason has been assigned for repudiating a plan reaffirmed less than two years ago.

Voters' Influence Curtailed

Many respectable authorities hold that the people are competent to select their judges. The Bond Commission holds otherwise. In its report, page 7, it says "But the voters of the State can not reasonably be expected to initiate a choice of such men (judges) from the bar because they lack the expert knowledge to enable them to judge of their qualifications. The Governor of the State seems to be the proper representative for that purpose."

In furtherance of that theory, Senate Bill 213 proposes that the Governor in the first instance shall appoint *all* judges, who shall be assured of at least one year's service before facing the election for a full 15-year term. The Constitution does not empower the Governor, as was the case under the Constitution of 1776 as amended, to appoint for the full term. Again the plan leans, and to an extent projects, a plan tried for 75 years and abandoned, (viz., that the Governor appoint), as was the plan for judges of the Court of Appeals to be chosen with little regard to geographical lines, which it would now resurrect.

The Bond Report does not quite solicit the full appointive power for the Governor. It does attempt to promote indirectly but in substance the like result by putting what was designed to be a backbreaking handicap upon candidates competing with the Governor's 1-2 year probationary appointee.

That is a lot of power unchecked to give any Governor; too much! It must tend to destroy the salutary constitutional distinction between the Execu-

tive and Judicial branches if judges are made dependent upon the uncontrolled Executive power. Not even the President has such power; for his judicial appointees must be confirmed by the Senate. At that his appointments arouse discontent. Even Justices of the Peace must be confirmed by the Maryland Senate. Why trust the Senate in the small and deny it power in the large?

Some substantial reason, rather than the bare assertion that *all* Governors are best qualified to make a selection ought to be forthcoming before turning the making of the Bench over to the Executive for perhaps a century to come, the actual if not the completely expressed hope of the Commission, as the Report necessarily implies.

Governors are not always lawyers; they are uniformly the beneficiaries of political organization, and deny their creator if they forsake political considerations. In many years there is no instance of any Governor appointing any judge save for reasons which in some part are politically flavored. And there is no good reason to the contrary, provided the political consideration is not pressed to thwart the selection of a competent man. Almost without exception (two to my knowledge) Governors have found in their own party ranks "good" judges. And Governors, like Presidents, have made many splendid appointments even if not politically denatured; and some bad ones. But the question whether the Governors' appointees from the Bar when made under the check of success at the judicial election, or the People's selections are the better, so far as can be seen, admits of no solution (the Bond Report to the contrary), as the following tends to show:

In recent years the following appointees have been defeated at the ensuing elections:

Governors' Choice.	Vs.	People's Choice.
Daniel R. Randall	by	Frederick Stone.
George M. Russem	by	James Alfred Pearce.
James A. C. Bond	by	I. Thomas Jones.
John S. Rogers	by	Wm. H. Thomas.
Glenn H. Worthington	by	Hammond Urner.
W. Laird Henry	by	John R. Pattison.
W. C. Walsh	by	D. Lindley Sloan.

The Most Deadly Danger Of Many

But a worse fate impends. It may be the handicaps placed on the contenders at the election against the Governors' probationary appointees are ineffective in fact; defeat the very purpose for which intended.

It is now necessary from time to time for Governors to make ad interim appointments. While an appointment gives the appointee "an edge" on the nomination, or did heretofore, from the Governor's party, it has disadvantages. A judge on probation is always suspect, sometimes is an electioneering judge. One party or the other in every case tried is disappointed and cherishes a smoldering or open grudge against the judge. An efficient judge makes enemies. On the other hand if a judge is a "Mr. Facing Both Ways" who straddles, decides as infrequently as he can, is a joiner, he acquires a pseudo popularity, and no respect. No judge within a year or two of service can make any deep or helpful impression upon the enfranchised masses, though those of long service often do. An appointed judge can not be a party nominee, *much less a two party nominee*, if the commission's ideas are written in the constitution. It is not contemplated that he campaign or have any organized connections. How can such an underprivileged candidate win?

We may not like it, but what makes our system of government go is the party system; which is true of every free government. The party is a continuing responsible entity; and is morally bound to sponsor and elect its candidates, including judges. In the final analysis, as a rule, judicial candidates must rely heavily upon party organizations, not so wholly as other elective officers it is true. Save for five Judges, including Judge Delaplaine, Judge Lawrence, Judge McLanahan and Judge Sayler, no instance is recalled at the moment of a sitting judge who is affiliated with the minority party of his section. And they were elected under extraordinary circumstances; *a bipartisan and not a non-partisan effort;* the two Baltimore judges with the aid of an enormously energetic bipartisan fight on the part of the Bar and the press.

In the last November election, Judges Solter, O'Dunne and Ulman, in addition to other potent elements tending to their

success, entered the Democratic primaries, and were their party nominees, and got the support of the party. Two were also Republican party nominees.

Judge Delaplaine and his running mate, candidate for Associate Judge, like Judge Lawrence, were duly nominated by the Republican party and supported by a share, it is understood, of the Democratic organization.

It is to be recalled that the amendment proposed in 1941 and accompanying bill to amend the primary election law recognized the need and propriety of nominations by political parties. Why be so impractical now and abandon a tried method?

It Is The Governor's Appointee Who Is Handicapped

It is proposed to put the Governors' fledgling in the election fight, county-State-wide, or city wide, with the status of a political orphan, with no party designation, with no party nomination, with no standing organized body of friends, with his own impromptu organization built up of those who are interested, and they are relatively few, in getting a stranger, one or two years cloistered on the Bench, elected. The Executive appointee, cut off from campaigning, if the amenities are observed, may be opposed by candidates, any number of them, drawn from the ranks of Communists, Bundists, etc., and larger, more potent and respected groups, who get nominated by petition, 5,000 names State-wide or in Baltimore; 1,500 in the county circuits. "Favorite Sons" will spring up from counties. Such nominating petitions, like referendum petitions, are almost invariably swindle sheets. As was shown in the Blumberg case and the O'Diehl vs. Jones case, they are saturated with fraud and perjury, which succeeds unless a court of equity intervenes by suit filed by or on behalf of the defrauded candidate. Names are secured by volunteers and professional solicitors at the cost of a few pennies each.

What an agonizing thing to perpetuate such a miserable device in our Constitution!

Capable Men Won't Run

One wonders if any of the members of the Commission would ever seek or accept a judicial appointment under such humiliating, irritating and uncertain conditions, when they are likely to be devoured by political ants on election day.

One wonders if a Governor appoints a man, however unfit, if any self-respecting lawyer will oppose him, when to do so means the use of the petition method and a State-wide campaign; the sole issue, one not of principles or policy, but of personal quality. That can but lead to a vastly expensive, mud-slinging, personal vote-soliciting campaign. Yet oddly enough that is the method proposed to weed out weak men in judicial contests.

If only the judicial candidates can contend in their sections, where the people know them first-hand, it may be the good men will not be opposed, or if opposed will win with less exertion and expense.

An Opportunity For Quacks

It is indeed amazing if any such prospect will attract men of the best minds, the best character, at the Bar, though it furnishes an irresistible prospect for the unfit. Get nominated for election to the nisi prius court for $75—1,500 names—or to the Court of Appeals at a cost of $250 for 5,000 names! To some the advertising feature—putting their names before the public—without further success is worth that. Somewhere in some corner of the State or City, irrepressibles will bob up and try it; making surreptitious or informal dickers with political organizations, trade and fraternal organizations, which the Governor's appointee, it is assumed, will not do.

There can be no doubt that the most sure and expedient method available (though not perfect) of getting the best and most independent minded men on the Bench is by resort to the nominating system by parties, or by party endorsement, with the franchise limited to the district or section wherein the candidate lives. Selfish strangers will oppose him where neighbors will not, especially if he has a ready-made organization behind him. Nor are men thus elected subservient to political influence.

THE COURT IS A BETTER COURT FOR NISI PRIUS EXPERIENCE

The constitutional amendment proposed in 1941 was defeated because the demotion of Chief Circuit Judges, and

the relegation of whole sections to relative judicial oblivion was resented; and because it was felt the Court of Appeals was a better court for the work at nisi prius. Judge Parke (a member of the commission), wholly competent after 15 years of service on the Court of Appeals, fully argued those considerations at the Atlantic City Bar Association meeting, and in his minority reports. The subjects treated were discussed deliberately in the Constitutional Convention of 1867 by exceptionally competent men, then they acted in the light of their personal experience and knowledge of the disadvantage attending a Court removed from primary contact with men and affairs. The Circuit Court of Appeals judges in the U. S. Courts are available for both nisi prius and appellate duties; an organization which is generally approved.

JUDICIAL MATERIAL IS AVAILABLE

It is to be remembered that the Bar and Bench are being recruited by younger men who are better educated than ever before, who as a rule are able, diligent and clean. The pessimistic view lately expressed that the Bench and the Bar are becoming decadent, hence needs reorganizing is wholly unfounded.

THE CONSOLIDATION OF BALTIMORE COURTS

As to the Supreme Bench of Baltimore; some inconvenience will be avoided by a consolidation, not much; some will result, not much. All in all, the subject of inconvenience and cost saved, if any, is trivial. So much work has to be done, and it requires so many clerks to do it. There is no surplus manpower employed. The Comptroller has the duty of regulating that; and the Clerks manifest little inclination to put on superfluous meu. In fact, the Circuit Courts are decidedly undermanned, and lag in their recording work. The clerks are efficient, the records are well kept. The Supreme Bench could make no appreciable improvement. Capable men, such as Peter Stevens, and many now employed, stay on undisturbed, have worked in the Court House their lifetimes.

The Supreme Bench finds the appointments it now makes something of a trial. To hear and decide cases thoughtfully and impartially and to do administrative work (or worse, patronage dispensing directly or indirectly), are regarded by many minds as wholly incompatible duties. There are 233 men working in the Clerks' offices and the Register of Wills' office. Given the task of appointing and controlling them, even through a Chief Clerk and a Register of Wills, it will be a struggle to keep the Bench out of political muddles. Until now political considerations stop with the Supreme Bench at the judicial frontier.

Nor could the Bench save money. The majority of the elected Clerks work at desks, and all supervise their offices closely. With a single Clerk, assistants would be required for the supervisory work the elected Clerks do now, and for moderate salaries. The Bond plan *requires the Bench to keep all present Clerks, paying one more than he gets now.*

Nor can a consolidation save the public steps. No central repository for records exists, or is architecturally possible. Records must be stored, as now, from basement to roof in every available cubby hole in a grossly overcrowded building.

I advocated the transfer of Juvenile Court work to the Supreme Bench as preferable to the Juvenile Court Constitutional Amendment, fortunately defeated, in a paper published February 19th, 1942. However, it is not wise to put Juvenile Court work *and* probate work on the Supreme Bench, then cut one off the present number. About half the members of the Supreme Bench expressed agreement with that view orally or in letters to the City Bar Association.

It is true the Judges of the Supreme Bench are not pressed by their duties. I have long urged some reduction of personnel. On the other hand, in 1928 the Courts were two years behind, due to a resurgence of business following the first World War, and the illness of one or more judges. With eleven men in good health it took over five years and imposed punishment on the Bar to catch up. The Judges put 20 to 25 cases in a day for trial in each law Court, sat until late, to the fatigue of jurors, Court officials, deputy sheriffs and to the great hardship of trial lawyers who could not

make ready for the next day's work. That exceedingly deplorable situation should not be allowed to recur. Business dropped off during the depression, is at a low ebb now due to the preoccupation incident to the war effort. In all human probability, with the coming of peace will come an enormous flood of litigation. A rash drastic reduction is to be deplored.

It takes about five judges to run the two equity Courts and the two Criminal Courts—those four Courts are always full—and occasionally three, even four, Criminal Courts for periods, are necessary. If two judges are used for new juvenile and probate work, and one is dropped, after providing the equity and Criminal Courts, three judges only are left to run the Superior Courts, the City Courts, non-jury cases, appeals, and the Court of Common Pleas. Three men, even if in vigorous health and working to excessively late hours can not manage that much work. Nor is there left any margin of safety against illness of the judges. The Supreme Bench proposals are, speaking mildly, unfortunate, impracticable.

THE ORPHANS' COURT

As to the Orphans' Courts, like consolidation, their abolishment offers an attractive, plausible theory. It is by no means an expensive Court for judicial salaries, especially in the counties. A deep-seated conviction can not be resisted that it will be bad for the Supreme Bench to have to take over the personnel and with it, some of the politico-patronage problems of the Register of Wills of Baltimore City.

The Orphans' Court is an informal, hospitable Court where women and minors may present their business without lawyers or pleadings. The Court is confined in the main to but one article of the Code, Art. 93. It needs no wide knowledge of law. It needs applied common sense. The record of the Orphans' Courts on appeals is gratifyingly fine. Its approachability and convenience are potent reasons for continuing its existence.

ONE COMFORT

Fortunately, the present Bills indicate the Commission has receded from its former plan to give all the voters of the State the right to vote for all the candidates for election to the Court of Appeals. The Baltimoreans will not have to canvass the City *and* twenty-three counties; the county men will not have to canvass for votes in Baltimore. It is unfortunate that the county men are left to campaign from Chincoteague Bay to the extreme end of Garrett County, from Pennsylvania to Point Lookout.

WHY A REVERSAL OF POLICY?

Senate Bill 213 marks a curious and sudden reversal of policy. Within the last few years the General Assembly has proposed and the people adopted constitutional amendments to enlarge by oue each the number of Associate Judges in the Second, Third, Sixth and Seventh Judicial Circuits. Thirty-seven men now sit upon the Court of Appeals and the Courts of Baltimore and the counties. Two years ago the plan proposed by the Webb Committee —put to the General Assembly—was to create five new judgeships. If that had carried, we would today have 42 judges sitting.

The instant plan is to cut the membership of the appeals and nisi prius Courts to a total of 33. No reason is assigned for the switch.

THE REDUCTION OF JUDGES IS TOO DRASTIC

The bill provides that there shall *never* be more than 21 judges, including 3 judges of the Court of Appeals, from the counties. That leaves 18 nisi prius judges to serve all the needs of 23 counties, including all probate work now disposed of by 69 Orphans' Court judges. It must hurry and harass the 18 judges to run from county to county over an area of 9,800 square miles of land, from Court to Court, to hear criminal, equity, common law, and probate causes. It must oppress the million people living in the counties, including the lawyers, to be required to travel long distances to get the ear of a judge; and it must be especially burdensome for the classes of people ordinarily having probate business.

Judges get sick. The newspapers on February 12th called attention to the First Circuit of four counties and three judges. Two judges are ill. The remaining judge lives 40 to 50 miles from two county towns in the circuit,

and in spite of his best efforts the inconvenience suffered is not small.

One feature of the Bond plan would help there; the assignment of judges to other circuits. With the numbers cut to the quick there will be no unengaged judge elsewhere. The First Circuit's experience points a moral.

The bills (S. B. 213 and H. B. 243 and 244), if incorporated in the Constitution, must result in loss of talent on the Bench, loss of utility and tone, loss of efficiency, and a rising of the scum to the top. Why jump from the frying pan into the fire—if we are in the frying pan?

AN EASY ECONOMICAL REMEDY

If the Judges of the Court of Appeals are overworked, do not have sufficient time to ponder opinions, the remedy is easy. It would seem that the bills introduced by Senator Cronin (S. B. 216, 217 and 218) must quiet all reasonable and sound criticisms, by taking one man off the Supreme Bench (saving in the salaries of that judge and his staff of $18,600) and adding one judge to the Court of Apepals from Baltimore, at a cost of $11,800. That makes a Court of nine, and retains all the desired features of the present system at a net saving of $6,800.

Furthermore, S. B. 217 relieves the seven Chief Judges of Circuit Court work when in their judgment it interferes with their Court of Appeals duty.

The Bond Report tells us that the Court of Appeals in the last year decided 118 cases. If opinions were written in all, that means about 14 opinions per judge on an eight-judge Bench, or slightly more than one a month; 118 records to study or less than 10 per month. That would not seem to the uninitiated a task too heavy for a nine-judge Court made up of two judges from Baltimore, with no other duty, and seven judges from the counties, with no other duty save as they prefer, as proposed by Senator Cronin's bills, to perform with convenience and credit.

This paper was prepared without consultation with any other judge; and none of the proposed constitutional changes can possibly affect the author's judicial duties, in view of his retirement from the Bench in 1944.

Maryland
State Library

Reorganization of the Court of Appeals of Maryland

By

MORRIS A. SOPER

United States Circuit Judge for the Fourth Judicial Circuit

Published by the

MARYLAND STATE BAR ASSOCIATION COMMITTEE TO SPONSOR THE CONSTITUTIONAL AMENDMENT REORGANIZING THE COURT OF APPEALS

Baltimore, Maryland

June 15, 1944

April 24, 1944

Honorable Morris A. Soper,
United States Circuit Judge,
Post Office Building,
Baltimore, Maryland.

Dear Judge Soper:

At a meeting of the State-wide Committee to sponsor the Constitutional Amendment Reorganizing the Court of Appeals held on April 19, 1944, the following resolution was unanimously passed:

> "Resolved that Judge Morris A. Soper be requested to prepare an article for publication, setting forth the advisability of the passage of the Constitutional Amendment Reorganizing the Court of Appeals."

It was thought an article of this sort would be of value, since you have had over twenty-eight years' experience on the Bench in both the State and Federal Courts, and in the capacity of both trial and appellate judge, including seven and a half years as Chief Judge of the Supreme Bench of Baltimore City, eight years as United States District Judge for the District of Maryland, and thirteen years as a Judge of the United States Circuit Court of Appeals for the Fourth Judicial Circuit.

We hope that you will be willing to comply with our request.

Sincerely yours,

(Signed) WILLIAM C. WALSH, *Chairman.*

May 27, 1944

Honorable William C. Walsh,
Attorney General of Maryland,
Cumberland, Maryland.

Dear Mr. Attorney General:

In response to the request of the Committee of the Maryland State Bar Association, I submit the enclosed article upon the Constitutional Amendment for the Reorganization of the Court of Appeals of Maryland.

Sincerely yours,

(Signed) MORRIS A. SOPER.

Maryland Law Review

VOLUME VIII NUMBER 2

REORGANIZATION OF THE COURT OF APPEALS OF MARYLAND*

By MORRIS A. SOPER**

Seventy-seven years is a long time for any organization to go without change. Yet that has been the case with the Court of Appeals of Maryland, the highest court of the State, which was organized in its present form by the Constitution of 1867 and has not been changed since. So it will not come as a shock or source of regret to our people, save those who are temperamentally opposed to all change, that they will be called upon next November to vote upon a constitutional amendment designed to strengthen the Court of Appeals and to improve the administration of the courts generally throughout the State.

This is a matter which affects all of the people—not merely those who have litigation in the courts, for the State Legislature cannot and indeed does not attempt to lay down the laws that will govern the people in all of the manifold contingencies that may arise. It is the duty of the Court of Appeals in deciding the cases that come before it to promulgate the governing rules of law which the lower trial courts must follow; and the result is, whether we ever have a case in court or not, that our rights and obligations in regard to our family, our business, our property, and indeed all our relations to our fellow citizens are in large part affected and determined by what the Court of

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** A.B., 1893, Johns Hopkins University; LL.B., 1895, University of Maryland; Chief Judge, Supreme Bench of Baltimore City, 1914-1921; United States District Judge, District of Maryland, 1923-1931; United States Circuit Judge for the Fourth Judicial Circuit since 1931.

Appeals says. It is therefore of prime importance to everybody that the judges who compose the Court shall not only be men of high character and fearless independence, but that they shall be chosen from the ablest, the wisest and the most experienced judges and lawyers of the State; and that they be given the fullest opportunity to consider their judgments in all their bearings before they are delivered.

Our present system is not well adapted to this end—not so well adapted indeed as those of nearly all the other States of the Union whose highest courts, usually called Supreme Courts, have been more recently organized or improved. Our Court is composed of eight judges, and although their power extends throughout the State, they are not chosen from the State at large but each judge is chosen from one of the eight circuits into which the State is divided. One circuit consists of the City of Baltimore and each of the other circuits consists of a group of from two to five counties. Each of these judges, save the one from Baltimore City, is not only a member of the Court of Appeals but he is also the Chief Judge of his circuit and hence he sits not only in the highest court of the State but also with considerable regularity in the trial courts of his circuit. His duties in the trial courts consume a large part of his time and strength, as is shown by the fact that 18 per cent. of the cases presented to the Court of Appeals from the counties in a recent period had been previously heard and decided on circuit by one of the Chief Judges.[1] Since many cases decided in the trial courts by the Chief Judges are not appealed, it will be seen that they perform a large part of the work which the trial courts are called upon to do. This work is of course of great importance to the litigants immediately concerned; but it could be performed by the experienced associate judges of the circuits,

[1] The period in question was 1935-1939, inclusive, for which the work of the Court of Appeals was surveyed statistically by Brune and Strahorn, *The Court of Appeals of Maryland, A Five Year Case Study* (1940) 4 Md. L. Rev. 343. The specific figures for the percentage of appealed county cases heard at trial by the Chief Judges appear at page 356, and show that 55 out of the 299 appeals considered from the counties were heard at trial by Chief Judges.

as is done in other states, and the Chief Judges could concentrate their energies upon the important function of enunciating the rules of law for the guidance of the entire Commonwealth.

The people of Maryland are not only deprived of full time judges in their court of last resort by its present organization, but they are handicapped and restricted in their choice of judges to such an extent that ofttimes the best men are not available. Under the present Constitution each circuit elects one judge, and since the circuits vary in population, in the volume of law business, and in the number of resident lawyers, unfair and unreasonable discrimination is inevitable. For example, a circuit with less than 5 per cent. of the population and a circuit with 10 per cent. of the population are on the same footing—each chooses one judge. But the most glaring contrast is between Baltimore City, which has practically 50 per cent. of the population of the State,[2] but is given only one judge, and the remainder of the State, consisting of 23 counties grouped in 7 circuits, which in the aggregate choose 7 judges. The discrimination is seen to be the more pronounced when it is disclosed that 61.7 per cent. of all the cases heard by the Court of Appeals come from Baltimore City and only 38.3 per cent. from all of the counties combined.[3]

Moreover, the defect consists not merely in discrimination in respect to the number of judges allotted to several county circuits or to the city compared with the counties as a whole. The more important matter is that when vacancies in the Court occur, the people of the State, all of whom are affected by the actions of the Court, are severely restricted in the field of their choice. This comes about because in the normal course of affairs the greater

[2] In the 1930 Census the population of the State was almost exactly divided between Baltimore City and the counties. In the 1940 Census the counties had slightly more than half. Newspaper information based on interim estimates and other sources indicates that the population of Baltimore City has grown so much between 1940 and 1944 that it is safe to assert that Baltimore City now has half, and probably more than half of the population of the State.

[3] These figures are also for the 1935-1939 period, for which see Brune and Strahorn, *supra*, n. 1, 4 Md. L. Rev. 343, 366.

number of lawyers will necessarily be found where the population is more numerous and the law business more prolific. There are approximately 2350 lawyers in Baltimore City while the average number of lawyers in each of the 7 county circuits is less than 100.[4] The largest number of lawyers in any of the county areas, about 129, is found in the Fourth Circuit, consisting of the three westernmost counties of the State while the smallest number, about 70, is found in the Second Circuit, consisting of the 5 upper counties on the Eastern Shore. This means of course that Baltimore City has 2350 lawyers from whom one judge may be selected for the Court of Appeals while the 7 circuits average less than 100 lawyers from which in each case one judge may be selected.

This limitation on its face is bad enough but in actual practice it is worse than it seems. When a vacancy occurs on the Court from the counties it is seldom that the voters of the circuit have the opportunity to choose a judge from all of the resident lawyers. In several circuits a combination of constitutional, political and geographic factors causes the choice to be restricted to one only of the counties in the group.[5] Under the Constitution of Maryland,[6] when a vacancy occurs in the Chief Judgeship in the Sixth Circuit (Montgomery and Frederick Counties), it may be filled only from the other judges of the Circuit or from lawyers resident in the county from which the retiring Chief Judge came. In the Fifth Circuit (Anne Arundel, Howard, and Carroll Counties), the same thing follows from the immemorial custom that each of the three counties shall have a resident judge. In the Third Circuit (Baltimore and Harford Counties), Baltimore County; and in the Fourth (Allegany, Washington and Garrett Counties), Allegany County, by reason of their larger population, have for fifty years been given a monopoly of the Chief Judgeship. In the First and Second Circuits, which

[4] *Ibid.*, 372.

[5] Further on this, see Editorial, *The Interim Report of the Commission on the Judiciary Article* (1942) 6 Md. L. Rev. 304, 308-310; and Editorial, *The Proposed Court of Appeals Amendment* (1943) 7 Md. L. Rev. 324, 326-329.

[6] Md. Const. (1867) Art. IV, Sec. 21.

comprise the nine Eastern Shore counties, and in the Seventh Circuit, composed of the four Southern Maryland Counties, the choice of a new Chief Judge is practically restricted to the associate judges and the bars of two counties only because each circuit has at least one county without a judge and in practice the choice of a new Chief Judge goes to the county of the retiring incumbent or to the county theretofore without a judge, so as to spread the judgeships over the circuit as far as possible.

Able men in the smaller county circuits are frequently drawn to the city where the opportunities for successful practice are greater. For all of these reasons the choice of members of the Court of Appeals is restricted to the smaller number of lawyers residing in certain counties of the several circuits and the people are frequently denied the opportunity to select the best men to fill vacancies on the appellate bench as they occur. It may be added in passing that the opportunity of the members of certain county bars to secure a place on the highest court of the State is greatly promoted by the present system so that some opposition to any change is to be expected.

These weak points in our judicial system have been obvious for a long time. But Maryland is a conservative State and the legal profession as a body here and elsewhere clings to the institutions to which it is accustomed, and is slow to change. Moreover, it is not an easy matter for practicing lawyers who appear in the Court of Appeals of Maryland, one of the oldest in the United States, to suggest that changes in its organization would enable it more easily to preserve its ancient prestige amongst the highest state courts in the Union. Nor is it easy at any time to secure the three-fifths majority of the members of the two houses in the legislature that is necessary to originate an amendment of the State Constitution and submit it to the people. Nevertheless the present movement is not new. It has been the subject of discussion amongst the lawyers of Maryland and at the meetings of the Maryland State Bar Association for many years.

HISTORY OF THE MOVEMENT.

In 1907 the Committee on Laws of the Association, consisting of leading members of the county and city bench and bar, began a study of the question and in 1908 presented to the annual meeting of the Association a report in which they recommended amongst other things that the judges of the Court of Appeals be limited to appellate work, that their number be reduced to five, and that they be elected on a state wide basis.[7]

The matter was brought up again on December 3, 1921, by a special committee of the Bar Association of Baltimore City composed of George Weems Williams and Charles F. Harley, both now deceased, and Samuel K. Dennis, soon to become Chief Judge of the Supreme Bench of Baltimore City and now occupying that position. The report of the committee contained the following passage:

> "Now, the above, as we have stated, are in the main emergencies; but *we believe that the time has come for the reorganization of our whole judicial system. It is a well known fact that our State is falling behind in the administration of justice. Our decisions have lost their uniformity and certainty.* We believe that a committee of the ablest men in this State should be appointed by the Governor to study carefully our whole judicial system and methods for its improvement. This would include the advisability vel non of a State-wide Judiciary, a Municipal Court for Baltimore City and corresponding County Courts for the rest of the State, Courts of Conciliation, the expensive work of our Orphans' Courts, real salaries for our Judges, a State-wide Court of Appeals, methods of decisions in appellate courts, and all matters relating to the prompt and fair and uniform administration of justice." (Italics inserted).

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[7] The Committee consisted of the late Judge Conway W. Sams of Baltimore City, the late Judge John R. Pattison of Dorchester County, the late Judge James H. Covington of Talbot County, the late Judge Alfred S. Niles of Baltimore City, Ridgely P. Melvin of Anne Arundel County, now Chief Judge of the Fifth Circuit and as such a member of the Court of Appeals, the late William Grason of Baltimore County, the late Senator Blair Lee of Montgomery County, the late William C. Devecmon of Allegany County, and the late Charles H. Stanley of Prince George's County. See Transactions, Maryland State Bar Association (1907) 281, and *Ibid.* (1908) 62.

This report resulted in the passage of a joint resolution by the General Assembly of Maryland of 1922 providing for the appointment by the Governor of a Judiciary Commission to study the whole judicial system of the State and report to the next General Assembly. Governor Ritchie appointed a committee of fourteen members, of which the late Charles McHenry Howard of Baltimore, a lawyer of national reputation, was Chairman, and the other members were: Samuel K. Dennis, now Chief Judge of the Supreme Bench of Baltimore City, J. Craig McLanahan, now Associate Judge of the Supreme Bench of Baltimore City, former Attorney General Alexander Armstrong, former Attorney General Thomas H. Robinson, Judge F. Neal Parke, subsequently a judge of the Court of Appeals and now retired, the late Charles F. Harley, the late John B. Gray, Sr., and Messrs. Sylvan Hayes Lauchheimer, Jacob Rohrback, John M. Requardt, Vernon Cook, Philip B. Perlman and Walter H. Buck.

A sub-committee of the larger body, consisting of Mr. Howard, Judge Parke, Mr. Perlman, Mr. Buck and Mr. Harley gave special study to the subject and submitted a report in January 1924 to which all of its members except Judge Parke agreed.[8] The report recommended that the Court of Appeals be composed of five judges chosen from any part of the State and not by circuits, and that the appellate judges should not do regular circuit work. It also recommended that the Chief Judge of the Court of Appeals should have the right to assign any of the judges of the Court of Appeals to do trial work where such a course would seem expedient. This report in its entirety was approved by eight and disapproved by six of the whole committee; but thirteen out of fourteen of the members favored changes in the organization of the Court of Appeals and the great majority agreed that the number of the judges should be reduced and their activities limited to appellate work. This appears from the following state-

[8] Report of January 7, 1924, to Gov. Albert C. Ritchie of the Commission appointed under the authority of a joint resolution of the General Assembly of Maryland in 1922 to study the judicial system of the State.

ment of the views of the minority which was published with the report:

> "The gentlemen dissenting agreed neither with those approving the report nor among themselves. Mr. Parke presented a separate plan. Mr. Gray thought five judges for the Court of Appeals enough and favored the limitation of the labors of this Court to appellate work; but disapproved other parts of the report, and approved some of the provisions of Mr. Parke's plan. *Mr. Dennis approved of neither the present system nor that of the sub-committee nor the plan of Mr. Parke. He thought there ought to be fewer circuits with an appellate court without nisi prius work.* Mr. Rohrback declared in favor of the present system. Mr. Robinson was against any change except the addition to the Court of Appeals of one judge from Baltimore City. Mr. Armstrong made a motion (which was not seconded) that the report be amended so as to provide for seven judges instead of five in the Court of Appeals." (Italics supplied).

Notwithstanding the strong preponderant conviction thus expressed in 1908 and 1924 by leading figures in the profession throughout the State, no proposal was presented to the Legislature. The contemplated changes would have affected a number of the members of the Court and no action was taken at that time. However, on January 11, 1941, William C. Walsh of Cumberland, Attorney General of the State, revived interest in the subject in a paper which he presented to the mid-winter meeting of the State Bar Association.[9] It was a favorable time to broach the matter again because a complete change in the personnel of the Court due to vacancies and necessary retirements was imminent. The Attorney General suggested changes similar to those previously advanced, and the Association by resolution directed its President, Walter C. Capper of Cumberland, to appoint a committee to give further study to the project. This committee consisted of F. W. C. Webb of Salisbury, Chairman, R. Bennett Darnall of Anne Arundel County, the late Walter L. Clark of Baltimore City, former Judge John A. Robinson of Bel Air, and Attorney

[9] Transactions, Maryland State Bar Association (1941) 17-24.

General Walsh. It prepared and submitted a unanimous report to the President of the Association on February 26, 1941 and therein outlined certain proposals which, after modification, are now incorporated in the proposed amendment to be submitted to the people of the State in the November election, 1944.

The Committee reviewed the history of the movement, the defects in the present organization of the Court outlined above, and prepared several bills for submission to the Legislature designed to bring the Court in line with similar high courts in other States throughout the nation. For present purposes it is sufficient to say that the bills provided for reduction in the number of judges to six, four to be chosen from the counties and two from Baltimore City, and also provided that the judges should perform appellate work only. The propriety of State-wide selection of the judges was considered but it was feared that the choice of the judges in the counties might be determined and controlled by the large population concentrated in the city, and hence the historic separation of city and county, and the division of counties in the appellate circuits, although reduced in number, were preserved.

In preparing the report the Committee had the benefit of views expressed at the 1941 Mid-Winter meeting of the State Bar Association by Carroll T. Bond of Baltimore City and Hammond Urner of Frederick, who for years had been respectively Chief Judge and Associate Judge of the Court of Appeals.[10] Chief Judge Bond showed that the eight-judge court was established in 1867 in order to get rid of a large accumulation of business which had long since been accomplished. He added:

> "Now, there is one other consideration. The work in the Circuit does now interfere with the work of the Judges on the Court of Appeals. I do not purpose going into great detail, but that observation is undoubtedly true. I think, therefore, that it is recognized as being highly desirable that those Judges who may sit on the Court of Appeals Bench should be relieved of their work in the Circuits. I honestly think that five

[10] Transactions, Maryland State Bar Association (1941) 25-28.

Judges are ample. I am heartily in accord with this plan, at least, in its general outline. I think that a Bench of five Judges would work better together than a Bench of eight possibly could. I know that they can all think better if they should have no circuit work to attend to."

Judge Urner, who had then recently retired after nearly thirty years' service on the Court, made the following comments:

"I must admit, Mr. President, in so far as my own individual judgment is concerned, I have very serious difficulty in reaching a conclusion upon any phase of the reported proposal, except, Mr. President, that the Judges of the Court of Appeals should be relieved of their Circuit work and that Baltimore City should have a larger proportion of the membership on that court.[11]

* * *

"As to whether the Judges of our Court of Appeals should have to continue to perform Circuit work I can say this. For many years I was of the opinion and I am still of the opinion—I have been of the opinion that the work of the members of the Court of Appeals should be confined to appellate work and that the Judges of that Court should not have to perform Circuit work. I think that they can perform appellate work much more satisfactorily to themselves, and certainly, probably more satisfactorily to the public if they had no Circuit duties to perform.

"They could then concentrate their attention upon their appellate duties, and they would have more time in which to read over the records, all of the records in a case. To read over all of the records in all of the cases, Mr. President. They would have more time for consultation with the other Judges in the work of the preparation of their opinions, so that upon that point, Mr. President, as I have said, I have absolutely no difficulty. I have also, for a long time been of the opinion that Baltimore City, having approximately, one-half of the entire population of the whole State and furnishing more than fifty per cent. of the cases to be decided upon appeal, ought to have a larger representation in that Court. But in regard to the

[11] Subsequently, as a member of the Bond Commission, Judge Urner approved the plan recommended by it.

other phases of the problem, although they seem to me to be very important, still, upon those questions, Mr. President, I really have not been able to reach a conclusion.

"* * * I approve of the report in so far as it recommends the constitution of the Court of Appeals, by relieving it of Circuit work and probably having the number reduced. I am a sharer of Judge Bond's opinion in that matter although I must say that my mind is moving from five to seven, backward and forward. I am not entirely clear about it although I would be perfectly willing to accept the recommendation of Judge Bond in whose judgment I have always the utmost confidence."

The Committee was not content with local expressions of opinion. It sought information and advice from the Chief Justices of the other 47 States of the Union.[12] In 42 States the judges of the highest court exercise appellate jurisdiction only and in the remaining 6 States, Delaware and Maryland alone impose regular trial work on the members of their appellate court. The Committee received replies from all of the other States and not a single Chief Judge favored the performance of trial and appellate work by the same judges although some of the Chief Judges, from lack of experience with such a system, hesitated to express a decided opinion. Chief Judge Layton of Delaware had this to say:

"We have been endeavoring for some years to have established a separate Supreme Court.

"It is my decided opinion that the highest appellate court in the State should be limited to appellate work; this for two reasons, first because it removes the confusion that is bound to exist when the members of the Court have two distinct functions to perform; and second, it permits the Judges of the appellate court to center their efforts upon the work before them."

The bills proposing constitutional amendments to carry out the recommendations were introduced in the 1941 Leg-

[12] On this, see Walsh, *The Movement to Reorganize the Court of Appeals of Maryland* (1942) 6 Md. L. Rev. 119, 132-137. Also published in the same issue with Judge Walsh's article was Buck, *Proposals to Change the Maryland Appellate Court System* (1942) 6 Md. L. Rev. 148.

islature.[13] While the proposal was endorsed by Governor O'Conor, and received an overwhelming majority in the House of Delegates, it failed of the necessary Constitutional majority for a proposed amendment in the State Senate. While it there obtained an actual majority, yet it fell short by two of receiving the necessary eighteen votes constituting the three-fifths required for a constitutional amendment.[14] Success of the movement with the Legislature thus had to await the ensuing session of 1943.

The State Bar Association at its next annual meeting in June, 1941 requested the Governor to appoint a Commission to study not only the Court of Appeals but the entire judicial system of the State. On November 1, 1941 Governor O'Conor appointed a Commission of 15 judges and lawyers from the State at large, which has come to be known as the Bond Commission, since the late Carroll T. Bond, Chief Judge of the Court of Appeals, was named as Chairman.[15] The additional members of the Commission were Charles Markell, then President of the Maryland State Bar Association; Hon. F. Neal Parke, former member of the Court of Appeals; F. W. C. Webb, Chairman of the State Board of Law Examiners; Walter C. Capper, former President of the State Bar Association, and now Chief Judge of the Fourth Circuit; Hon. Hammond Urner, former member of the Court of Appeals; Samuel J. Fisher, former President of the Baltimore City Bar Association; S. Marvin Peach; Hon. Eli Frank, then a member of the Supreme Bench of Baltimore City; Harry N. Baetjer; J. Howard Murray, now an Associate Judge of the Third Circuit; Joseph Bernstein; G. C. A. Anderson, then President of the Baltimore City Bar Association; Edward D. E. Rollins, then State's Attorney for Cecil County; and Clarence W. Miles.

Numerous meetings of the Commission were held at which prolonged discussions took place and finally an interim report was filed on June 1, 1942, signed by all the

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[13] On the proposal before the 1941 Legislature, see Editorial, *The Pending Proposal to Reorganize the Court of Appeals of Maryland* (1941) 5 Md. L. Rev. 203.

[14] See Walsh, *supra*, n. 12, 6 Md. L. Rev. 119, 140.

[15] On the appointment of the Bond Commission, see Editorial, *News of the Bar Associations* (1941) 6 Md. L. Rev. 75.

members of the Commission except one, in time for consideration at the meeting of the State Bar Association at the end of the month.[16] At that meeting the report was approved by the Association by a vote of 86 to 40. An effort to reconsider this action was voted down at the mid-winter meeting of the Association in December 1942, after the final report of the Commission had been submitted to the Governor on October 21, 1942.[17] Bills for the action of the Legislature had been drafted by the Commission and submitted to the Legislative Council of the State on November 30, 1942.

The measures submitted to the Legislature not only proposed the reorganization of the Court of Appeals but also the consolidation of the Courts of Baltimore City and the abolition of the Orphans' Courts throughout the State; but as the last two proposals did not come to a vote in the Legislature they need not be further considered. The Court of Appeals bill contained the important changes in the organization of the Court which, as we have seen, had elicited the general approval of the profession for many years, that is, a reduction in the number of judges to five, two to be chosen from Baltimore City and three from the counties at large, and the release of these judges from regular trial work in the County courts. At the same time the division of the State into Circuits was preserved and an ample number of Circuit Judges to do the trial work was provided.

In addition, a forward step of great importance was taken by a provision constituting the Chief Judge of the Court of Appeals the administrative head of the judicial system of the State. By this provision the Chief Judge is directed to require the trial judges throughout the State to report from time to time upon their judicial work and the business of their courts. He is also empowered in case of vacancy, illness, disqualification or absence of a Judge of the Court of Appeals to empower any of the County or

[16] The Interim Report was published in the Baltimore Daily Record, June 2, 1942, and was also circulated in pamphlet form.

[17] The Final Report was published in the Baltimore Daily Record, October 22, 1942, and was also circulated in pamphlet form.

City trial judges to sit on that Court; and he may designate a judge of the Court of Appeals or any of the trial judges of the State to sit in any of the trial courts of the State other than his own in any case or for any specified period. These powers conferred upon the Chief Judge are made subject to such rules and regulations as the Court of Appeals may make.

These provisions are now found in the proposed Constitutional Amendment, with certain modifications which were made during the passage of the bill through the Legislature.[18] The most important legislative change eliminated the provision that the three county members of the court should be chosen from the counties at large, and in lieu thereof, divided the counties into three Appellate Judicial Circuits, each to choose one appellate judge. The Bond Commission recognized that under an ideal system all the judges of a State-wide court should be selected from the standpoint of fitness, irrespective of residence, but the peculiar situation in Maryland seems to require the setting apart of its one great city from the rest of the State in order to guard against possible domination and control by the city in the selection of judges. The Legislature extended this compromise by requiring the recognition of each of three county areas, the Eastern Shore, Central and Southern Maryland, and Western Maryland, consisting of nine, seven and seven counties respectively, as separate Appellate Judicial Circuits. This arrangement was deemed necessary by the members of the Legislature to satisfy the people of the counties, and it so greatly improves the present system by increasing the size of the areas from which the judges will be chosen that it has been accepted by the members of the Commission as the best possible solution. The enlargement of the field of choice of a judge when a vacancy in the counties occurs is obvious.

Another legislative change eliminated a new method of selection of judges proposed by the Bond Commission,

[18] Md. Laws 1943, Ch. 772, proposing amendments to Secs. 5, 14, and 21, and an additional Sec. 18A, of Md. Const. (1867) Art. IV. See Editorial, *Court of Appeals Amendment Passes Legislature* (1943) 7 Md. L. Rev. 143.

which had provided that all Maryland judges should in the first place be appointed by the Governor to serve until the next election and should then go on the ballot automatically, subject only to opposition by those who might be nominated by petition. This proposal was said to be impracticable,[19] and its omission leaves undisturbed the accustomed method of choosing judges in Maryland.

This summary of the movements and the actuating reasons that have led up to the proposed amendment serves at least to demonstrate that the proposal is not a radical or revolutionary scheme hastily devised, but the result of a study begun 37 years ago, that has been submitted to the practical test of two legislatures, and has won the approval of three-fifths of the members of the General Assembly composed of a preponderance of county men. In essence the proposal reduces the number of appellate judges from eight to five; it promotes their efficiency by confining their regular duties to appellate work; it widens the field of choice of the judges by broadening the areas from which they may be chosen, and finally it makes the whole judicial force of the State more flexible by giving the Chief Judge the power, under the supervision of the whole court, to designate any judge to sit in any court of the State for a designated period. These proposals seem fair and reasonable on their face but since they involve changes in the highest court of the State and undoubtedly jeopardize to some extent the natural ambitions of county lawyers and judges to serve on that court, it is not surprising that some opposition has developed. It is fortunate indeed that this opposition has been voiced by two outstanding figures in the legal profession of the State of unusual ability who have had long experience on the Bench in trial or appellate work; for it is safe to say that their arguments furnish the most severe test to which the amendment can be subjected and that nothing worth saying in opposition has been left unsaid.

[19] Objection of Judge Parke, appended to the Commission's Final Report, *supra*, n. 17, and an article by Chief Judge Samuel K. Dennis, Baltimore Daily Record, February 15, 1943.

THE OBJECTIONS OF JUDGE PARKE.

The Honorable F. Neal Parke of Westminster, Maryland, was for many years and is now the acknowledged leader of the Carroll County Bar. For seventeen years, until he attained the age of seventy years and was obliged to retire from the Bench, he was the Chief Judge of the Circuit and as such a Judge of the Court of Appeals. Unlike most lawyers he possesses the capacity to serve not only as a vigorous and efficient trial judge, but also the learning and literary skill needed for a successful appellate judge. He was a member of the Bond Commission and was the only dissenter from its findings. His greatest objection, to use his own words, was to the new method proposed by the Commission for selecting judges, but this proposal, as we have seen, was eliminated by the Legislature.

In addition Judge Parke objected mainly to releasing the appellate judges from trial work. In his dissent appended to the final report of the Bond Commission he said:[20]

> "One of the grounds of objection to the Report is that it would deprive the members of the appellate bench of the advantage of continued experience in the actual application of the principles of law and its procedure of observing their incidence in litigation and in the prosecution of crime and of being brought in contact with the practical affairs of finance, commerce and life. By presiding in the circuit the appellate judge brings the law straight from the appellate tribunal into the circuit, and thereby assures to the litigants and the accused the application of the existing law as fixed by the latest decisions, and this produces a certainty and satisfaction with the administration of the law which reduces the number of appeals and the expense of litigation.
>
> "The attendance of the Chief Judge of the Circuit has always been subordinate to his appellate duties, but his presence has been of incalculable weight and satisfaction to the public in the assurance given to vigor in the enforcement of the law and the elimination of any exhibition of local prejudice, passion or subservience. It is no light matter to deprive the admin-

[20] *Supra*, n. 17.

> istration of the law of this element of confidence in the just, fearless and impartial administration of the law."

The actual experience of the State appellate courts throughout the United States does not warrant the apprehensions that Judge Parke has entertained. The appellate judges of 42 States have no trial duties at all and in only 2 of the rest, Maryland and Delaware, have they regular trial work to perform; and in Delaware the Chief Judge advocates its elimination. It is a mistake to suppose that judges confined to appellate work will suffer from lack of experience in the practical affairs of life. Lawyers are seldom elevated to an appellate court before the age of 50, after they have had 25 years of active life at the bar or on the bench of the trial court and have become thoroughly familiar with business life and with litigated cases in the making.

On the other hand it is not easy for any man to carry on successfully both as a trial and an appellate judge. Even an unusual lawyer or judge who possesses the qualifications of both places finds it difficult, if he is subjected to the labor and constant interruptions of the trial court, to make the necessary research and to do the careful writing required for the opinions of an appellate judge that are published as precedents. For our present purposes on this point it is sufficient to quote the following passage from the report of the Bond Commission, approved by such experienced appellate judges as Chief Judge Bond and Judge Urner and by the eminent lawyers who signed that document:[21]

> "The work of reviewing decisions in trial courts, with the incidental establishment of the law for future cases, requires much time for undisturbed reflection by the judges and consultation among themselves; they should not be disturbed by distracting duties. Nor should the work of expounding the conclusions of the court in opinions, with the necessary effort at clearness and definiteness, be done hurriedly. Furthermore, the principles of law which the judges are to apply, and

[21] *Supra*, n. 17.

> the practical effect of their application in the several states of the country, are nowadays made subjects of constant study and exposition in legal periodicals and text books. The appellate judges must acquaint themselves with this material, and also with much current non-legal literature."

Little need be added in answer to the suggestion of Judge Parke that the Chief Judge of a Maryland Circuit as now organized can bring down to the trial court a knowledge of the law, a vigor of law enforcement and an absence of local prejudice that cannot be expected from an Associate Judge. The opinions of the Court of Appeals are promptly published in the Baltimore DAILY RECORD so that they are at once available to all the judges and lawyers of the State alike. The Associate Judge comes from precisely the same county circuit as his Chief Judge, and in all fairness it must be said that Maryland judges, appellate and trial alike, may safely be trusted to be impartial and just in their deliverances. Maryland trial judges are quite as able to handle important business as the trial judges of other states, and there is no reason why they should not do their work unassisted and thus be given this experience and responsibility.

OBJECTIONS OF CHIEF JUDGE DENNIS.

It is equally important and helpful to examine the objections of the Honorable Samuel K. Dennis who has had practical experience in both county and city affairs, since he began his career on the Eastern Shore and later came to Baltimore to become a leading figure at the bar. Since 1928 he has been Chief Judge of the Supreme Bench of Baltimore City.

THE COMPOSITION OF THE COURT OF APPEALS AFTER DECEMBER 31, 1944.

In the first place, Judge Dennis expresses some doubt as to the composition of the Court of Appeals if the amendment is carried at the November election and goes into

effect on January 1, 1945.[22] It was necessary in drafting the measure to protect the tenure of the present members of the Court who were elected to their positions before the bill passed the Legislature. It is clear, however, that this purpose has been achieved with complete fairness to all the sitting judges. The Court consists at present of eight judges from the present judicial circuits as follows:

Chief Judge Ogle Marbury of Prince George's County, Seventh Circuit;

Judge Bailey of Wicomico County, First Circuit;

Judge Collins of Kent County, Second Circuit;

Judge Grason of Baltimore County, Third Circuit;

Judge Capper of Allegany County, Fourth Circuit;

Judge Melvin of Anne Arundel County, Fifth Circuit;

Judge Delaplaine of Frederick County, Sixth Circuit;

Judge Adams of Baltimore City, Eighth Circuit.

On January 1, 1945 the Court will be reduced to seven judges, that is to say, five judges from four new Appellate Judicial Circuits into which the State will be divided, and two additional judges from the present Court who will serve until they reach the age of seventy years and retire in conformity with the requirements of the present Constitution. From and after January 1, 1945 the Court will consist of the following:

Chief Judge Ogle Marbury, Second Appellate Judicial Circuit;

Judge Collins, First Appellate Judicial Circuit;

Judge Delaplaine, Third Appellate Judicial Circuit;

Judge Adams of Baltimore City, Fourth Appellate Judicial Circuit;

A new appointee from Baltimore City, Fourth Appellate Judicial Circuit;

and, in addition: Judge Grason of the present Third Circuit and Judge Melvin of the present Fifth Circuit.

[22] Article by Judge Dennis, Baltimore Daily Record, March 13, 1944.

THE STATUS OF JUDGES GRASON AND MELVIN AFTER DECEMBER 31, 1944.

Judge Dennis gives particular attention to the cases of Judge Grason and Judge Melvin who will remain as full members of the Court of Appeals until they reach the age limit and are compelled to retire.[23] He expresses the legal opinion, at the same time frankly admitting that able lawyers disagree with him, that these judges will be "washed off the Court of Appeals" on December 31, 1944, and thereafter will not be "full fledged members but pseudo or demi members" who will wear the "sonorous and honorary title of Additional Judges of the Court of Appeals". These epithets are amusing rather than instructive for the effect of the amendment upon the positions held by these judges cannot be questioned. It provides that except as to the additional judge to be appointed from Baltimore City, the new Court shall be appointed by the Governor from the new appellate judicial circuits from among the *elected* Judges composing the Court on December 31, 1944. The Governor, therefore, has no choice but to appoint Judge Collins from the new First Appellate Judicial Circuit, the Eastern Shore, Judge Delaplaine from the new Third Appellate Judicial Circuit, Western Maryland, and Judge Adams from the new Fourth Appellate Judicial Circuit, Baltimore City. His only authority is to appoint a new judge from Baltimore City and to choose another judge for the new Second Appellate Judicial Circuit, Central and Southern Maryland, from among Judges Marbury, Grason and Melvin. In effect he has already made this choice for he has recently designated Judge Marbury as the Chief Judge of the Court of Appeals and will doubtless continue him in this office on the new Court. The other two judges who live in that Appellate Judicial Circuit, Judges Grason and Melvin, will remain on the

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[23] While the proposed amendment would permit any additional judges to serve on the Court of Appeals until the ends of the terms for which they had been elected, it so happens that both Judge Grason and Judge Melvin will reach retirement age prior to the expiry of their respective elected terms.

Court and will also continue to be Chief Judges of their present trial Judicial Circuits, since the amendment makes the following express provision:

> "Any elected Judges from [the present] Circuits, except the Eighth Circuit, in office on December 31, 1944, other than the three designated by the Governor as Judges of the Court of Appeals, *shall be additional Judges of the Court of Appeals and shall continue to be Chief Judges of their respective Circuits and shall hold office for the residue of the terms to which they were elected.*" (Italics supplied).

The Status of Judges Bailey and Capper After December 31, 1944.

It will be observed that six of the present judges will remain on the Court and a new man from Baltimore City will be added if the amendment is adopted. Judge Bailey and Judge Capper will retire from the Court, but no injustice to them is involved since both of them were recently appointed after the Amendment Bill had passed the Legislature and with full knowledge of its terms. Their present positions as Chief Judges of their respective circuits will expire January 1, 1945 but they can be and doubtless will be appointed Circuit Judges therein. Both of these judges favor the passage of the amendment. Before their elevation to the Bench Judge Capper was a member of the Bond Commission and Judge Bailey was Chairman of the Bar Association Committee appointed to sponsor the reorganization plan before the Legislature.

Five Appellate Judges in Maryland Are Sufficient.

Judge Dennis fears that a five judge court will be inadequate, especially as "men of mature age, as Court of Appeals Judges usually are, not infrequently get sick". There is no real ground for apprehension on this score as an examination of the volume of appellate work required of the Court of Appeals will disclose. A careful study of the volume of business for the five year period 1935 to 1939 was made by Messrs. Herbert M. Brune, Jr., and John S.

Strahorn, Jr., and published in June, 1940 in this REVIEW.[24] The number of cases in each of these years was as follows:

1935	144
1936	133
1937	150
1938	172
1939	115
	714

that is, an average of 143 cases per year. The number of cases during the subsequent four years, 1940 to 1943, shows a decided falling off. A supplemental count, made on the same basis as the Brune-Strahorn survey, shows that the number of cases for this subsequent period was as follows:

1940	124
1941	114
1942	103
1943	107
	448

or an average of 112 per year.

It has been stated more than once in discussions of this subject that the average number of cases does not exceed 150 annually. If this figure were accurate, five judges relieved of trial work would have no difficulty whatsoever in hearing the arguments and writing the necessary opinions. The experience of appellate courts throughout the country dispels any doubt on this matter. The fact is, however, as the tabulations indicate, that the number of cases is much less than 150 per year and there is no reasonable probability that it will exceed 125 per year in the future.

There need be no concern that the work of the Court would suffer from absence of judges due to illness or other cause. The proposed amendment includes a provision to

[24] Brune and Strahorn, *The Court of Appeals of Maryland, A Five Year Case Study* (1940) 4 Md. L. Rev. 343, 359.

be discussed hereafter that confers power on the Chief Judge to provide for such contingencies by designating any of the trial judges of the State to sit upon the Court of Appeals in case of emergency. Since the Chief Judge will have all of the Circuit Judges in the counties and all of the judges of the Supreme Bench of Baltimore City to choose from, suitable selections can be readily made for temporary service on the Court of Appeals without interfering with the work of the trial courts.

Reduction in the number of appellate judges is a matter for congratulation rather than alarm. Any person who has acted as one of a group of judges or as one of any cooperating group soon realizes that the smaller the number the greater the efficiency. With judges, the conference and exchange of views that should precede the writing of an opinion and the criticism and modification that follows its preparation are more easily accomplished and are more helpful and practicable if the number of conferees is restricted. The reduction in the number of judges in a comparatively small State is a move in the right direction, while the presence of five men gives ample assurance that the benefits of consultation and comparison of varying views will be preserved.

The Effect of the Amendment Upon Circuit Courts of the Counties.

The Bond Commission and the Legislature were careful to provide that the Circuit Courts in the counties would not be left short of trial judges by releasing the Chief Judges from trial work. The present arrangement consists of 18 Associate Circuit Judges who give full time, and seven Chief Judges who, being members of the Court of Appeals, give part time to trial work. The amendment provides that there shall be at least three trial judges in each of the present seven county circuits so that when the Court of Appeals is finally reduced to five, upon the retirement of Judges Grason and Melvin, the county courts will have 21 full time judges. During the interim the county courts will have 20 full time trial judges and two

part time trial judges. It is obvious that there will be no shortage of judges for trial work.

Trial judges are now easily available to members of the profession in all parts of the State for the passage of orders and for services other than trial work; and this condition will not be materially changed. After December 31, 1944 only one more county than at present, i. e., Kent County in the Second Circuit, will be without a resident judge. In these days of easy communication by mail and rapid transit no hardship will be imposed on the profession.

It may be added that at present the counties of Maryland have 25 judges, that is, 18 Associate Judges and seven Chief Judges, while the city has 12 judges, that is, 11 trial judges and one member of the Court of Appeals. After December 31, 1944 the counties will have 24 (temporarily 25) judges and the city 13 judges in all.

ORGANIZATION OF THE COURTS OF MARYLAND INTO AN ADMINISTRATIVE JUDICIAL SYSTEM.

A second major objective of the amendment is the establishment of an administrative system for the courts of the State headed by the Chief Judge of the Court of Appeals under the control of the whole Court. At present the judicial power of the State is without State-wide organization and without an administrative head. Organization is confined to the circuits each of which is a watertight compartment whose boundaries the judges therein have no power to cross; and there is no exchange or cooperation between them. For example, a judge in Dorchester County may sit in Somerset County but he may not sit in Talbot County or Caroline County; a judge in Baltimore County may sit in Harford County but not in Baltimore City or in Carroll County to the west or Anne Arundel County to the south; and a judge in Baltimore City may not sit in any county of the State. If there is a vacancy through illness or pressure of work in one circuit and a shortage of work in another there is no way in which the lack in one place can be made up through the excess in another. So far as the trial courts are concerned,

the courts of the Maryland circuits are as separate from each other as the courts of the several States.

Furthermore, the courts of Maryland have no common head. The average citizen would naturally suppose that a judicial system that employs so many judges and entrusts them with powers that so vitally affect the rights of the people would have some responsible head to direct its business affairs. But it is not so. There is complete lack of integration of the judicial circuits of the State. Every circuit stands alone wholly independent of all others and every judge stands independent and alone save for the power of reversal in the Court of Appeals. Of course complete independence of decision must be and will be preserved but there is no reason why the judicial manpower of the State should not be organized for purposes of efficiency with a supervisory head.

The Bond Amendment proposes to remedy these defects in a very simple manner. It provides that the Chief Judge of the Court of Appeals shall be the administrative head of the judicial system of the State and shall from time to time require from the judges of the county and city courts reports as to their judicial work and business. He is also empowered in case of vacancy, illness, disqualification or absence of an appellate judge, to designate any trial judge to sit on the Court of Appeals; and he may also designate a judge of the Court of Appeals or a trial judge to sit in any trial court of the State. These powers are given to the Chief Judge subject to such rules and regulations as the Court of Appeals may see fit to make.

The lack of such a system in the past has hampered the courts of the State in the disposition of business. Twenty-two years ago the Courts of Baltimore City were running behind while trial judges in other parts of Maryland were not fully occupied. The only remedy under the existing law was the passage of an act by the Legislature of 1922 creating another judgeship in the city. It turned out in the course of time that the pressure of work was temporary and the result is that today there are more judges in the city than are needed. Sometime ago cer-

tain associate judges in a Western Maryland circuit were absent on account of illness and the Chief Judge, who also had his appellate work to do, was obliged to take over their assignments. This burden could easily have been carried without inconvenience to any one if a judge from Baltimore City or some other part of the State could have been designated for the purpose. The institution of the proposed system will easily take care of all such emergencies.

Equally meritorious is the provision for reports of the business of the trial courts to the Chief Judge of the Court of Appeals. There is now no source from which accurate information can be readily obtained as to the number of days in which the trial courts of the State are in session or as to the amount or character of the business which they perform. Statistical information is wholly lacking and no one in authority has any means of knowing how the work is being done. A comparison of the work of the several circuits and of the city would show where judges are overburdened and where they have time to spare and the interests of the public and of the legal profession would be served by raising the prestige and efficiency of the trial courts. It is safe to say that no other business activity would tolerate the present lack of organization of the courts; and that no Maryland judge, if given the opportunity, would be loath to cooperate in the interest of efficient administration.

Judge Dennis also criticizes this part of the proposed amendment. He thinks it will put too great a burden upon the Chief Judge of the Court of Appeals and he fears that the Chief Judge may be an objectionable person. He says:

> "All will agree that those clerical and administrative duties must divert the Chief Judge from adjudicating cases. If the Chief Judge is unreasonable, meddlesome, blundering, or disposed to evil, he can make judges subservient, plague and pack the courts, put judges of the Court of Appeals, nisi prius judges and the bar to irritating inconvenience and loss".

Neither of these objections will seem tenable to any one who is willing to give to the courts of Maryland the

same efficiency which characterize the courts of other jurisdictions. The Governor and the Legislature of the State may be safely trusted to furnish the Chief Judge of the Court of Appeals with such clerical assistance as he may need; and one has only to name the Chief Judges of the Court since 1907, when the present movement began, to wit: A. Hunter Boyd, Carroll T. Bond, D. Lindley Sloan and Ogle Marbury, to realize that the sort of judicial ogre whom Judge Dennis imagines is unknown in this State. Even if such a man should secure the office, he would be subject to the control of his colleagues under the terms of the amendment.

The operation of the proposed administrative system is not a matter of guesswork for there is ample experience to serve as a guide. One has only to observe the administration of the United States Courts in which a similar system operates on a national scale. Every United States trial court in the country is required to make periodic reports of the business done to the Administrator of the Courts at Washington so that the amount and character of the work done in each District becomes a matter of public information, open to all. Moreover, every United States District trial judge and every United States Circuit appellate judge is subject to call to service in any part of the country. Within any federal circuit the presiding Circuit Judge may assign any of the Circuit or District Judges to sit in any United States Court in any state in the Circuit; and with the cooperation of the presiding judge, the Chief Justice of the United States may assign the judges in any circuit to sit in any other circuit of the nation. The flexibility of this arrangement and the willing cooperation of the judges have had a notable influence in keeping the United States Courts abreast of their dockets. Any judge who has operated under such a system will acknowledge the interest of the work and its stimulating and broadening influence. In Maryland it would tend to bring the members of the judiciary closer together, acquaint them with the various parts of the State, and afford them the opportunity of observing the advantages of pre-

vailing local procedures. There need be no fear of resulting hardships. The system would be administered under the supervision of the appellate judges who would be entirely sympathetic with the problems of their colleagues in the trial courts. Traveling and living expenses for a judge while away from his circuit could readily be provided in the legislative budget, and in most instances prolonged absences from home could be avoided. Some burden of administration on the part of the appellate court and some inconveniences on the part of the trial judges would of course ensue, but they would be well worth while in view of the benefits that would be obtained; and it is not likely that any judge would contend that he should be free from the inconveniences that men in all other lines of endeavor are called upon to endure.

THE SECOND CONSTITUTIONAL AMENDMENT AFFECTING THE COURT OF APPEALS PROPOSED BY CHAPTER 796 OF THE ACTS OF MARYLAND OF 1943.

In his search for grounds to oppose the changes proposed in the Court of Appeals amendment, Judge Dennis finds another argument in the fact that the Legislature of 1943 in addition to the amendment suggested by the Bond Commission proposed another amendment[25] which also relates to the assignment of the trial judges to sit in the various judicial circuits throughout the State. It is said that this amendment was proposed by reason of the inconvenience which resulted from the emergency caused by the absence of judges in the Western Maryland circuit above referred to. The measure was introduced in the Legislature before it was known whether or not the proposal of the Bond Commission would be approved. It requires the Legislature to provide by general law for the assignment by the Court of Appeals of any of the Chief or Associate Judges of the present circuits of the State, including the judge of the Court of Appeals from Baltimore City and the trial judges thereof, to sit in any other or different judicial circuits for designated or limited periods in order to relieve the accumulation of business or to take

[25] Md. Laws 1943, Ch. 796.

care of the indisposition or disqualification of any judge. Judge Dennis thinks that this proposal presents a serious inconsistency because it directs the Legislature to provide for the assignment of judges by the whole Court of Appeals whereas the Bond Amendment is self executing and invests the power in the Chief Judge of the Court. As a matter of fact there is little difference in the practical effect of the two measures, and even if both should be adopted by the people, no irreconcilable conflict would arise. Judge Dennis fails to note that under the Bond Amendment the administrative power lodged in the Chief Judge is made subject to such rules as the Court may enact, so that in either case the full court has the ultimate control. The Bond plan is to be preferred because the other amendment makes no provision for filling temporary vacancies in the Court of Appeals. Moreover, emergencies may arise when the Court of Appeals is not in session and the Chief Judge could proceed with more expedition if he were not obliged to wait for the approval of the entire Court.

From whatever standpoint the proposed Constitutional Amendment is viewed, it is obvious that it deserves the wholehearted support of the people of the State. At last, after many years of careful study, the leaders of the legal profession in all parts of the State have agreed upon an improvement in our judicial system, and this improvement has received the approval of the State Legislature. The areas from which the members of the Court of Appeals will be chosen will be broadened so as to include larger numbers of highly qualified men; an unnecessarily large Court of Appeals will be reduced to a more efficient body; the appellate judges, freed from the distractions of the trial court, will be able to do work of as high a grade as any appellate court in the country; the trial judges will be given full control of the work in their respective circuits and will grow in strength by reason of the experience; and finally, the administration of the entire judicial system in Maryland will be integrated and reorganized so as to make available at any point all the judicial resources which it comprehends.

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The Amendment Reorganizing the Court of Appeals

By

D. LINDLEY SLOAN

Former Chief Judge of the Court of Appeals of Maryland

Published by the

MARYLAND STATE BAR ASSOCIATION COMMITTEE
TO SPONSOR THE CONSTITUTIONAL AMENDMENT
REORGANIZING THE COURT OF APPEALS

Baltimore, Maryland
October 7, 1944

MARYLAND STATE BAR ASSOCIATION

September 30, 1944.

Judge D. Lindley Sloan,
Cumberland, Maryland.

My dear Judge Sloan:

Because of your long and distinguished career as a member of the Court of Appeals of Maryland, first as Associate Judge from the Fourth Circuit, and finally as Chief Judge until last Spring, the State-wide Committee of the Maryland State Bar Association to sponsor the Constitutional Amendment Reorganizing the Court of Appeals is very anxious that the Bar of Maryland and the general public should have the benefit of your opinion as to the necessity and propriety of the Amendment before voting for or against its adoption on November 7th, and has asked me to get in touch with you and ascertain whether you can be prevailed upon to express your views.

I am sure the members of our Association as a whole, as well as the public generally, will welcome such an expression from you and I do hope you will find it fitting to comply with the Committee's request.

Awaiting your advices and with my best personal regards, I am

Very sincerely yours,

/s/ F. W. C. WEBB,
President.

FWCW/BMH

THE AMENDMENT REORGANIZING THE COURT OF APPEALS

By D. Lindley Sloan
Former Chief Judge of the Court of Appeals of Maryland

At the November election, the people of Maryland are to vote on one of the most important and, in my opinion, desirable Constitutional Amendments ever submitted to them. I refer to Chapter 772 of the Acts of 1943, which proposes a reorganization of the Court of Appeals and certain other changes in our judicial system.

For more than thirty-five years, practically the same changes have been advocated by many leading judges and lawyers, and the movement finally culminated in the appointment of the Bond Commission by Governor O'Conor. This Commission, of which the late Carroll T. Bond, former Chief Judge of the Court of Appeals, was Chairman, recommended, with few exceptions, the changes found in Chapter 772, and for the first time since 1867 the people of the State are to have the opportunity of voting on an amendment designed to improve our judicial system.

The essentials of the Bond Plan were as follows:

1. It reduced the number of judges, and enlarged the groups of lawyers from which the Appellate Judges could be selected, by giving two to Baltimore City and three to the counties as a whole, instead of one to Baltimore City and seven to the seven County Circuits as now provided.

The only change made in this part of the plan by the Legislature was to divide the counties into three Appellate Circuits with one judge coming from each. This change does not affect Baltimore City, and was insisted upon by the county members of the Legislature, with Senator Funk of Frederick offering the Amendment which made the change.

2. It divorced the Appellate judges from regular trial work by limiting them to appellate duties, except when assigned to trial work by the Chief Judge.

3. It provided an administrative system for the Courts of Maryland under the direction of the Chief Judge and subject to supervision by the Court of Appeals.

These objectives will be attained by the adoption of the Constitutional Amendment proposed by the Legislature, and I think the Amendment should be approved.

On March 23, 1943, while the Bill proposing the Amendment was before the Legislature, I made the following statement regarding it:

> "The big thing is that the people ought to have a chance to decide so important a question and they should have the right of decision. Let the proponents and the opponents of the bill argue the case before the court of public opinion, the people. They are capable of deciding the issue once and for all. Personally, I would vote for its adoption at the polls."

The plan finally approved by the Legislature made only two material changes in the Bond Plan. One eliminated a new method of selecting judges, which had never been previously proposed, and the other changed the areas from which the county members of the Court of Appeals were to be chosen. Neither change materially affected the long-sought chief objectives of the Bond Plan, both were accepted by all the surviving members of the Bond Commission, and except for these two modifications, the Legislative plan embodied in Chapter 772 is to all practical intents and purposes the Bond Plan. I favor the approval of Chapter 772 by the voters because I believe its adoption will bring about an improvement in the Court of Appeals and in the judicial system of the State.

Some opponents of the measure lay great stress on the fact that no change has been made in the Court of Appeals since the adoption of the Constitution of 1867. They argue that the provisions of that Constitution governing the Court of Appeals are sacred and subject to no improvement, though forty-one amendments have been made to other parts of the same Constitution, and six more, includ-

ing the amendment we are discussing, are to be voted on in November.

In this connection it may be of interest to briefly trace the history of the Court of Appeals as it existed under our various Constitutions, and to make some observations concerning the Constitution of 1867 and the circumstances under which it was proposed and adopted.

The first provision for and mention of a Court of Appeals in the Laws of this State was in Article 56 of the Constitution of 1776, which reads:

> "That there be a Court of Appeals, composed of persons of integrity and sound judgment in the law, whose judgment shall be final and conclusive, in all cases of appeal from the General Court, Court of Chancery and Court of Admiralty; that one person of integrity and sound judgment, be appointed Chancellor; that three persons of integrity and sound judgment in the Law be appointed judges of the Court now called the Provincial Court; and that the same Court be hereafter called and known by the name of *The General Court;* which Court shall sit on the western and eastern shores, for transacting and determining the business of the respective shores, at such times and places as the future Legislature of this State shall direct and appoint."

The General Court passed out by the Constitutional Amendment of 1805. Agreeably to Article 30 of the Declaration of Rights of 1776, judges were appointed and held commissions "during good behavior". Same by Art. 40, Constitution 1776.

The General Court and the Court of Chancery were considered of more importance than the Court of Appeals. No judge was ever appointed to the Supreme Court of the United States from the Court of Appeals, but four judges of the General Court, Robert Hanson Harrison, Thomas Johnson, Samuel Chase, and Gabriel Duvall were.

Article 9 of the Amendment of 1805, divided the State into six judicial districts. There were to be three judges

appointed by the Governor for each district to hold their commission during good behavior, one to be designated as Chief Judge. By Article 5, the Chief Judges of the circuits were to constitute the Court of Appeals. It so continued to the Constitution of 1851, which provided for a Court of Appeals, independent of the Circuit Courts, the judges of which were to be respectively elected by the voters of four judicial districts. The first district was composed of the counties of *Alleghany,* Washington, Frederick, Carroll, Baltimore, and Harford; the second of Montgomery, Howard, Anne Arundel, Calvert, Saint Mary's, Charles, and Prince George's; Baltimore City the third; and all the counties of the Eastern Shore, the fourth. Term of office was ten years, or until seventy years of age, "whichever may first happen".

The Constitution also provided for eight circuits with one judge from each circuit, except Baltimore City, which had four.

On and off the bench, partisanship ran high in those days, resulting in the Constitution of 1864, and its abrogation by the Constitution of 1867, when the Southern post-war sympathizers got in control.

The Constitution of 1864, which increased the membership of the Court to five, was born of the Civil War, and as a result of the animosities of the times. It was initiated by a Legislature which was loyal to the Union, with the force of Governor Bradford behind it, and like him, hated the Confederacy and all its works. This Constitution provided by Section 1 of Article VI: "The General Assembly shall also provide for taking the votes of soldiers in the Army of the United States serving in the field." Section 4 disfranchised anybody "in the service of the so-called Confederate States of America" or who "in any manner adhered to the enemies of the United States" or had declared "his desire for the triumph of said enemies over the armies of the United States." It also required a test oath.

It redivided the State into five districts, each of which should elect one judge who should be a member of the

Court of Appeals, and into thirteen circuits, in twelve of which there should be one judge each, and in the thirteenth, Baltimore City, four judges. At the election in November, 1864, the proposed Constitution was adopted by a majority of 375 votes. The civilian or stay-at-home vote was 29,536 against, to 27,541 for, but the soldier (Union) vote was 2,633 for, to 263 against. The war was no sooner over than the agitation for a new Constitution began.

The validity of Article I was attacked in the case of Anderson v. Baker, 23 Md. 531. It was upheld by Judge Samuel M. Berry, in the Circuit Court for Montgomery County, and in the Court of Appeals by Judges Bowie, Goldsborough, Cochran, and Weisel. Judge Bartol dissented. His dissent did not hurt him any in the election of 1867, for he was the only judge of the Court of Appeals under the Constitution of 1864 who survived under the Constitution of 1867.

Those were strenuous times. Maryland, in all probability, would have seceded, but for the boldness of Governors Hicks and Bradford, the latter of whom caused the arrest of enough secessionist members of the Legislature to make it safely Union and to call a Constitutional Convention.

There can be no doubt that the disfranchisement and test oath clauses of the Constitution caused the calling of the Convention of 1867. All of the agitation was directed at those provisions of the Constitution of 1864, and with the end of the Civil War and the return of the soldiers of the Confederacy, no time was wasted in starting the movement for the overthrow of the recently adopted Constitution. The vote in 1864 showed plainly that the majority of the voters were southern in their sympathies. With a Convention called to adopt a Constitution eliminating the restrictive provisions, of course, the whole Constitution was open for revision. The debates on the judiciary showed the sentiment divided between those who wanted three-judge against one-judge courts. The advocates of the three-judge

system, that is a chief and two associates, had the idea that the three judges would sit together in the Circuit, and that by reason of their combined judgment, the number of appeals would be reduced. The records do not show any such result.

There is no reason to believe from anything said or done, prior to the Constitution of 1867, that there was any dissatisfaction with the courts as then constituted. The convention was in such humor that anything done in 1864 was wrong; the members were bent on tearing that Constitution apart, and they did. There was much sentiment in 1867, however, for the continuance of the then existing judicial system. Henry W. Archer of Harford County offered a substitute for the majority report on the composition of the Court of Appeals providing for a court of five judges, one from each of five districts, which was rejected by a vote of 66 to 33. "Several members gave as a reason for voting against the substitute the fact of the salaries being placed at $4,000, which they thought was too high, but at the same time, expressed themselves in favor of an independent Court of Appeals." Perlman's Debates, 351. As adopted, the salary of the appellate judges was fixed at $3,500, considerably reduced by expenses to, from, and at Annapolis, and the circuit judges at $2,800. Richard H. Alvey, elected to the court at the next election, proposed $5,000 for the Chief Judges and $3,500 for the Associate Judges, but the proposal was rejected with little ceremony. Some advocated a limit of $2,500. The majority of the delegates were more concerned about the wages than the structure of the court.

The Constitutions all had one glaring defect and that was the failure to provide for the assignment of judges to any circuit outside of their own where their services might be required. Some judges in the State now object to it. The State pays them and the State has the right to require their services when and where needed. William P. Maulsby, a delegate from Frederick County, proposed such an amendment, but it was not adopted. The Bond Plan

cures this defect in our system. It provides for the assignment of judges from any circuit in the State to any other circuit. Another amendment is presented by which the Legislature is to provide that the Court of Appeals makes such assignments. (Chapter 796 of the Acts of 1943.) Judge Dennis says these are inconsistent, but he knows that if both are adopted, either plan can be followed, and both be right and neither wrong.

One of the arguments stressed by the opponents to the Bond Plan is that when we had four and five judge courts, the court fell behind in its work and could not catch up. There is little, if any, force or substance to this argument.

At the December Term, 1860, there were 366 cases on the docket, while at the April Term, 1867, when there were still only five members of the Court, this number had been reduced to 235. In 1860, the Court handed down opinions in 146 cases, 112 opinions were rendered in 1861, 100 in 1862, 112 in 1863, 48 in 1864, there having been no December Term in 1864, 123 in 1865, and 122 in 1866. This compares favorably with the volume of work now being done by the Court with eight judges, and certainly demonstrates that five judges with no nisi prius work could readily handle the present work of the Court. It should also be remembered that the years just mentioned included the period of the Civil War, during which it was doubtless difficult for the Court to dispose of cases with dispatch. The records show numerous continuances, there having been 248 at the June, 1863, Term, 230 at the January, 1865, Term, and it is obvious that the absence of counsel in the armed services on both sides of that conflict accounted for many of the postponements. The accumulation of these cases may have been one of the reasons advanced for increasing the number of judges to eight in the Constitution of 1867, but if so this reason for having eight judges soon ceased to exist, for at the October, 1870, Term, the number of continuances had already been reduced from 230 in 1865 to 86, and within a few years thereafter the docket was

current with no greater number of continuances than we have now.

It seems a bit incongruous to argue that we should retain eight judges when even the alleged reason for having that number ceased to exist some sixty or seventy years ago, and when the record shows that the four and five judge courts which existed between 1851 and 1867 disposed of as many cases a year as does the present eight-judge court. However, the change from delayed to prompt opinions is due chiefly to the changes in the rules and not to the number of judges sitting. The number of judges has little to do with the speed with which cases are heard and decided. The accumulation of cases prior to 1867 was more the fault of lawyers than of the Court. Then each counsel was allowed two hours to an argument. The result was that many cases were not finished in a day. The celebrated B. and O. R. R.—C. & O. Canal case took a week, and the decision was given six months in advance of the opinions which covered over 200 pages. The lawyers consumed so much time in argument that the court was often crowded for time to write opinions. But that is all changed. Now arguments are limited to forty-five minutes each when there are two arguments on each side, making the total time allowed three hours. When there is only one argument for the appellee, the whole time which may be consumed by a case is two hours. If the former time allowance prevailed now, the arguments of many October Terms would not be finished before the January Term would open. The rule limiting and cutting down the time for arguments has had much to do with clearing the dockets every term, and so has the constitutional rule requiring opinions to be filed within three months after a case is argued, which rule first appeared in the Constitution of 1864. It was proposed by Delegate Oliver Miller, who later became a member of the Court of Appeals and one of Maryland's ablest judges.

I am in favor of the Bond Plan which is being submitted to the people for several reasons.

I think it will add to and not subtract from the independence of the judiciary. The appellate court should be wholly and completely independent of the trial courts. An argument is that the appellate judges are kept in touch with what is going on around them and this better qualifies them for the work. As Judge Soper said in his article in the Maryland Law Review, the judges of the Court of Appeals are men who have had twenty-five or more years in the general practice of law and are prepared by experience to sit in judgment on the cases which may come before them. This is a common law state. Our system is built on the experiences of many centuries; we didn't live through it all; its principles are pretty well established, and we are concerned principally with their application. Forty-six states have the plan proposed by the Bond Committee; two, Maryland and Delaware, have our system. If we are and have been right, they're all out of step but us.

The Baltimore City members of the Court of Appeals do not have any local trial work, but I never heard any criticism of the quality of their work. They were Judges Le Grand, Cochran, Bartol, Bryan, Schmucker, Stockbridge, Bond, and Adams. You can't throw stones at any of them.

In our court, eight men sit around the table in the consultation room. Often one of them has been appealed from, and there are many such cases every term. He steps out of the room while the others sit in judgment on him. I think it's wrong; the Court of Appeals ought to be a *Court of Appeals* with every judge sitting on all appeals.

We have an eight-man court. The number ought to be odd and not even, so that there may be a decision on every appeal. I recall many cases in which there were affirmances by a divided vote in which there should have been opinions. Zoning was established in Baltimore because seven and not eight judges sat in the case. But for that decision, it might, and probably would, have been long delayed.

Five judges, if relieved of circuit duties, can do all the work that eight are doing now, and so reduce the burden on the taxpayers of the State. Why have more judges than we need to do the business of the Court? We had a court of four from 1851 to 1864, and five from 1864 to 1867. In personnel and quality, they will compare with any other groups in our history, and they had no circuit duties. Although Maryland is a small state, it has a larger number of appellate judges in proportion to its population than any other State in the Union.

There is another feature of the proposed amendment that is of public interest. The proposal does not break up the circuits as at present constituted. It provides that there shall be three judges in the seven county circuits, of whom the senior in point of service shall be Chief Judge. In the Fourth Circuit, for instance, to make a three-judge court, an additional judge is to be appointed from Allegany County and elected in 1946. If the amendment is ratified at the polls, on January first, Judge Huster will automatically become Chief Judge of the Circuit and so continue until his retirement when Judge Mish becomes Chief Judge until the end of his term. In the Second Circuit, Judge Knotts would become, on January first, the Chief Judge.

Opposition of various kinds, much of it personal or political, but no doubt some of it sincere, has heretofore prevented the people from having a chance to vote on this matter, but the last Legislature swept aside this opposition, and in November the people of Maryland are to have this long-awaited opportunity.

In my opinion, the proposed changes are sound and constructive, their adoption will improve our Court of Appeals and strengthen our entire judicial system, and for these reasons I am supporting the amendment and intend to vote for it on November 7, 1944.

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#9

To The Voters Of Maryland

By FRANCIS NEAL PARKE

An organized and vigorous campaign is being conducted to secure your support of the Second Constitutional Amendment which will be on your ballot to be voted on November 7, 1944. If this amendment is adopted, it will make such radical and fundamental changes in the membership and functions of the Appellate Court that we conceive it a duty to submit to your candid judgment some of the reasons which, in the public interest, compel us to oppose this amendment:

First: So vital and fundamental a modification of the Constitution with respect to a co-ordinate branch of the government should not be attempted, unless and until it has been considered, approved and submitted to the voters by the representatives of the people of the State in a Constitutional Convention duly assembled.

Second: The times and affairs of men are now so out of joint, and the thought and judgment of voters so distracted and preoccupied by private sorrow, care and foreboding that those who remain can not give adequate consideration to the problem presented, and those in the armed service of their country will either he unahle to vote or be insufficiently informed.

To adopt a fundamental change in the Constitution of the State in their absence seems a hetrayal of the confidence of those who expect us to maintain intact our judicial system at home while they, in jungle, in air, on land and water, in deadly peril, fight to the utmost for our peace, security and the preservation of our institutions at home.

The Practical Effect of the Amendment Is to Narrow the Choice to a Few Populous Counties

Third: The compact populous political division of Baltimore City shall have two judges, and the wide areas of the Counties with their dispersed population shall have three judges. One is to come from what is designated as the First Appellate Circuit which is composed of the nine Counties of:

	Population.	Area In Square Miles.
Cecil	26,407	351.22
Kent	13,465	283.36
Queen Anne's	14,476	375.36
Caroline	17,549	322.06
Talbot	18,784	271.82
Dorchester	28,006	580.94
Wicomico	34,530	378.37
Worcester	21,345	482.54
Somerset	20,965	334.89
	195,527	3,380.56

The Second Appellate Circuit, which is composed of the seven Counties of:

	Population.	Area In Square Miles.
Harford	35,060	442.75
Baltimore	155,825	607.43
Anne Arundel	68,375	419.90
Prince George's	89,490	486.17
Charles	17,612	457.78
Calvert	10,484	216.65
St. Mary's	14,626	365.04
	391,472	2,995.72

And, lastly, the Third Appellate Circuit which is composed of the seven Counties of:

	Population.	Area In Square Miles.
Carroll	39,054	452.78
Howard	17,175	252.88
Montgomery	83,912	497.04
Frederick	57,312	664.74
Washington	68,838	458.47
Allegany	86,973	425.16
Garrett	21,981	664.25
	375,245	3,415.32
*Baltimore City	859,100	78.72

(*Populations from World Almanac, 1944; areas from Maryland Manual.)

Since nominations for judgeships may be made by primary vote and elections are to he by popular vote in every one of the judicial circuits, the proposed grouping of the counties of the State

in these three appellate judicial circuits is objectionable in that the selection and election of the judge will depend upon the vote in a *few* of the counties in every one of the three circuits because of the disproportionate population of these few counties.

In addition, the bars of the several counties, and much more the voters, will neither have, nor will they be able to acquire the information requisite to make a discriminating choice at the polls of a primary or of an election. For instance, what can the voters and bar of Cecil know of the candidate from Somerset? Or of Harford know of the lawyer from St. Mary's? Or of Garrett know of the candidate from Montgomery?

A brief reflection will make clear that the practical effect of the grouping of the counties will *not* be to enlarge the choice of a judge to *all* the eligible lawyers of the respective circuits but will actually be to limit the choice to the bars of those few counties in every circuit whose large populations will decisively determine the judicial primary and election. Thus the choice of the appellate judges will be narrowed to those who are from the populous counties of every circuit. Again theory must yield to reality.

Membership In a Large and Able Bar, With No Circuit Work to Be Done, Is No Assurance of Superior Capacity In the Judge Elected to the Court of Appeals or of Distinction In His Judicial Work

The argument that the larger the number of lawyers to choose from the abler the judge elected, and that exclusively appellate jurisdiction will assure superior judicial consideration and decisions is refuted by the record of Baltimore City. In that political unit since 1867, its population has been far in excess of any other poltical division of the State and its Bar has been much larger than the combined Bars of any other judicial circuit. Furthermore, since 1867 the member of the Court of Appeals from Baltimore City has not been burdened with any circuit work. During this long period he has been engaged in purely appellate work. So, with the most distinguished as well as the largest Bar in the State, the conditions assumed by the advocates of the amendment to assure judicial superiority in the Court of Appeals have been ideal in Baltimore City for over three-quarters of a century. The practical test during this long period of the theory advanced demonstrated that the continuous existence of these conditions does not produce the result desired and hence disproves the gratuitous assumption made.

Let the record speak:

During the period 1867-1944 the members of the Court of Appeals from Baltimore City and the County Circuits have been:

1867-1944

Baltimore City

James Lawrence Bartol, C. J., Baltimore County and City.
William Shepard Bryan, Sr.
Samuel D. Schmucker.
Henry Stockbridge.
Carroll T. Bond, C. J.

Counties

Richard Henry Alvey, C. J.
John Mitchell Robinson, C. J.
Oliver Miller.
Levin Thomas Handy Irving.
John Ritchie.
Frederick Stone.
James McSherry, C. J.
Henry Page.
Andrew Hunter Boyd, C. J.
James Alfred Pearce.
Isaac Thomas Jones.
N. Charles Burke.
William H. Thomas.
Hammond Urner.
John R. Pattison.
T. Scott Offutt.
W. Mitchell Digges and others.

Is there anyone bold enough to say that the justices from Baltimore City surpassed in knowledge of the law, in concentration, in study, in efficiency, in juridical eminence and opinion the contemporary justices from the County Circuits? In the face of this record, is there anyone rash enough to say that reducing the number of judges and increasing the area of selection is any adequate assurance of abler appellate judges.

To have an able Bench something more is required than selection from a numerous Bar, and a restriction to appellate work. The record of the past is at once a confirmation of this statement aud an accurate forecast of the future.

The Present Court of Appeals Is Efficient. Its Predecessor Was a Court of Exclusively Appellate Jurisdiction With a Membership of First Four and Then Five Judges (1851-1867). It Was Unable to Take Care of Its Work.

The present Court system was created to cure the defects of a court (1851-1867) of four and five members, with none but an appellate jurisdiction. The fact that the system now in being has undergone no material modification since 1867 and stands high in popular approval argues for its continuance and is no more a reason for a change in the system than that our form of government should be abandoned because it was established in 1787.

Speaking with reference to the record of the Court of Appeals as constituted under the Constitution of 1867, Hon. Alexander Armstrong, a distinguished citizen and eminent lawyer, said at the Ceremonies in Commemoration of the 150th Anniversary of the Establishment of the Court of Appeals of Maryland:

"We have apparently developed a judicial system, in so far as the Court of Appeals is concerned, which is absolutely adapted to our needs, for in the relatively long space of sixty-one years it has not been subject to a single modification." (As reported in 157 Md., p. xxxix).

Why Should the Experience of the Past Be Rejected and the Inadequate and Discarded System of 1851-1867 Be Restored?

Under the Constitution of 1851 the Court of Appeals had but four members, who had no circuit work to perform. This system prevailed until the Constitution of 1867. It was known as the independent court in contradistinction to an appellate court whose members discharged both circuit and appellate work. Although their work was exclusively appellate, four judges proved insufficient to keep abreast of the docket. The volume of undecided cases had become so great that an additional judge was provided by the Constitution of 1864. But this increase in membership was inadequate. "And at the opening of the June Term, 1864, there were two hundred and forty cases on the docket, some of them dating from 1850," reports Carroll T. Bond in "Court of Appeals of Maryland," p. 164, and Judge Bond states "The fact that the Court of Appeals was behind in its work produced a general agreement on the addition of one to the number of judges of the court, making it five in all." Ibid, p. 167.

The consequence of this increase in membership of the court to five, after three years, was disappointing as by 1867, "there had been but little gain by the existing Court of Appeals in the mass of cases in arrear of its docket," affirms Judge Bond. Ibid, pp. 175, 185.

The inadequacy of the system of a purely appellate tribunal of four, and then five members having been established unquestionably by its unsatisfactory results during the period of 1851 to 1867, the Constitution of 1867 returned to the essential features of the system which had existed from 1806 to 1851. Ibid, p. 174.

The new Court, with both appellate and circuit duties, cleared the docket of the accumulated cases of the former wholly appellate tribunal by protracted sittings. For years the docket has been disposed of promptly and the court has established a record of efficiency which is unsurpassed by any appellate court of any State of the Union. Bond, pp. 185, 186.

The discharge of the appellate work is paramount to circuit work, which has not been suffered to interfere with the proper performance of the appellate work. Whenever the work of any circuit sufficiently increased, the remedy has been to increase the number of the associate judges of the circuit.

Appellate and Trial Work Is an Advantage to the Public, to the Judge, to the Court.

As against the opinion of present critics that the labors of appellate judges should be exclusively confined to appellate work, there is great authority.

The late Chief Judge James McSherry in a paper read before the Maryland State Bar Association in 1904 stated the reasons for this position: "The chief defect in an independent system lies in the fact that the Judges being wholly withdrawn

from contact with the practice at nisi prius become more theoretical, and decisions are consequently apt to deal with abstract principles rather than with the practical application of them. The present system brings the members of the Bar and the Judges in closer touch and that circumstance is of great advantage to both in the administration of justice. The practical side of a case is often as important to be considered as is its technical legal aspect and the Judge, who for years has been removed from the attrition of the trial Court, is liable to grow oblivious of conditions which ought to have their due weight in reaching just conclusions. I think I may safely say that the best and most satisfactory work which the Court's records disclose has been that done under the system first adopted in 1805. Certainly the most expeditious work has been done under the system. When the Court established under the Constitution of 1851 and continued under the Constitution of 1864 was succeeded by the one created in 1867, the New Court upon organizing, was confronted with two hundred and fifty-two cases which had not been disposed of, many of which had been on the docket for quite a number of years and some since 1852. It required considerable time and labor to do the work which the preceding Independent Court had left undone."

In this conclusion Judge McSherry is supported by eminent judges. Among these may be mentioned the late Henry Page, James Alfred Pearce, A. Hunter Boyd, Charles B. Roberts, I. Thomas Jones, William H. Thomas.

[Editor's Note—Judge Parke was for seventeen years a member of the Court of Appeals of Maryland; president of the State Bar Association, 1924-25, and a dissenting member of the "Bond Commission."]

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THE DAILY RECORD
(Baltimore, Md., October 30, 1944.)

The Present Judicial Structure Of The Court Of Appeals Of Maryland Needs No Change

By EDWARD D. MARTIN
OF THE BALTIMORE BAR

In the approaching election in November, the voters of Maryland are going to be called upon to determine whether or not the Judiciary Article of the State Constitution ought to be changed. The contemplated amendment or change provides, *inter alia*, for an alteration in the present structure of our State Court of Appeals.

Since the adoption of the State Constitution in 1867, Maryland has been divided into eight judicial circuits, seven of which are composed of certain groups of the counties. Baltimore City comprises the eighth circuit. In the seven county circuits, the Chief Judge of the circuit automatically becomes an Associate Judge of the Court of Appeals. In the eighth circuit, Baltimore's representative on the Court of Appeals is specially chosen. In the seven county circuits, the Chief Judge, in addition to his appellate work on the Court of Appeals, from time to time, may engage in *nisi prius* or trial work. The Baltimore member of the Court of Appeals does no *nisi prius* work. Since 1867, therefore, the Court of Appeals has been thus constituted, with seven judges from the counties and one judge from Baltimore City.

The proposed amendment to the Constitution, in so far as the Appellate Court is concerned, modifies the present composition of the Court. Thereby the State is to be divided into four appellate districts through a regrouping of the twenty-three counties of the State into three districts. Baltimore City is to comprise the fourth. One appellate judge is to be chosen from each of the three county districts, and two of the judges are to be selected from Baltimore City. Thus, under the proposed amendment, the Court of Appeals will be composed of five judges rather than eight, the present number. Thereunder the judges of the Court of Appeals will generally be precluded from participation in *nisi prius* work.

When one is faced with making a decision as to whether or not the existing structure of the Court of Appeals ought to be changed, the natural query which arises in his mind is "why?"

The razing of the judicial structure of the State, which has been in force since 1867, is something that should not lightly be done. Especially when through its portals, without blemish, have come a long line of able and distinguished jurists. A judicial system which has been productive of such men ought not to be disturbed in the absence of sound reason. Before the present structure of the Court of Appeals is changed, the advocates of the change must show that the proffered substitute will produce a superior and better Appellate Court. Undoubtedly the burden rests upon them.

In any consideration of the value of the contemplated amendment, there open up many vistas for serious thought. There is the oft expressed opinion by a number of the proponents of the amendment that it is becoming increasingly difficult to find, under the existing structure, judicial timber, in the county circuits, sufficiently strong to bear the mental and intellectual strain requisite for an appellate judge. Yet, the record of the Court of Appeals since 1867 destroys the force of this observation. It is replete with instances of the development of a legal sapling into a sturdy judicial oak, whose roots have extended deeply into the jurisprudence not only of Maryland but also of the Nation. And, in its growth, the sapling has ever had the shelter and the protection of the older and more mature oaks on the Court. Illustrative are the remarks of Judge William C. Walsh, now Attorney-General of Maryland, at the memorial services held for the late Judge Hammond Urner, of Frederick County, namely:

"If I may be pardoned a personal reference, I would like to say that

during my two years of service as a member of this Court from 1924 to 1926, Judge Urner went out of his way to be helpful and to aid my youth and inexperience and I will always be deeply and sincerely grateful for his wise counsel and advice." 181 Md. VIII.

In the earlier history of the Court of Appeals between 1867 and 1900, the seven county circuits nurtured and brought into full intellectual and judicial bloom such outstanding jurists as Judge Alvey, Judge Miller, Judge Robinson, Judge Irving, Judge Ritchie, Judge Stone and others of like ability and integrity. During this era also, other jurists of equal lustre, to whom reference is hereinafter made, served upon the Appellate Bench, their periods of service extending beyond 1900.

Because of the criticism by the advocates of the amendment of the judicial production of the several county circuits, it has been of interest to observe the appraisal by leading members of the Maryland Bar, particularly those from Baltimore City, and by the press, of the intellectual ability and judicial capacity of the judges from the county circuits, who have served on the Court of Appeals between 1900 and the present time, though as indicated above, in a number of instances, their elevation to the Appellate Bench antedated 1900 by many years. No reference is, of course, made to the judges now sitting on the Court of Appeals.

These estimates of mental attainments and judicial worth have usually been given at the time of the appointment or retirement of one of the judges or at a memorial service held subsequent to his death. It is true that, at such a time, one has an inherent desire to speak well of the man whom, or whose memory, he is called upon to honor. Yet, it is equally true that the illustrious and outstanding members of the Bar and the press, whose words are to be quoted, would not permit their spoken words, even upon such occasions, to transcend their honest judgment of the worth of the man of whom they are speaking.

That the members of the Court from the counties bring to it something of singular value is apparent from the remarks of the late distinguished Chief Judge Carroll T. Bond. At memorial services, held at the Court of Appeals on November 13, 1940, in honor of Judges W. Laird Henry, John R. Pattison and William Mason Shehan, Judge Bond said:

"As to their contributions to the work of the Court and the jurisprudence of the State, they, like all other appellate judges under our practice, reveal their achievements so thoroughly in the opinions they write for the Court that they leave, after all, little room for comment. More important than the intellectual quality of their work, however, is the character of the men and the spirit in which they did their work, that is, their personal and judicial integrity. These qualities it is which, more than others, make a man acceptable to the people as their judge. Sufficient intellectual ability is usually found in combination, for it is happily rare that a man without the necessary ability has the boldness to undertake the work." 178 Md. XXVI.

What might be termed the refreshing or realistic influence of the county judge upon the Court is implicit in Judge Bond's remarks at the time of Judge Briscoe's death:

"All courts of course, and indeed, all professional or specialized workers, are constantly in danger of losing the sense of the relation of their work to the humanity for which all are working, to make their work too professional or ritualistic. It is a risk which attends devotion to specialized labors, and against this tendency Judge Briscoe brought to the counsels of the Judges an abundance of protection. That was no small contribution." 147 Md. XXXVI.

Of value is the contemporary estimate of the Court of Appeals under its existing structure, made on February 10, 1944, by Governor Herbert R. O'Conor at the time of the retirement of Chief Judge Sloan. Governor O'Conor said:

"Fortunately, at a time when many vested institutions are tottering, Maryland has, in its Court of Appeals, a foundation that has been unshaken amid all the turmoil that has engulfed the world. While constitutional methods are under attack in other sections, and although faced by some of the gravest legal problems that have ever arisen within our State, the Court of Appeals has conducted itself with such reasoned judgment, such unquestioned impartiality that it retains to the fullest degree

the entire confidence of all our citizens." *Minutes of the Court of Appeals of Maryland*, February 10, 1944.

There follow the considered opinions of distinguished members of the Maryland Bar and of the press regarding the judicial performance of the county judges of the Court of Appeals (exclusive of the present Court) who have been members of that tribunal since 1900. There have been twenty-five. Reference is made to twenty-two. Judge William H. Adkins, of the Second Judicial Circuit and Judge William H. Forsythe, Jr., of the Fifth Judicial Circuit are yet alive and their work has not been formally appraised, though their integrity, learning and ability and their contributions to the work of the Court are known and recognized throughout the State. Judge John G. Rogers, of the Fifth Judicial Circuit, was a member of the Court for only one year.

Clearly, sound reason and fair analysis should oppose the destruction of a judicial structure which begets such judges.

Chief Judge James McSherry, Frederick County, Chief Judge, Sixth Judicial Circuit, 1887-1907; *Chief Judge of the Court of Appeals*, 1896-1907.

The late Bernard Carter, Esq.:

"It can be said in words of truth and soberness that he was a great judge, the opinions of this Court, as delivered by him, furnish the fullest proof and will constitute an abiding record; for to those who have read them or shall hereafter read them, they abundantly show a clear, direct and logical mind, a power of subtle analysis, balanced and checked however by excellent common sense, deep and broad legal learning, untiring industry, full knowledge and clear appreciation of the fundamental principles of common law and equity jurisprudence, great ability in the proper application of those fundamental principles and of the result of judicial adjudications and a strong sense of justice." 105 Md. XL.

Judge David Fowler, Baltimore County, Chief Judge, Third Judicial Circuit, 1889-1905.

The late Bernard Carter, Esq.:

"From the time he took his seat on this Bench, until the day he left it, he conscientiously applied his mind, day by day, to make himself thoroughly familiar with the many subjects which it was necessary he should understand, in order to properly dispose of the many important questions, which, from time to time, came before the Court for determination; he thus not only acquired increased knowledge, but he greatly strengthened and developed his naturally vigorous mind; so that, before the time of his mid-judicial service on the Bench, he was able to bring to the performance of his judicial duties, a well balanced judgment, vigorous, well trained faculties, strengthened by constant study and a memory enriched by the knowledge of jurisprudence, and polite literature. He had so become an able and learned member of this Court, the duties of which he discharged with firmness of conviction, soundness of heart and mind, thorough integrity, and a high ideal of duty." 114 Md. XXX.

Judge John P. Briscoe, Calvert County, Chief Judge, Seventh Judicial Circuit, 1890-1924.

Randolph Barton, Jr., Esq.:

"We are told on high authority, 'let not him that girdeth on his harness boast himself as he that pulleth it off.' Judge Briscoe girded on his harness thirty-four years ago. Then he could only hope and resolve. Now he can appraise the degree of success he has had in realizing those hopes. Has he lived up to the standard which was early set and which has consistently been maintained for membership on the Bench of which he has so long formed a part? To achieve and maintain that standard was all that he could possibly desire when, as a young lawyer, he first took his seat upon this Bench. If he has succeeded he may well boast as he puts his harness off. We, the members of the Bar, think he has. His associates on the Bench sustain us in that contention." 144 Md. XXX.

Judge Henry Page, Somerset County, Chief Judge, First Judicial Circuit, 1892-1908.

Edgar Allen Poe, Esq. (then Attorney-General):

"Here he labored patiently and industriously and brought into full play all the forces of a naturally legal and logical mind enriched by study and training and fortified and strengthened by high moral character and sound judicial temperament.* * * Judge Page's opinions are all written in a clear,

terse aud forceful style. Pertinent legal principles are correctly and succiuctly stated and then applied without unnecessary elaboration to the facts of the case before him." 120 Md. XXXII.

Chief Judgc A. Hunter Boyd, Alleghany County, Chief Judge, Fourth Judicial Circuit, 1893-1924; *Chief Judge of the Court of Appeals*, 1907-1924.

The late Joseph C. France, Esq.

"Our profession is in debt to him peculiarly, not alone for his uuiform courtesy, patience and spirit of accommodation that he always displayed as presiding judge—those qualities we are in the habit of looking for; not aloue for his mastery of the law, and that was great; not alone for his personal qualities, which as I have said made him what he is; but I think that over and above all was something else with which those other qualities combiued, and that was, as Mr. Robinson has indicated, the constant and perpetual desire to do justice. That meant justice to the litigants, it meant justice to the opposing contentions of lawyers, aud it also meant justice to the fundamental precepts of the law. You will find that running all the way through his opinions at times laboriously, but that is the thread, that is the clue." 146 Md. XXX.

Judge James Alfred Pearce, Kent County, Chief Judge, Second Judicial Circuit, 1897-1912.

The late Alexander Armstrong, Esq. (then Attorney-General):

"In the jurisprudence of the State his clear, sound and fearless expositions of the law will ever be preserved as a monument to his own greatness and a heritage for all the generations yet to come." 138 Md. XXVIII.

Judge I. Thomas Jones, Howard County, Chief Judgc, Fifth Judicial Circuit, 1899-1907.

The late Wm. Sheppard Bryan, Jr. (then Attorney-General):

"In the opinions of Judge Joues is found ample evidence of the learning, the industry and the patient and sincere love of justice which he brought to the service of the State.* * * The consequence is that the jurisprudence of Maryland is richer and the authority of this high Court is greater by reason of Judge Jones' service on the bench." 104 Md. XXVIII.

Judge N. Charles Burke, Baltimore County, Chief Judgc, Third Judicial Circuit 1905-1920.

William L. Rawls, Esq.:

"High as was the order of all his work in every office that he assumed, that which he performed as a member of this Court will of necessity be longest remcmbered and will constitute his surest title to regard hereafter. His opinions are preserved in thirty-six volumes of the reports of this Court, the first in 101st Maryland, the last in 136th. They are the true reflection of a mind of great native power, trained and disciplined by conscientious exercise and by paiustaking and discriminating research enriched by wide reading both in and out of his profession; and of a mind inherently and preeminently judicial in character." 145 Md. XXVIII.

Judge William H. Thomas, Carroll County, Chief Judge, Fifth Judicial Circuit, 1907-1924.

The late Thomas H. Robinson, Esq. (then Attorney-General):

"His career upon the bench was marked by distinguished service, helpful to his associates of this Court, and extremely satisfactory to the profession which practiced before him. His knowledge of the law was sound and thorough, his judgment safe and impartial, his temperament even and judicial. His written opiuions reflect all of these qualities and they are found from 107 to 144 of the reports of this Court. They are his professional monument, of which his friends who loved him are justly proud." 145 Md. XXIV.

Judge Glenn H. Worthington, Frederiek County, Chief Judge, Sixth Judicial Circuit, 1907-1909.

Governor Herbert R. O'Conor (then Attoruey-General):

"It is significant to note that Judge Worthington's abilities as a jurist were highly appreciated by his follow citizens, as is illustrated by the fact that having given evidence of his qualifications to discharge the important functions of the judicial office, in filling out the unexpired term of his predecessor, the late Chief Judge James McSherry, he was later elected to the judgeship. These successive services constitute a full measure of confidence and esteem and represeut the very highest of human tributes." 167 Md. XXV.

Judge W. Laird Henry, Dorchester County, Chief Judge, First Judicial Circuit, 1908-1909.

Attorney-General William C. Walsh:

"Judge Henry served as a member of this Court from May, 1908, until October, 1909, and his opinions are found in volumes 106 to and including 109 of the Maryland Reports; their lucidity and thoroughness bear eloquent testimony to Judge Henry's sound legal learning and industry." 178 Md. IX.

Judge John R. Pattison, Dorchester County, Chief Judge, First Judicial Circuit, 1909-1934.

Attorney-General William C. Walsh:

"He was a man of fine judicial temperament, of sound judgment and of great legal learning, and history will record him as one of the great judges of our State." 178 Md. VII.

Judge Hammond Urner, Frederick County, Chief Judge, Sixth Judicial Circuit, 1909-1938.

Attorney-General William C. Walsh:

"Judge Urner will, of course, be best and longest remembered as a member of this Court. For a little more than twenty-nine years he served here as an associate judge, and the cases in which he wrote opinions are reported in volumes 111 to 175 of the Maryland Reports. These opinions are models of clarity and legal learning and reflect the sound judgment of one of Maryland's most able judges. They constitute Judge Urner's greatest monument, and through all the years to come they will serve as guide posts on the road to justice in this State, and will aid in determining the rights, the duties, and the liberties of the citizens of Maryland." 181 Md. VIII.

Judge Albert Constable, Cecil County, Chief Judge, Second Judicial Circuit, 1912-1919.

The late Governor Albert C. Ritchie (then Attorney-General):

"Judge Constable's career upon the Bench was marked by distinguished service, helpful to his associates of the Court, and altogether satisfactory to the profession which practiced before him. His knowledge of the law was sound and thorough, his judgment safe and impartial, his temperament even and judicial. His written opinions reflect all of these qualities. They are his professional monument, of which his friends who loved him are justly proud. We see in them how splendidly suited to the ermine he was." 133 Md. XXX.

Judge T. Scott Offutt, Baltimore County, Chief Judge, Third Judicial Circuit, 1920-1942.

Attorney-General William C. Walsh:

"Judge Offutt was a forceful and gifted judge. His claim to fame is soundly established in the opinions which he prepared for this Court, and these opinions will be cited as precedents and will serve as guide posts in the administration of justice in Maryland in all the years to come. This is true of all the Judges of the Court of Appeals of Maryland, and is honor enough for any man, but in the case of Judge Offutt it can be confidently predicted that the future historian of the Court will place his name high on the list of the most distinguished jurists who have served as its members, and in the history of our State he will always rank as one of its truly outstanding citizens." THE DAILY RECORD, February 21, 1944.

Judge W. Mitchell Digges, Charles County, Chief Judge, Seventh Judicial Circuit, 1923-1934.

Governor Herbert R. O'Conor (then Attorney-General):

"In approaching the attempt to voice our tribute of respect to his memory, we realize fully that our words are inadequate to describe the admiration and affection held for Judge Digges by the entire bar of the State of Maryland. He was the personification of justice. His knowledge of legal principles was thorough and sound; his judgment impartial and safe; his temperament conservative and judicial." 167 Md. XXX.

Judge William C. Walsh, Alleghany County, Chief Judge, Fourth Judicial Circuit, 1924-1926.

The Sun, Baltimore, August 4, 1926:

"It is anything but a slight responsibility that the people place upon those whom they choose for judges.* * * It is superlatively important, therefore, that the men who sit upon the Court of Appeals should know the law, should be industrious, should be patient and should be honest as daylight and courageous. Judge Walsh's service leaves no doubt that he is qualified in all these respects and to them has been added experience of great value."

Judge Walsh has been Attorney-General of the State of Maryland since November 8, 1938.

Judge Francis Neal Parke, Carroll County, Chief Judge, Fifth Judicial Circuit, 1924-1941.

The Sun, Baltimore, January 5, 1941.

"There is little that one may say, on the retirement of Judge Francis Neal Parke, of the Court of Appeals, that is not well known to him. The attitude and expressions of his fellow-members of the judiciary and of the Bar have told him over and over again that respect has long since passed into deference. He is not only one of the ablest judges of his time in Maryland; he is recognized by bench and bar as the peer of the ablest judges of any stage in Maryland's history, and that means that he would have been an honor to any bench in the land."

Judge William Mason Shehan, Talbot County, Chief Judge, Second Judicial Circuit, 1934-1940.

Attorney-General William C. Walsh: "He will be best remembered by the legions who knew him as an ideal citizen, a sound lawyer and judge and a loyal friend. The opinions he rendered as a member of this Court need no commendation from me and they will stand as a record for all times of his grasp of legal problems and his earnest study of the law." 178 Md. X.

Judge Walter J. Mitchell, Charles County, Chief Judge, Seventh Judicial Circuit, 1934-1941.

The Evening Sun, October 23, 1934: "Last week Judge W. Mitchell Digges, of Charles County, died and Governor Ritchie appointed Walter J. Mitchell, President of the Senate, to take his place pending election time. The Democrats of the district then nominated Mr. Mitchell to fill out the unexpired term of Judge Digges:

"Thanks to the wisdom of the Republican State Central Committee, it was possible yesterday for the papers to announce that Mr. Mitchell will have no opposition on the November ballot. His fitness for the position is so manifest and his ability to rise above partisan consideration so clear that it would be injecting a wholly extraneous element into the situation to set up some one to run against him. The Republican Committee had the wit to see the situation and acted accordingly. They are to be commended."

Judge Benjamin A. Johnson, Wicomico County, Chief Judge, First Judicial Circuit, 1934-1943.

Attorney-General William C. Walsh: "The reported opinions of Judge Johnson as a member of this Court begin with the case of American-Stewart Distillery, Inc., vs. Stewart Distilling Company, 168 Md. 212, and run through the succeeding volumes to Volume 180 of the Maryland Reports, and these opinions are a tribute to the ability and industry of their author. Prior to his elevation to the Bench, Judge Johnson had acquired an enviable record for hard work and unusual skill as a practicing lawyer and his services were widely sought throughout the First Circuit. These outstanding attributes were fully displayed in his work as a Judge both at nisi prius and in this Court, and when added to his courage and ability in reaching sound conclusions brought him great distinction during his decade of judicial service." THE DAILY RECORD, January 25, 1944.

Judge D. Lindley Sloan, Alleghany County, Chief Judge, Fourth Judicial Circuit, 1926-1943, *Chief Judge of the Court of Appeals, February* 10, 1943–*April* 3, 1944.

Governor Herbert R. O'Conor: "Fortunately, at a time when many vested institutions are tottering, Maryland has, in its Court of Appeals, a foundation that has been unshaken amid all the turmoil that has engulfed the world. While constitutional methods are under attack in other sections, and although faced by some of the gravest legal problems that have ever arisen within our State, the Court of Appeals has conducted itself with such reasoned judgment, such unquestioned impartiality that it retains to the fullest degree the entire confidence of all our citizens.

"Unquestionably, much of this successful functioning of the Court is due in large measure to the distinguished jurist in whose honor this gathering has been called. Throughout his eighteen years of service on the highest Court of the State he has been a symbol of that reasoned judgment for which Americans of every age have turned to their Appellate Courts when seeking final decision on moot questions." *Minutes of the Court of Appeals of Maryland,* February 10, 1944.

(Reprinted from THE DAILY RECORD, Baltimore, Md., October 16, 1944.)

Maryland State Bar Association

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

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October 22, 1958

Maryland State Bar Association

REPORT OF 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.

OGLE MARBURY,
Seventh Circuit.

H. VERNON ENEY,
Eighth Circuit,
Chairman.

FREDERICK W. INVERNIZZI,
Secretary.

October 22, 1958

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October 22, 1958

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 Court of Appeals of Maryland 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*
_____	2			3	2							
_____				13								
_____				7	18							
_____	15	16	16									
_____												
_____					9							
_____		19	17	14	16	9	25	25	32	30	32	26
_____	15	18	15	15	17	8	23	23	31	30	28	24
_____		15	12									
_____			7	12	14	7	22	24	22	10	33	17
_____												
_____					7	8	27	24	32	30	35	26
_____												
_____	19	18	4									
_____		10	15	15	17	9	25	26	36	27	30	29
_____						5	18	23	27	30	31	29
_____				14	15	7	5					
_____	19	3										
_____	13											
_____	18											
_____												
_____	4											
_____	21	17	16	15	5							
_____												
udges_____									4	2		2
_____	126	116	102	108	120	53	145	145	184	159	189	153
_____	17.1	16.1	14.0	13.1	13.1	7.6	20.7	24.1	30.0*	26.1*	33.0	25.1*
_____	21	19	17	15	18	9	27	26	36	30	35	29
_____	4	3	4	7	5	5	5	23	22*	10*	28	17*
_____	175	150	160	157	155	66	172	166	205	187	214	178

ril, 1945 Term and the annual terms begin with October, 1946.
pinions 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)

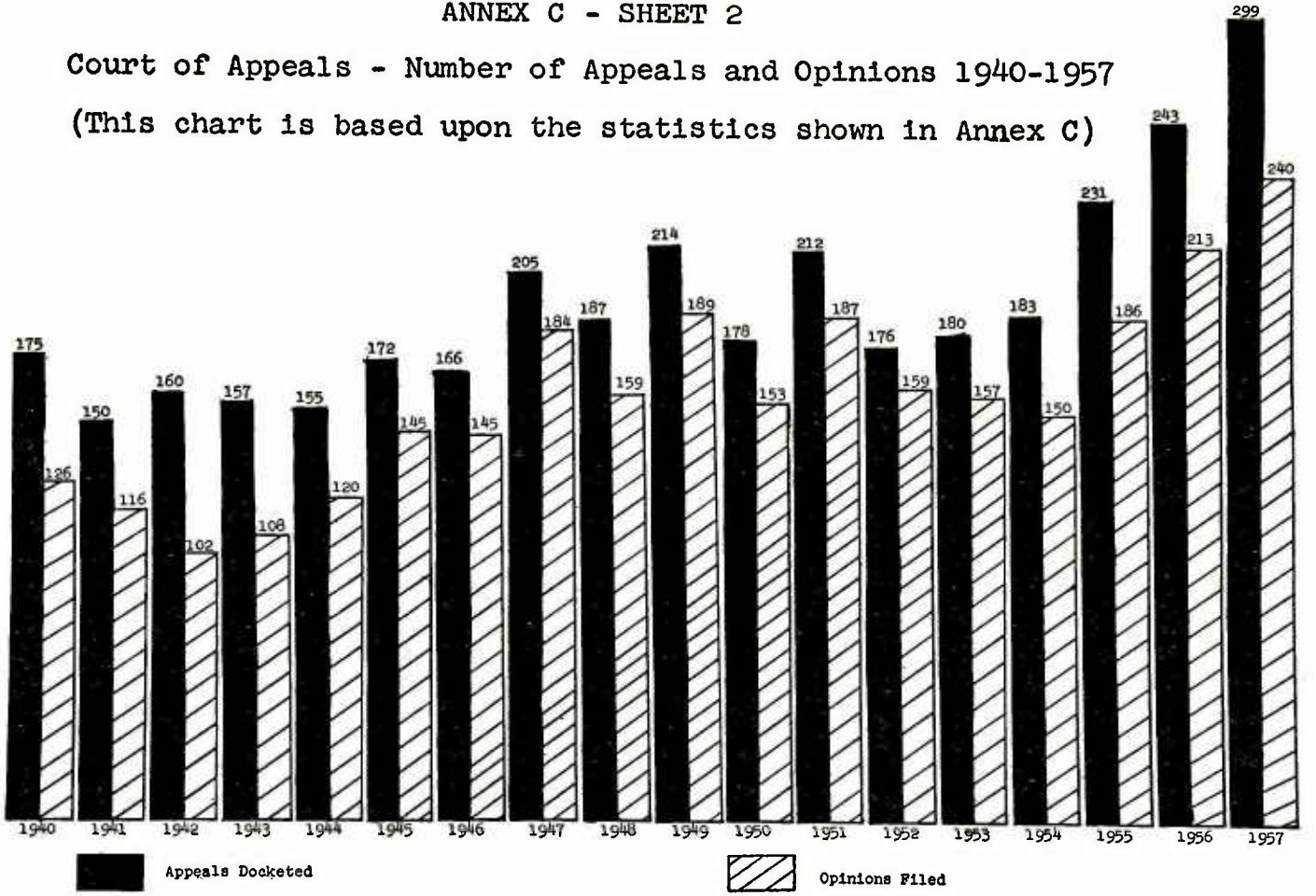
Term	*Appeals Docketed*	*Total Opinions Filed*	*Opinions by Specially Assigned Judges*	*Average* Opinions Per Judge*
Jan., Apr., Oct. 1940	175	126		17.1
Jan., Apr., Oct. 1941	150	116		16.1
Jan., Apr., Oct. 1942	160	102		14.0
Jan., Apr., Oct. 1943	157	108		13.1
Jan., Apr., Oct. 1944	155	120		13.1
Jan. 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 Clerks 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.

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First report dated January 15, 1958	2-28
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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.

PRESS OF
THE DAILY RECORD COMPANY
BALTIMORE, MD.

A REVIEW

RELATIVE TO

THE

COURT OF APPEALS OF MARYLAND

By

CHARLES CLAGETT

Baltimore

February 2, 1959

NOTATION

The bill with respect to amending Article IV of Maryland's Constitution, which the special committee of the State Bar Association proposed, contained in its report dated October 22, 1958, and which was approved by the Association at its mid-winter meeting on December 5, 1958, in addition to the other features criticized in this review, contained the vices in the proposed Section 3 and also in violation of proper regional representation on the Court of Appeals, as noted. The bill as submitted to the Legislature on January 29, 1959 made correction of Section 3 in conformity with the criticism, and it also made alterations as to regional representation of the nature of the criticism. As to the latter, however, for the purpose of facilitating the proposed intermediate appellate court, it still is featured by the vice of continuing the two different regions of the two northern counties and the five Southern Maryland counties in one appellate judicial circuit instead of separate circuits as the other regions of the State have.

As this review was going to be published in the first few days in February, and was on the press, it was not possible to call attention, in it, to the changes - of which the writer of this review had no knowledge until the printed bill was published.

Baltimore

February 2, 1959

A REVIEW

RELATIVE TO

THE

COURT OF APPEALS OF MARYLAND

By

CHARLES CLAGETT

Baltimore

February 2, 1959

FOREWORD

This review has been written from a more comprehensive point of view than solely the immediate emergency of the Court of Appeals, in order to bring into clear perspective, condensed within a comparatively few pages:

1. Maryland's historic basic principles of government with respect to its judiciary;
2. how those principles developed;
3. a full appreciation of the necessity, whenever any measures are proposed affecting its judiciary, to subject them to the test of whether they comply with those principles.

It has become apparent that, contrary to confident predictions at the time of the adoption of the "Bond Amendment" of Maryland's Constitution in 1944, a five membership Court of Appeals, on its present basis of appellate jurisdiction, will in the near future be unable adequately to dispose of the case load of the court.

Now, in the short space of fourteen years, it is proposed, in order to remedy the situation, that Maryland involve itself with another, supplemental and intermediate, appellate court, which, despite optimistic wishful thinking, will inevitably result in heavy additional and expanding expense to the people of Maryland, the prospect, looking behind forms and in realistic terms, of double appeals and consequent increased expense to litigants, and double reports burdening the members of the judiciary and the legal profession, and, if the judges of the Court of Appeals perform the inquisitorial function contemplated in the proposal, a most onerous burden upon them.

It is not possible for human beings to look beyond the veil which separates them from the future and see what future developments may require, and consequently no one is in a position to say that developments may not arise in the future which would make it advisable, at such a time, to resort to various courses, including the possible inauguration of a tiered super-structure of appellate judiciary embodying an intermediate appellate court. It should, however, be clear beyond argument, that Maryland should assume no such burdensome involvement unless and until it becomes absolutely essential.

Therefore, with respect to the present condition, in considering the proposal which has been advanced, the most careful consideration should be given to other possible practical alternatives.

In the course of this review, comment naturally is evoked as to measures proposed or supported in the past or at present by various individuals, and critical consideration of such measures may occur, but no reflection on such individuals is intended — implied or otherwise. They — as has also been the case of those maintaining the opposite positions — have given generously of their valuable time and services to what they believed to be for the public interest, and many of them have been friends of long standing of the writer of these pages. They all have been and are men who are entitled to be held in high regard, and, in order to guard against any erroneous impression, documentation references will be cited without personal connections as far as possible.[1] *

This review has been compiled, not with the intention of engaging in any organizing movement, but, from the detached point of view of

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* Numbers refer to accompanying notes, *infra,* pages 33 to 55.

a lawyer in retirement, in order that the herein presented aspects of the questions involved may not be lost sight of, and receive the thoughtful consideration of the judiciary of the State, the members of the Bar, and, naturally as most important, the Chief Executive, other public officials and members of the General Assembly as the representatives of the people and the people themselves, in arriving at an intelligent solution of matters which can so vitally affect the general public.

The attainment of such a solution can not be accomplished, unless there be a full recognition of fundamentals, and one of the primary fundamental facts is that litigation and matters which come before courts do not arise out of thin air. They are occasioned by the relations and activities of people. Consequently they follow, and increase with, the populations, and in Maryland the heavy increase, present and prospective, of the population, and the well established trend of its distribution within the State, are going to make necessary an adjustment of the membership of the Court of Appeals itself, and also a practical treatment of the methods of review, and thus have the result of providing the essential approach to dealing with the problem of the Court of Appeals.

Before discussing what should be the adjustment, and what methods of review should be considered, it is most important that there be a thorough understanding of the fundamentals of the State of Maryland itself as to its judiciary, because those fundamentals have vital bearing on both of the questions just cited.

MARYLAND'S BASIC PRINCIPLES OF GOVERNMENT WITH RESPECT TO ITS JUDICIARY, AS DEEPLY ROOTED IN ITS HISTORIC BACKGROUND.

These basic public principles, are inherently bedded in the distinction between the Federal Courts intended to deal with federal questions, and the State Courts dealing with local matters which generally, in one way or another, come close to the fireside.

Therefore, Maryland, after first trying out a different course, which it discarded, developed two basic principles with respect to its judiciary, to which, while insistent that its judges must always be independent, it has since steadfastly adhered over a long period.

A. That its judges, as public officials administering judicial affairs so intimately affecting its people, are to be elected by the people.

B. That its Court of Appeals is to be composed of judges coming from, and elected by the people of, different sections of the State, so that they will be familiar with the conditions in and the problems of the people of those regions, thereby bringing to the entire court a close familiarity with the conditions and affairs of the whole State.

It is necessary that there be a clear comprehension of how these principles have evolved through the various constitutions of the State; and at the same time there will be a like clear comprehension of the sound basis of, and reason for, certain subsidiary features. The pertinent constitutional provisions will accordingly be stated.

The Declaration Of Rights

AND

The Constitution And Form Of Government.

(Maryland's first Constitution, adopted at the Constitutional Convention of 1776.)

The Declaration of Rights.

"That all government of right originates from the people, . . ."[2]

"That all persons invested with the legislative or executive powers of government, are the trustees of the public, . . ."[3]

"That the right of the people to participate in the legislature is the best security of liberty, and the foundation of all free government; for this purpose elections ought to be free and frequent, . . ."[4]

"That the independency and uprightness of judges are essential to the impartial administration of justice, and a great security to the rights and liberties of the people; wherefore, the chancellor, and all judges, ought to hold commissions during good behaviour, and the said chancellor and judges shall be removed for misbehaviour, on conviction in a court of law, and may be removed by the governor, upon the address of the General Assembly, provided that two-thirds of all the members of each house concur in such address."[5]

The Constitution And Form Of Government.

That various public officials, including the chancellor and all judges, "shall hold their commissions during good behaviour, removable only for misbehaviour, on conviction in a court of law."[6]

That the governor, with the advice and consent of the council, should appoint sundry officials including the chancellor and the judges.[7]

That there should be a Court of Appeals, but without stating the number of its members or whence they should come.[8]

The Constitutional Amendment, Acts of 1804, Ch. 55, November Session, confirmed by the Acts of 1805, Ch. 16, November Session, established regional representation on the Court of Appeals.

The State had previously been divided into judicial districts with respect to the local courts, and Sections 1 and 5 of this Constitutional Amendment re-arranged those districts into six, each composed of a group of counties — Baltimore City being still a part of Baltimore County — and provided that the Court of Appeals was to be composed of the six Chief Judges of those districts.

In so doing the requirement was made that the judges of the districts were to be residents of the respective districts for which they were appointed, and that "each judge shall hold his commission during good behaviour, removable for misbehaviour on conviction in a court of law, or shall be removed by the governor, upon the address of the General Assembly, provided that two-thirds of all the members of each house concur in such address; . . . ."[9]

THE CONSTITUTION OF 1851.

After the question was fully and powerfully debated and fought out in the Constitutional Convention, and the position taken, of widespread objection to the experience of the appointive system, and also that the election of judges would not have any greater effect of involving the courts in politics than the appointive basis, and the assertion of the opposition of not as much, the continuance of that basis

was overwhelmingly repudiated, and it was determined that thenceforth the judges of the State were to be elected by the people.[10]

While dividing the State into eight local judicial circuits, it further divided it into four appellate judicial districts — three being composed of groups of counties and one of Baltimore City — each to be represented by one judge on the Court of Appeals, which was to be so constituted. The appellate judges, not being part of the local circuit judiciary and therefore not having local circuit duty, were to be residents of, and elected by the people of their respective appellate judicial districts, and to serve for ten years unless previously attaining the age of seventy, and within that age limitation, but not thereafter, with the right of re-eligibility.[11]

The local circuit judges were likewise to be from and elected by the people of their local circuits, for a term of ten years.[12]

Vacancies in judgeships were to be filled by the Governor with the advice and consent of the Senate, until the next general election of Delegates.[13]

The Constitution Of 1864.

(The Civil War Constitution, disfranchising many of the people, especially in the sections where the sentiment was most affirmatively in favor of the South; and with Maryland under Federal domination.)

While dividing the State into thirteen local judicial circuits, it further divided it into five appellate judicial districts (thereby increasing them by one), each to be represented by one judge on the Court of Appeals, consequently so constituting it. Three of the districts were composed of groups of counties, and, as to the other two, one — the "Second" — was composed of Harford and Baltimore Counties and the first seven wards of Baltimore City, and the other — the "Third" — of the rest of Baltimore City. The judges of the Court of Appeals were to be elected from their respective appellate judicial districts, but, accordingly differing from the 1851 Constitution, by the voters of the entire State. The judges of the local circuits were elected from and by the voters of their respective circuits. As was the case under the 1851 Constitution, the judges of the appellate judicial districts, not being part of the local circuit judiciary, had no local circuit duty. All terms were to be fifteen years unless previous attainment of the age of seventy, but not thereafter, with right of re-eligibility within that limitation.[14]

Vacancies were to be filled by the Governor, with the advice and consent of the Senate, until the next applicable general election.[15]

THE CONSTITUTION OF 1867.

(The principal occasion for which being to correct the effects of Federal domination. This, of course, is the present Constitution.)

Divided the State into eight judicial circuits, seven thereof being composed of groups of counties, and the eighth of Baltimore City. The Court of Appeals was to be composed of the seven Chief Judges of the county judicial circuits and a special judge from the Baltimore City judicial circuit. All the eight judges were to be residents of, and elected by the people of, their respective judicial circuits.

The other, i.e., local judges of all these judicial circuits, were likewise to be residents of, and elected by the people of, their respective judicial circuits.

The term of all the judges was to be fifteen years unless they previously attained the age of seventy, and within that age limitation, but not thereafter, with the right of re-eligibility; but, under this constitution as originally adopted, with provision that the General Assembly might extend the tenure beyond that age but not beyond the term of election. (This extension provision was subsequently removed. Const. Amend's. Act of 1931, Ch. 479, rat. Nov. 8, 1932, Act of 1953, Ch. 607, rat. Nov. 2, 1954.)

Vacancies were to be filled by the Governor until the next applicable general election. (However, the designation of the Chief Judge of the Court of Appeals by the Governor with the consent of the Senate, continued, as previously, until the "Bond Amendment" eliminated the Senate consent requirement.)

The county judges on the Court of Appeals participated in local circuit duties. The judge from Baltimore City actually did not, although he was subject to such additional duties, if any, as the general assembly might prescribe.[16]

The jurisdiction of the Court of Appeals was stipulated to be "such as now is or may hereafter be prescribed by law" (and which, as noted in Hendrick v. State, 115 Md. 552, has been construed to mean appellate jurisdiction only).[17]

The "Bond Constitutional Amendment", in 1944,[18] was the subject of intense controversy arising from great conflict of views as to the wisdom and advisability of its features; certain of which will be considered later herein since they are directly involved in the subject of this review. The comment here will be limited to noting the respects in which the amendment changed the previous provisions of the Constitution.

After making temporary arrangements for the additional judges then on the Court of Appeals, it reduced the number of the judges from eight to five.

It divided the State into four appellate judicial circuits, and recognizing the nine Eastern Shore Counties as one region, allotted it one judge, the Western Maryland counties, i.e., Garrett, Allegany, Washington, Frederick, Montgomery, with Carroll and Howard included, as another region, allotted it one judge, combined the two northern counties, Harford and Baltimore and the five Southern Maryland counties, Prince George's, Anne Arundel, Charles, Calvert and St. Mary's, into a single region, and allotted it one judge, and allotted Baltimore City two.

The judges were stipulated to come from and be elected by the voters of those respective appellate judicial circuits.

The existing geographical divisions of the State into the eight local circuits was not changed. However, the connection of the judges of the Court of Appeals with them was. Although, as already shown, of the previous eight judge membership of the court, the one from Baltimore City did not participate in local circuit trials, the other seven, then being Chief Judges of the seven county circuits, did from time to time. The amendment disassociated the judges of the Court of Appeals from their local circuit court connection.[19]

In case of vacancy in the office of any judge of the State, including, as well as otherwise, the expiration of the term of fifteen years, or the creation of a new judgeship,[20] the Governor fills the vacancy. The appointment runs, in case of the expiration of a fifteen year term, until the first biennial election of Representatives in Congress after such expiration, or, in case of any other vacancy, until the first such general election after one year subsequent to the arising of the vacancy, and, of course, in either case until the qualification of the elected judge.[21]

Supplemental to the constitutional provisions, reference should be made to the following legislative enactments.

Candidates for nomination, for the office of judge, are excepted from the requirement that candidates in primary elections must be affiliated on the registration records of their county or the City of Baltimore with the political party whose nomination they seek. This enables a candidate for a judgeship to be entered in the primaries of both political parties, and if he is nominated by either party his name goes on the ballot in the election.[22]

When only one candidate qualifies, within the proper time, for any office in a party primary election, a certificate of nomination is

issued to him, and his name will not appear on the ballot in that party's primary, but will, of course, go on the ballot in the election.[23]

A candidate, who has not been a candidate for nomination by a political party at the primary election preceding a general election, may be nominated, independently, by a petition signed by a certain number of properly qualified voters, for an office to be filled at such general election.[24]

In the elections, the names of candidates for the office of judge, are to be placed on the ballot or voting machine without any party label or other designating mark or location, which might directly or indirectly indicate the party affiliation of any such candidate.[25]

Maryland's system of selecting its judges, under its constitutional provisions, the statutes just cited, and the practice pursued, is inherently sound. There is no legitimate reason why it should be changed or modified in any respect.

When a vacancy occurs, the State Bar Association and the applicable local Bar Associations, as a matter of practice and not of law, submit to the Governor lists of persons whom they recommend, which may vary. He then, in the performance of his constitutional duty, determines whether he considers that the best selections can be made from those lists or otherwise. Usually he does make his selections from those lists. After the appointment, the judge will have been in office from one to two years, (and if, having previously been elected, for a much longer period) before he must come up for approval by the people, who have in the meantime had the opportunity to know something about him.[26]

As already shown, the appointee has full and favorable opportunity of being retained. His name can be entered in both party primaries, and if nominated in either, goes on the ballot in the election. If his nomination in either is uncontested, his name does not appear on that party's primary ballot, but automatically goes on the election ballot. If he does not want to have his name entered in the primaries, he can be nominated by petition, and accordingly go on the election ballot. In whichever way nominated, he submits himself, free of the handicap of party label, in the election, for the people's approval.

In earlier times the means of informing the public of the qualifications of candidates were of course inadequate, but today, through the press, radio and printed data, and as to judicial candidates particularly the service rendered by Bar Associations, the channels of communication efficiently perform that public obligation, so that the people are thoroughly informed.

Thus, having had experience with the judicial appointee, and with full information as to him and all other candidates, the people exercise their sovereign right of passing judgment and determining whom they want as their judges, i.e. the public officials administering the judicial branch of their government.[27]

There are elements to be found in the legal profession, both the judiciary and the bar, which have experienced difficulty in adjusting themselves to a recognition of the right of the people to select their judicial officials, just as they have that right with respect to the other important officials of their government. It has been apparent that they would like to see judges in Maryland placed on a strictly appointive basis, and, if they could, would take away from the people their right to select them. Since they realize that any measure of such direct nature would have no chance whatever, there has been evinced a disposition to endeavor to accomplish the same result, in effect, indirectly. All of such attitudes have, of course, been rejected, and under the Declaration of Rights, it is the duty of the members of the General Assembly, as trustees of the people, to be ever alert and watchful to guard against any sapping of their rights.[28]

It is impossible to consider the provisions of its successive Constitutions, meaning by that term also to include its Declarations of Rights, since Maryland first became a State, without having forcefully brought home to the mind its deeply rooted conviction of how its judges generally, and within that general principle the judges of its Court of Appeals, should hold their office.

From the very beginning it has laid down the principle that the determination of who shall be their judges must come from the people. At first it did this on the basis of the previously mentioned provisions in the Declaration of Rights, as to the rights of the people, i.e. that all government of right originates from the people, their right to participate in the Legislature, and the members of the Legislature and those entrusted with executive authority being trustees of the people. Coupled with the provisions in the Declaration of Rights, were the provisions in the Constitution proper, that the Governor and the Council with which he conjointly was to act, were to be elected by the Legislature and were to appoint the judges, who were to be removable, however, upon action by the Legislature. Then from 1837, subsequent to which time the Governor was to be elected by the people direct and there was to be no Council, the appointments were to be by the Governor and the Senate by requiring the consent of the Senate, with the Legislature retaining the removal authority. Thence, after having had the experience of the above mentioned indirect selection of the judges which had proved unsatisfactory, the further continuance of which it rejected, from 1851, i.e., for more than one

hundred years, the State has been insistent that its judges must not only hold their office from the people through their trustees, but, apart from the temporary filling of vacancies, from direct election by the people themselves. Moreover, it had found from the experience of seventy-five years, i.e., from 1776 to 1851, with life tenure even on a basis of good behaviour, that such tenure was utterly unsatisfactory, and therefore has since limited the tenure of judges to a fixed term, at the expiration of which they must again come up for election by the people, and with the retention, in the meantime, of the people's right of removal through their representatives.[29]

In connection with such elected limited tenure, it contemporaneously also established the age limitation of seventy years; and, when subsequently it tried out extension of that age limitation, but not beyond the elected term, in case the Legislature in special cases decided to do so, it found from an experience of sixty-four years, i.e., from 1867 to 1931, that it, too, was most unsatisfactory, and, consequently, abolished the exception, thereby adhering to the age limitation and also strictly within the elected term.[30]

Likewise as to regional representation on its Court of Appeals. It is to be borne in mind that at the time of the adoption of Maryland's first Constitution of 1776 and the succeeding period, the colonies were struggling for their independence, and their affairs were in an unsettled and organizing state. Although the colonies' Declaration of Independent was approved by their Continental Congress on July 4, 1776, it was not until early in 1781 that their Articles of Confederation creating the United States of America became effective, thereby initially bringing the country into existence. Maryland had withheld ratification, for the purpose of obtaining cession, to the Confederation, of western lands claimed by colonies, and, upon Virginia's agreement to cede, Maryland felt that satisfactory results would follow and ratified the Articles in February, signing March 1, 1781, consequently causing them to go into effect. However, England did not agree to the colonies' independence in the preliminary Treaty of Paris until the last part of 1782, and in final treaty form until the latter part of 1783. The colonies still continued to function as a confederation under the very general terms of the Articles of Confederation, until the adoption of the Constitution of 1787, which, although ratified by Maryland in the spring of 1788, did not receive the necessary ratifications until the middle of that year. Washington became President early in 1789, but the national Bill of Rights did not become part of the Constitution until the latter part of 1791. It, therefore, can be easily understood, how, in this unsettled and crystalizing period, Maryland's Court of Appeals was in a formative state, as herein previously shown, and the number of its members was not even fixed by law until 1801,

and by constitutional provision until 1805, with the establishment, when so fixed, of the court on a constitutional regional basis. Since that time, for more than one hundred and fifty years, Maryland has unwaveringly held fast to that principle, requiring throughout the entire period that its members be residents of the respective regions, and since establishing the elective basis in 1851, with the exception of the brief three year life of the Civil War Constitution of 1864 adopted when Maryland was under Federal control and many of its people disfranchised, that they also be elected by the people of those regions.

By its whole history, Maryland has shown that it wants and intends to have an independent judiciary; but, likewise, also, with equal determination, that it neither wants nor intends to have a judicial oligarchy or a judicial autocracy, not originating from and accountable to the people, nor to set a stage which might make it possible for such a condition to arise. In the same manner, its history could not be more conclusive, that, in accord with, and in pursuance of those positions, and moreover, as already stated, with the desire that the members of its highest judicial tribunal be in touch with the people and familiar with their problems, it wants and with like determination intends to have the members of its Court of Appeals come from, and be elected by the people of, dispersed regions of the State.[31]

With Maryland's basic principles of government with respect to its judiciary clearly in mind, it is possible to turn to thoughtful consideration of the present problem of the Court of Appeals, which should be done free from the pressure and propaganda which are usually employed when there is a desire to have accepted an advocated proposal, and only too often lead to hasty and unwise action. The consideration of this problem will be approached from the two-fold point of view, referred to earlier in this review, i.e. first, the essential adjustment of the membership of the court, dealt with under the first caption below, and, second, methods of review.

The Number And Distribution Of Judges.

The two features here considered are interrelating and call for a practical solution of both.

As to the most advisable number of judges of the Court of Appeals, there has been and is wide difference of opinions. They fall, however, into two groups, i.e. those who think that the Court has been unwisely reduced in size, and those who have and do advocate a small court on the theory that it operates more efficiently. It is therefore in order, to endeavor to ascertain what light facts impart.

Previous to the Constitution of 1867 there was a smaller court,[32] which, for the immediately preceding sixteen years (as also had been the case for its first thirty years), had no local circuit duties. It did not keep its dockets current, and there was a heavy accumulation of undisposed cases. With the Constitution of 1867, the Court was enlarged from five to eight, the seven county members of which having also local circuit obligations. Within a comparatively short time they had cleared up all the accumulation, and thereafter always kept the docket, which, of course, was smaller than it is today, current, and moreover took care of their circuit duties.[33] Probably the most responsible appraisal of the functioning of that court, is that of one who had constant familiarity with it, and who spoke with the voice of great authority. John Prentiss Poe, in his Pleading And Practice, 1880 Edition (and which he repeated in those following), Volume I, page 8, in emphasizing that the Court regularly disposed of its docket every term, said: ". . . while in many of the States of the Union, and even in the Supreme Court of the United States, the delays incident to appeals are so serious as oftentimes to amount to almost, if not quite, a denial of justice."

Further: "No reference to the organization of the present Court of Appeals of Maryland would be complete which, while recognizing the eminent high judicial character and learning of the Court itself, omitted to mention the promptness with which all appeals are heard and decided, and to contrast that with the unfortunate delays only too prevalent in many other similar tribunals."[34]

This is the record of actual facts relative to the efficient functioning of an eight membership Court, and the unsuccessful accomplishment of a small membership in taking care of the requirements of the Court, in Maryland, up to the time of the 1944 "Bond Amendment."

As to a seven membership Court, the committee of the Maryland State Bar Association which recently, among other recommendations (all approved by the Association) which will be discussed later in this review, recommended an increase in the membership of the Court to six, earlier in its interim report to the Association at its January 1958 mid-winter meeting, in commenting on appellate courts of various sizes, said:

> ". . . 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." (Int. Rep. p. 17)

In the face of these facts, it can not logically be concluded that a court of reasonably larger size than the present five membership Court of Appeals lacks efficiency.

Turning to the previously mentioned theory of the small court, which has had its practical application in the "Bond Amendment", it is pertinent to ascertain how the theory was implemented into the appellate judicial structure of Maryland, and how it has worked out. It was, of course, not based on Maryland's previous experience with such a court, which was directly to the contrary. It has been stated and repeatedly reiterated that it was the result of a movement originating in 1908, but that is evidently a mistake.[35] It was the majority view of a closely divided committee in 1924, which, however, received no support.[36] Its real advocacy seems to have arisen in 1941, and resulted in a divided committee report, which when transformed into proposed action for the General Assembly failed to receive, from it, the essential constitutional proposal authorization.[37] This was the war period when there was a general falling off of litigation and the consequent case load of courts.[38] Therefore, the condition, although it later proved to be temporary, lent itself to an argument for a reduction in the number of members of the Court of Appeals, which, following up the 1941 effort, was accomplished in the 1944 "Bond Amendment."[39]

Since that amendment there has been keen interest in observing how the Court on the reduced basis would work out. Maryland has in the past and in the present had a satisfactory judiciary. Certainly, that is true as to its Court of Appeals, and, with a few exceptions, is likewise true as to its lower courts of the circuit level. There is not the slightest question that — as was the case with its predecessor — the Court of Appeals on its present basis has functioned efficiently. The Country, however, is not standing still, nor is Maryland, and, naturally, in young and developing countries, populations and attendant activities increase, until they strike a more or less levelling off condition. Therefore, under such circumstances, it is imposing an abnormal load on a court, to reduce its membership to practically a minimum and expect it to fulfill its undertaking. That is, unless that undertaking is to be changed, and if the manner in which Maryland is developing, is inevitably going to make necessary an adjustment of the membership of the Court, which is the case, that is the first thing to be done, and any supplemental measures should be resorted

to, only if and to the extent necessary. Consequently attention becomes focused on what adjustment is going to be necessary.

That, as statistics later supplied herein will show, should be approached from the following threefold aspects:

> The five membership basis as it is today.
>
> The basis of six judges, being that which has been recommended by the current committee of the Maryland State Bar Association and endorsed by it.
>
> The basis of seven judges, since experience proves that courts so constituted function efficiently, and conditions in Maryland, subsequently described, indicate that it would be wise to give it proper consideration.[40]

It is not possible to intelligently consider what the adjustment should be without having a clear understanding of what, appertaining to it, took place in connection with the adoption of the "Bond Amendment." Baltimore City's population, facilitated by measures later cited, had been substantially increasing, and, according to the national census of 1940, was a slight fraction over forty-seven per cent of the entire population of the State. Moreover, a study of the case load of the Court of Appeals for the five-year period, 1935-1939, had shown that of the opinions filed the proportion was approximately 61.7% from the city and 38.3% from the counties.[41] Consequently, it was generally agreed that Baltimore City was entitled to a larger regional representation on the Court of Appeals. However, although the recited facts as to population and case load are correct, the trend of the people's settling in the county areas adjacent to the National Capital and to Baltimore City, was already well under way and had been publicly noted.[42] This portended changed conditions in the future.

The proponents of the "Bond Plan", nevertheless, emphasizing the existing population and case load ratios, advocated both that the Court of Appeals be reduced from eight to five, and also that two of the judges come from the city, where they would, of course, be elected, and the other three from the counties at large and thus elected.

As has been previously stated, there was great division of views as to the wisdom and advisability of the features generally of the "Bond Plan", and only the portions mentioned earlier in this review survived the Legislature. Here, attention is directed solely to the two above-mentioned features, which were the subjects of a bitter and protracted fight in the General Assembly. The metropolitan press of Baltimore City conducted a continuous propaganda campaign in support of the proposal, and the Governor, who at the time was from

Baltimore, afforded his active cooperation and support. The pressure became so severe that in the end certain members of the Legislature, who had been taking a leading part in preventing the proposal from being adopted, reversed their position, and the two features, one changed as below stated, survived.

As, is apparent, the proposal attempted to break down Maryland's principle of regional representation and election of the members of the Court of Appeals, by the proposed provision that the county members be elected from and by the counties at large. This the General Assembly inflexibly refused to countenance, and in the process of adhering to that position, provided that, as heretofore mentioned in this review, the judges were to come from and be elected by districts as follows. The Eastern Shore insisted that it have one judge, which it obtained. Western Maryland insisted that it have one, which it obtained. In order for Baltimore City to get two, the five counties of Southern Maryland, i.e. Prince George's, Anne Arundel, Charles, Calvert and St. Mary's, and the two northern Maryland counties, i.e. Harford and Baltimore, were gerrymandered into a single district, getting one judge, instead of Southern Maryland getting one, the northern counties getting one, and Baltimore City getting one, if the basis were to be a five member court. That, on such a basis, subsequent developments and the future which they portend, indicate would have been an appropriate regional distribution of the judges.

The result of combining the two different regions of Southern Maryland and northern Maryland into one district, has been the constant source of irritation and resentment ever since. The present representative of those two regions on the Court of Appeals, Judge Hall Hammond, has unique qualifications to do so. He lives in Baltimore County, but his background, early and immediate, is deeply rooted in Southern Maryland. It is, however, recognized that no such unique qualifications are likely ever to occur again.

Subsequent developments and their direct bearing on the situation created by thus combining those two regions, have served to emphasize the abnormal condition.

The Constitution of Maryland provided that the Legislature could not alter the dividing lines between counties, without the consent of a majority of the voters in the area which would be changed from one county to another.[43] This has had a very salutary two-fold effect. It has protected the people from being forcibly so transferred, against their will, from their home government to one which they did not desire, and it also has constituted a potent break on power expansion of the various political and governmental divisions. Although Baltimore City under and from the Constitution of 1851 has been regarded

on a basis similar to that of the counties, and so referred to repeatedly by the Court of Appeals,[44] that court, in construing this constitutional provision, held that Baltimore City was not comprehended within its terms.[45]

Baltimore had, in the past, by various legislative enactments, greatly expanded its area and population, sometimes with and at others irrespective of what might be the wishes of the people in the affected areas.[46] The inhabitants of the sections outside the City limits objected to being exposed to such a contingency, and, as the City had reached a point where, if the course continued, it might dominate the whole state, an amendment of the Constitution was adopted in 1948, making the constitutional provision applicable to Baltimore City as well as to the counties.[47]

Moreover, the already mentioned trend of the people to settle in the county areas outside of Washington and Baltimore City, has continued with ever accelerating pace. This has naturally been followed by community centers and other facilities, bringing business and commerce to them, and industries seeking space for their development, and, in view of motor vehicle advancement more convenient operation, have followed the same pattern.

Comparison of the previously mentioned situation at the approximate time of the adoption of the "Bond Amendment", and that of the present time conveys its own meaning. As of April 1, 1940, of the State's entire population, Baltimore City had 47.2% and the counties 52.8%. As of July 1, 1958, the City had 33.1% and the counties 66.9%. From April 1, 1950 to July 1, 1958 their respective increases, and their increases based on percentages of their own populations were, Baltimore City 1950 — 949,708, 1958 — 984,000, i.e. 3.6%, the counties 1950 — 1,393,293, 1958 — 1,992,800, i.e., 43.0%.

Also as to manufacturers operations, the percentage proportions of the whole have been, in 1947, Baltimore City 58.7%, the counties 41.3%; in 1954, the city 48%, the counties 52%.

With respect to retail trade, the percentage proportions of the whole have been, in 1948, Baltimore City 54%, the counties 46%; in 1954, the city 46%, the counties 54%.

As to building permits, excluding public buildings which were not computed, the difference in favor of the counties has been so great as not to be comparable.[48]

Turning to the case load of the Court of Appeals — the comparative percentages have been as follows. The already mentioned average for the five year period, 1935-1939, was, from Baltimore City 61.7%,

from the counties 38.3%. That, however, was of *opinions written,* without including applications for leave to appeal in habeas corpus cases (appellate review of such nature having developed from and through 1945, Ch. 702, Sec. 3C, 1947, Ch. 625, Sec. 3C and 1957, Ch. 399, Sec. 24). According to the Third Annual Report of The Administrative Office of The Courts, i.e., for the period between September 1, 1957 and August 31, 1958, the proportion was 35.5% from the City and 64.5% from the counties. This is of *appeals taken,* not including applications for leave to appeal in habeas corpus cases. There is consequently that difference in the bases, but they both give their respective comparisons.

With respect to lawyers. It has been noted that normally their greater number will necessarily be found where the population is more numerous and the law practice more prolific. Therefore, it is pertinent to consider what has been the effect on them. About the time of the "Bond Amendment" there were 3,000 lawyers in Maryland, of whom 2,350, i.e. 78.33% were in Baltimore City, and 650, i.e. 21.67% in the counties. As of the present time there are 4,224 in the State of whom 2,846, i.e. 67.38% are in the City, and 1,336, i.e. 32.62% in the counties. The trend to the counties apparently has also reacted on them.[49]

Since it is clear how all these criteria are being affected by the population trend, it is pertinent to call attention to the further facts as to the populations of the four counties adjacent to the two cities, Washington and Baltimore as follows:

	April 1, 1950	*July 1, 1958*	*Percentage Increase 4/1/50 to 7/1/58*
Baltimore	270,273	444,000	64.3%
Anne Arundel	117,392	188,000	60.1%
Montgomery	164,401	291,000	77.0%
Prince George's	194,182	335,000	72.5%

In order that there be available comprehensive information relative to population, in arriving at a conclusion as to what is the proper adjustment of the membership of the Court of Appeals, there are appended hereto three tables compiled by the writer of this review. These tables show, as grouped therein, the national census populations of the various counties and Baltimore City, as of April 1, 1930, 1940 and 1950, and the estimates, by the Maryland State Department of Health, Division of Vital Records and Statistics, of those populations

as of July 1, 1958 and of the changes as percentages of their April 1, 1950 populations, from that date to July 1, 1958, as contained in its release communication of August 18, 1958.*

Table I gives the situation of the appellate circuits as they are constituted at present, on the basis of four appellate circuits and five judges, with the following result:

	Populations as of July 1, 1958	*Judges*
The Eastern Shore	239,800	1
Western Maryland with Carroll and Howard Counties	635,000	1
The two northern Maryland Counties, i.e., Harford and Baltimore, and the five Southern Maryland Counties, i.e., Prince George's, Anne Arundel, Charles, Calvert and St. Mary's	1,118,000	1
Baltimore City	984,000	2

Table II gives the situation as it would be with five appellate circuits, on a basis of six judges, with the two northern Maryland counties and the five Southern Maryland counties in two separate appellate circuits, with the following result:

	Populations as of July 1, 1958	*Judges*
The Eastern Shore	239,800	1
Western Maryland with Carroll and Howard Counties	635,000	1
The two northern Maryland Counties, Harford and Baltimore	511,000	1
The five Southern Maryland Counties, Prince George's, Anne Arundel, Charles, Calvert and St. Mary's	607,000	1
Baltimore City	984,000	2

Table III gives the situation as it would be with six appellate circuits, on a basis of seven judges, with Carroll and Howard detached from the Western Maryland Counties, and with those two counties, the five Southern Maryland Counties and the two northern Maryland

* For these tables, see pages 56 to 58.

counties grouped in three separate appellate circuits which would be in accord with the three local circuits, with the following result:

	Populations as of July 1, 1958	*Judges*
The Eastern Shore	239,800	1
Western Maryland	550,000	1
Harford and Baltimore Counties	511,000	1
Carroll, Howard and Anne Arundel Counties	273,000	1
Prince George's, Charles, Calvert and St. Mary's Counties	419,000	1
Baltimore City	984,000	2

Table I shows how the arrangement under the "Bond Amendment" has worked out. If the five membership court be continued, it is evident that they will have to be adjusted according to the natural regional representation, and when the first vacancy occurs in the present Baltimore City members, the consequent result would be that it would not be filled, and that the membership would be allotted to one of two separate districts into which the present gerrymandered district combining the two northern Maryland counties and the five Southern Maryland counties would be divided. The Table II arrangement would correct the error made when the two northern counties and the five Southern Maryland counties were so gerrymandered, and which as already shown is absolutely essential, and will become continually more so as time goes on. The Table III arrangement has the merit of a long range view, by putting the four large and rapidly growing counties adjacent to Washington and Baltimore City in different appellate judicial circuits. In that connection it is to be noted that, although the district which would be constituted by Anne Arundel, Howard and Carroll Counties would have a smaller population than some of the others, in addition to the heavy growth of the Anne Arundel County population, Howard's percentage increase is 31.9% and Carroll's is 21.4%.

Methods Of Review.

Now it is in order to take up the second of the two features, previously mentioned, to be considered in connection with the present problem of the Court of Appeals, i.e., a practical treatment of methods of review.

This should be done keeping in mind what has previously been set forth herein, and, realizing that government is merely an organization of the people and that courts are an instrumentality of government, the dominant consideration should ever be — what best serves their interest.

Since there is current a proposal of a special committee of the Maryland State Bar Association, which has received its endorsement, that in the process of review there be introduced into Maryland an intermediate appellate court system, that proposal should receive preliminary consideration. Before considering whether the installing of such a system in the State is advisable, the specific terms of the present proposal should be examined.

It will be found that it is featured by certain vices violating Maryland's basic principles with respect to its judiciary.

First. Although it recognizes that the situation in the appellate circuit in which the two counties of northern Maryland and the five Southern Maryland Counties were thrown together, requires an adjustment of the membership of the Court of Appeals, and it proposes that the membership be increased to six so as to allow another judge to those counties, it actually compounds the violation of regional representation which took place, against their will, when they were originally so gerrymandered for purposes hereinbefore set forth. It does not separate those two different regions into two separate appellate judicial circuits, and give each its proper separate regional representative on the Court of Appeals — to which they are respectively entitled — as the other different regions of the State have. Instead it proposes to leave them thrown together, and attempts to obtain acceptance of the continuance of that condition by providing that no two judges may be residents of the same county. The result would be that a population preponderance or development in one area, aided by an organized press propaganda campaign, could not only elect the representative whom it would have anyhow, but could also dictate the selection of the other, whether residing in the same or the other region. It is not meant to provide separate regional representation, but actually to make possible the contrary.

The original 1941 proposal suggested much the same kind of thing. It proposed that the State be divided into four appellate circuits, with a regional representative from each of three county appellate circuits and two from Baltimore City, but to be elected by the entire State. One of the proposed circuits was to include the Eastern Shore counties and four of the Southern Maryland counties. The Eastern Shore and Southern Maryland mutually appreciated the complement, but did not consider that proper regional representation. The then special

committee of the State Bar Association found that it would be advisable to change the arrangement radically (even though as changed, it did not get through the legislature). It proposed that there be five appellate judicial circuits as follows: The Eastern Shore — Southern Maryland and Howard County, it being associated with that section — Western Maryland — Carroll, Harford and Baltimore Counties — and Baltimore City. There were to be six judges to come from and be elected by the separate appellate circuits, one from each of the county appellate circuits and two from Baltimore City. The grouping of the Eastern Shore and Southern Maryland was thus abandoned, and the State-wide election also as it was recognized that, with its then population, Baltimore City would in practical effect have the power to select not only its own judges but those of the four county circuits as well.

The original "Bond Plan" likewise made a similar proposal. As already noted, it proposed that of the five judges, of that plan, two were to come from and be elected by Baltimore City, and three were to come from and be elected by the counties at large. The General Assembly would not contemplate the county arrangement, and the counties were divided into the present three appellate circuits with a separate judge coming from and elected by each.[50]

It is therefore clear that this is just another attempt to break down proper regional representation on the Court of Appeals, and should be rejected.

Second. It provides that when a vacancy exists in the office of Judge of the Court of Appeals, the Governor may appoint a judge from the intermediate appellate court to fill the vacancy, who shall hold office as Judge of the Court of Appeals for the residue of the term for which he was elected or appointed to the intermediate court. This provision is patterned after the provision in the Constitution which authorizes the Governor, in case of vacancy in the office of Chief Judge of the Supreme Bench of Baltimore City to appoint as his successor, one of the Associate Judges of that Court, and provides that he may serve as such Chief Judge for the remainder of the term for which he was elected Associate Judge thereof. That, however, is a very different thing. The Associate Judge was elected by the people to that very same court, and he is merely designated as its Chief Judge. The proposal would enable a person to be installed in a court to which the people were not electing him, and that the highest court in the State, which wields powers, judicial and rule making, of far reaching nature affecting their interests. The people have the absolute right to decide whom they want on their Court of Appeals, and to have that right unimpaired, just as they have and should have

that right with respect to all their courts. If such a thing can be done in this instance, the next step logically would be to apply it to the courts generally, and gradually undermine the right of the people to elect their judges, resulting in the resurrection of the repudiated appointive system in this State. It is one of those indirect attacks on Maryland's basic principle of an elected judiciary, previously referred to in this review, and should likewise be rejected.[51]

Third. Section 3 of Article IV of the State's Constitution, at present applies to the judges of the courts of Maryland generally. It provides for their tenure of fifteen years, the seventy years age limitation, and the right of the General Assembly, two-thirds of the members of each House concurring, with the approval of the Governor, to retire any judge in case of his inability to discharge "his duties with efficiency, by reason of continued sickness, or of physical or mental infirmity." The proposal would lift the judges of the Court of Appeals and of the intermediate appellate court out of the provisions of that section. It provides in Section 14 how the Court of Appeals would be constituted, and in Section 17A how the intermediate appellate court would be constituted. In neither section, however, does it include the above mentioned provisions of Section 3. Consequently, unless the courts placed a forced construction on the language of the last mentioned section, the judges of those two courts would be free of those provisions. It is assumed that this was not intended, but in no event should there be any such possibility.

These features are vital because they involve fundamentals. There is another, not of such fundamental nature, which involves a matter of policy and is important. The proposal states that it is contemplated, in order to make it work out in an attempt to avoid the burden of double appeals, that in cases appealed to the intermediate court, a litigant might apply for a review by the Court of Appeals in its discretion, before as well as after a decision by the intermediate appellate court. This calls for little comment because, although it might be harassed with such double applications, for obvious reasons of a practical nature it is inconceivable that the Court of Appeals would load itself down with reviewing cases before they had gone through the intermediate court, and it had thus been determined whether there was anything left for it to review. The proposal, however, went further than that, it expressly stated that it was contemplated that, in order to make the plan work out, the Chief Judge of the Court of Appeals would be constantly investigating the cases in the intermediate appellate court to determine when there should be a review by the Court of Appeals. It was further emphasized, that the arrangement has as one of its reasons the object of affording the Chief Judge ample time to perform administrative duties which, having been deposited

on him, it is prophesied will heavily increase as time goes on. It, of course, would tax human power of credulity to believe that after first blush, and as the intermediate court and its ramifications expanded, which they undoubtedly would, the Chief Judge would perform, adequately or otherwise, any such onerous investigating task. If he did, and if he performs the other administrative duties, of which he is to be the repository, what becomes of his functions as a judge? At the time the "Bond Plan" was being advocated, one of the claims was that it would bring to the Court of Appeals such caliber that it would take its place with the foremost state courts in the country. Is transforming its Chief Judge into a departmental administrator such an accomplishment? Judges are elected to decide problems of law and equity, and because they are believed to have the qualifications to do so. That has certainly always been Maryland's concept. Are not theorists leading Maryland into strange fields with respect to its judiciary? From a practical point of view it is evident that Maryland has gone far enough along those lines, and all further extensions of such activities should be prevented, so that its judges will perform their normal functions as judges, without being diverted. Otherwise, apart from the effect on the quality of its judges, inevitably, Maryland is going to have the unnecessary expense of a more numerous judiciary than it would ordinarily need.

Moreover, of even greater importance, will arranging the State's judiciary on a basis which contemplates, that the Chief Judge of the Court of Appeals will be more and more clothed with powers outside of and beyond his normal functions as a judge, ultimately bring about conditions in Maryland's judiciary which it has not had in the past, and which it certainly does not want, against which a now deceased prominent former member of the judiciary of ability and comprehensive understanding of human nature and human affairs advised and warned?[52]

With respect to the feature in the current proposal, that, in an attempt to avoid double appeals, the Chief Judge would be constantly investigating cases in the intermediate appellate court to determine when there should be a review by the Court of Appeals, when the proposal came up for consideration at the mid-winter meeting of the State Bar Association on December 5, 1958, the Chief Judge protested that feature. He stated that neither he nor any other member of the Court was willing to assume any such undertaking. The proponents therefore altered the plan, by proposing that the Court, i.e. the Judges alternately, perform that task. This would merely transfer the onerous imposition from the Chief Judge individually to the members of the Court generally, with all of its impractical and inadvisable implication and involvement as stated above.

Passing from specific features of the particular proposal which has been presented, to the broader question of whether Maryland should assume the burden — because burden it undoubtedly will be — of an intermediate appellate court structure, that expedient should be weighed in the scale of whether, if ever it will be advisable, it is advisable at the present time, and further what alternatives should be considered.

As already shown, it is going to be necessary to increase the membership of the Court of Appeals, and consequently any other measures adopted will be supplemental thereto, and should be considered from that point of view. There are various supplemental methods which could be employed to the extent called for, but it is deemed advisable to confine the consideration, in this review, to three, which will be briefly discussed.

First. The intermediate appellate court, which is the expedient that has been proposed, provides, in the class of cases coming within the jurisdiction of that court, the litigant with a right to have his case reviewed by it. If, however, he desires to reach the Court of Appeals, he can do so only by first carrying his case to the intermediate court, and then, if the Court of Appeals grants him permission, he can reach that court. Consequently, to find out whether or not the Court of Appeals considers that his case has merits justifying its hearing and consideration, he must, looking at things realistically and in a practical way, do so through the intermediate court. Therefore, the way it usually works out, and when put into operation, as time goes on, it is only reasonable to believe that it will work out, the litigant goes through a double appeal with all the expense incident thereto, which, in view of the cost of litigation, becomes wellnigh backbreaking to the ordinary litigant. As to members of the legal profession, judiciary or bar, those who have had occasion to examine authorities in jurisdictions where there are intermediate appellate courts, with reports of both the intermediate court and the highest court, well know the experience. When they bring it into their home state they do not have to debate the result. The profession is already loaded with reports of one kind or another of which its members are compelled to keep informed.

Dean Roscoe Pound, of the Harvard Law School, in an address to the Maryland State Bar Association, on the subject "Improving The Administration Of Justice", said:

> "You in Maryland have been spared the intermediate appellate court and double appeal."[53]

Chief Judge Carroll T. Bond, of the Court of Appeals of Maryland, in addressing the State Bar Association in connection with the

"Bond Plan", referred to "the evil of excessive publication of opinions, which is filling shelves with too many books, and almost making our judicial machinery unworkable", but he said that no satisfactory remedy had been found.[54] It is clear what even the normal double reports would mean.

Apart from the involvement with respect to litigants and members of the legal profession, the establishment of the intermediate appellate court system is to be considered from the point of view of the taxpayers. The Committee of the Bar Association does not claim to be able to say what the annual cost would be. It thinks that it would be about $150,000.00. Human experience, however, shows, only too well, how preliminary estimates of costs of various projects of one kind or another turn out. There is little doubt that such a system once started will become more and more expansive and expensive and on no small scale.[55]

Confronted with these facts, the inadvisability of establishing the intermediate appellate court system in Maryland, unless and until, if ever, it becomes absolutely necessary, is apparent.

Second. In Maryland's sister state, Virginia, in almost all cases, review by its highest court is obtained by filing with that court a petition showing, to its satisfaction, that the case justifies its consideration. This does not afford the litigant the absolute right of review of a lower court's decision. It does, however, enable him to apply to the highest court, direct, and thus find out whether that court considers that there is anything in his case which might cause it to reverse the lower court's decision. In this direct manner he does not have to first go to an intermediate court, and then, if he wishes to reach the highest court, go through the same kind of procedure. Therefore, he is not subjected to the double appeal, and the abnormal and practically prohibitive expense resulting therefrom. Furthermore, if the highest court considers that there is no probable basis for a reversal, he is spared the expense of what, in most cases, would be a futile appeal. This supplemental method, with a certain amplification, might well be considered in Maryland in a limited class of litigation. In cases up to five hundred or a thousand dollars, mechanics liens, divorce and alimony cases, provision could be made by statute, for a litigant to thus apply to the Court of Appeals, and with the amplification that the lower court itself, if it felt that the case was one which should receive the highest court's determination, also might certify it to the Court of Appeals for its hearing and decision.

In this manner, the litigant, without going to an intervening court, has two opportunities to show that he should be permitted to go to the highest court direct, either by such showing to the lower court itself — or indeed on that court's own initiative — or through his petition filed with the Court of Appeals.

Apart from the saving of expense to the litigant, and the avoidance of the burdensome double reports infliction on the members of the legal profession, the taxpayers would not have saddled on them the heavy financial burden which would result from the intermediate appellate court system.

There is another and very important advantage in this supplemental method. It would not be wrapped up in the Constitution as the intermediate appellate court system would be. It could be done and abolished by legislative enactment. Consequently the Legislature could see how it worked out, and, if it did so satisfactorily, could extend it to other cases of the same general class, and, if it did not, could abolish it at any time.[56]

Third. If there be the feeling that each litigant, even in cases involving no substantial or novel legal question, should have the mandatory right to a review of the trial court result, by some judicial tribunal, careful consideration should be given to the court in banc, in the class of cases referred to in paragraph "Second".[57] By that supplemental method the judges of each of the eight local circuits would sit as a court in banc, and review the trial court decision. Of course, the trial judge would not be included in the court in banc, which would be composed of not less than three judges of the same circuit. If there should not be as many as three such judges available, the Chief Judge of the Court of Appeals would make assignment from other circuits, or possibly from the Court of Appeals if any judge thereof were at the time available.

The litigant would merely make his application to the trial court for a review of that court's decision by the court in banc, which would automatically follow. From the decision of the court in banc, there would be the same method of reaching the Court of Appeals as referred to in paragraph "Second", except that the certification, of course, would be by the court in banc. There would probably from time to time have to be additional judges in various circuits, but they would be available for trial duty, and could be assigned from one to another of the circuits. Therefore they would serve a duplex function which would make for economy in the whole structure.

This method, of the court in banc, involves no superstructure of appellate judiciary, and avoids the abnormal expense to litigants of the double appeal, because it is administered, simply, in the lower court organizations. Likewise, as they would be merely local rulings, they would not be reported, and consequently there would not be the double reports burdening the legal profession. Moreover, it would be in accord with the process which has taken place with respect to Maryland's judiciary. Under the Constitution of 1776, Maryland in the

beginning had, in addition to its local courts of the kind then existing, the Court of Appeals, the General Court, the Admiralty Court and the Chancery Court and Chancellor, as well as the Orphans' Courts. Over the years it has followed a course of simplification, by eliminating courts and combining and simplifying judicial functions. In so doing it expanded its local courts and brought its court functions closer to the people. This method, in contrast to the intermediate appellate court, keeps the review closer to the home environment and administered by judges who through their trial duties are in daily contact with the matters and relations involved in cases of this class.[58]

Having considered these supplemental methods of review, there are two features of the proposal of the State Bar Association's Committee which have received the endorsement of the Association, which should briefly be referred to, because they are to be taken into account in determining what necessity there is for installing a super structure of appellate judiciary in Maryland.

It is recommended that it be provided that no more than five judges sit in any case unless the Chief Judge shall otherwise direct. This would have the effect of making it possible for a sixth judge, *i.e.*, one judge (or if the court were composed of seven judges, a sixth and a seventh judge, *i.e.*, two judges) not sitting in a particular case, to devote his (or their) time to writing opinions. It would greatly reduce the difficulties of the court in disposing of the case load, as will appear by referring to Note 40. The difference which that provision would make in the present situation is that, in stating it as a constitutional policy, it would have the practical effect of bringing about that result. The court has it in its power to do the same thing at the present time, on its basis of five judges, because Section 14 of Article IV of the Constitution provides that three judges shall constitute a quorum, and also that the concurrence of a majority of a quorum shall be sufficient for the decision of any cause. Therefore, at present the court may sit as a court of five or four or three judges, which would leave those not sitting, free to devote their time to writing opinions.

The other feature would implement a position taken by the majority report of another and previous committee of the State Bar Association in 1951. The majority report, apparently of all the members of the committee but one, called attention to the provision in Section 18A of Article IV of the Constitution authorizing the assignment of judges from the trial courts to sit temporarily on the Court of Appeals in case "of a vacancy or of illness, disqualification or other absence", of a member of that court, and expressed the view that the words "other absence" were properly susceptible of a liberal construction. It strongly commended the practice of assigning nisi prius judges to sit on the Court of Appeals, from the dual point of view of relieving

members of an appellate court of some of their burdens, and of adding to the judicial experience of the nisi prius judges. The chairman of the committee stated that the majority view was that the words above mentioned could be construed to authorize the assignment of a nisi prius judge to sit on the Court of Appeals while a regular judge was absent writing opinions.

That view was supported by a prominent member of the judiciary. The position of another prominent member of the judiciary was that the language of the constitutional provision was not intended to be so construed, but was confined to an absence from judicial duties altogether. No action was taken by the Association on that question.[59]

The present proposal is of course intended to dissipate the uncertainty as to constitutional construction by adding the following words to the constitutional provision "or for the purpose of relieving an accumulation of business".

The advantages of a liberal approach to the use of judges from the local courts on the Court of Appeals, are, as far as the judges themselves are concerned, that naturally, the lower court judges appreciate being selected to sit on that court, and they in turn bring with them to it closer contact with the every-day operations of the trial courts. It thus serves to enhance the tone of the trial judges, and at the same time aids in keeping the judges of the Court of Appeals in a practical, realistic atmosphere.

The criticism of the practice, unless kept within reasonable limits, has been that it tends to weaken the continuity of the Court of Appeals.

As far as the case load of the court is concerned, it is apparent on its face how this materially increases the reserve of manpower of the Court of Appeals.

It should now be possible to arrive at a sound conclusion as to what is the practical and common sense solution of the problem of the Court of Appeals, with the consideration ever dominant — what is in the best interest of the people of Maryland.

Wishful thinking and hopes on the part of advocates of any proposal are natural and understandable, but unfortunately they have to be weighed in the scale of stern realities, and, entirely apart from the fundamental vices in the specific proposal which has been submitted, it is, and undoubtedly will be as it will practically work out, inherently an intermediate appellate court which is proposed.

As has been clearly brought out, inevitably, the result would be to visit on litigants in Maryland the today backbreaking, prohibitive costs of double appeals, on the members of the legal profession,

judiciary and bar, in their own State, the harrassing burden of double appellate reports, with the profession already almost swamped with legal material which has to be read, and on the taxpayers of the State a heavy and ever mounting financial obligation. With other remedies available, Maryland should assume no such burden.

The solution, which evolves in the process of this review, and which recommends itself in an intelligent approach to the questions involved, combines certain other features recommended by the Committee of the Bar Association, in altered form, utilizing conditions which at present exist, and putting into practical operation simple and in comparison economical supplemental remedy in the following manner:

First. For reasons already set forth, the membership of the Court of Appeals should be increased, either on the basis of six judges coming from and elected by the people of five different and separate regions, represented by five separate appellate judicial circuits, in accord with Table II; or seven judges coming from and elected by the people of six different and separate regions, represented by six separate appellate judicial circuits, in accord with Table III. As previously shown, the Table II arrangement will correct the grave mistake made in the "Bond Amendment" in combining the two northern Maryland counties and the five Southern Maryland counties in a single district, and the Table III arrangement has the merit of the long range view.

Second. The provision should be effected, that no more than five judges shall sit in any case, but the proviso "unless the Chief Judge shall otherwise direct", should be changed to read, "except in instances or circumstances as may be prescribed by the rules and regulations of the Court of Appeals, adopted subject to the Laws of Maryland".[60]

Third. It is proper to amend section 18A of Article IV of the Constitution so as to add to the provision for assignment of judges of the trial courts to sit on the Court of Appeals, the words "or for the purpose of relieving accumulation of business", since all assignments of judges are controllable by rules and regulations which may be made by the Court of Appeals, and it is consequently left to the Court to determine whether, and, if so, when the power should be exercised. However, wherever in that section it is provided that the assignment of judges is, to sit "in any case or for a specified period", the language should be changed to read "in any case or for a temporary specified period".

Fourth. The abandonment by the Court of its former practice of writing lengthy opinions in practically all cases, and the adoption by it, as it has recently begun to do, of the practice of rendering short opinions

merely stating the conclusions of the Court, in cases in which it deems full opinions unnecessary.

Fifth. The Acts of 1958 Ch. 44, and Ch. 45, were enacted in connection with the Post-Conviction Procedure Act and accompanying legislation, applicable to habeas corpus cases. One of the purposes thereof was an expected reduction of the previous case load of the Court of Appeals arising from such litigation. It has yet to be determined how this is going to work out.

These measures alone should enable the Court of Appeals to deal with its present problem. Looking to and preparing for the future, it would be wise for the Legislature to make provision for a supplemental measure, and to select the one of the methods of review which is most practical at this time.

Regarded from that point of view, it is difficult to escape the conclusion, that the common sense course would be to first try out the "Second" measure referred to herein under the caption "Methods Of Review", *i.e.,* the petition for leave to appeal, or certification by the lower court, in the limited class of cases, there mentioned. As previously stated it could be done by legislative enactment, and, if it proved successful, it could be extended to other cases of the same class, if it did not, it could be abolished by the Legislature upon its determination that it was advisable to do so.

If for any reason, the Legislature determined not to so proceed, the "Third" measure, *i.e.,* the court in banc would be the logical one to employ.

It is unnecessary to say anything further about the advantages of these measures, than has already been set forth.

Passing from the consideration of the present emergency of the Court of Appeals to the broad field of jurisprudence, it would be difficult for anyone in an unbiased state of mental balance, to follow the course of legal developments in Maryland without being impressed with its philosophy toward its laws and its instrumentality, *i.e.,* its courts, to construe and apply those laws. It has been fundamentally one of simplicity and striving for greater simplicity, adhering to the grass roots of the origin of and reason for government, *i.e.,* to serve the people, and keep in touch with them, and, in implementation thereof, the preservation of its basic principles of government with respect to its judiciary.

It has shown its recognition of the desirability of keeping pace with the progress of times, and yet generally has been able to resist the agitations which have arisen in the name of reform garbing merely the nostrums of individual groups. While it has been willing to con-

sider theories which have been written into the laws of other jurisdictions, and adopt them when they were found to be sound, it has not been readily swayed by arguments that it should fall in with alleged patterns, and it has steadfastly rejected them when they would undermine its tried and tested fundamentals.

This has been the course of wisdom and common sense, and that which would naturally be expected.

Maryland is one of the thirteen original states which brought this nation into being, and it would be a tragic development were it ever to fall to a condition of intellectual poverty or enfeebled purpose where it could only ape and have no basic principles and policies of its own.

NOTES

1. The names of Chief Judge Carroll T. Bond, of the Court of Appeals of Maryland, and Chief Judge Samuel K. Dennis, of the Supreme Bench of Baltimore City, will inevitably occur, because they figured so prominently in connection with the "Bond Plan", which, in part, as modified by the General Assembly, provided the basis for the present organization of the Court of Appeals.

They were both men of ability and fine character and integrity, which naturally brought them the high esteem in which they were held.

Chief Judge Bond's career was purely in the legal field. From the practice of law he became an Associate Judge of the Supreme Bench of Baltimore City, and thence the Chief Judge of the Court of Appeals, and possessed to an eminent degree the judicial poise and temperament which are so admirable in a judge. Although he was not its originator, when a proposal was made that the Governor appoint a committee to consider possible reorganization of the judiciary of the State, he was designated its chairman, and the recommendations, which evolved, consequently bore his name and were known as the "Bond Plan." As recommendations by committees are usually a composit constituting adjustments of views by their members, except where his individual views were clearly brought out in connection with that plan, citations of his views will be from his earlier history of the Court of Appeals.

Chief Judge Samuel K. Dennis had, in addition to his general practice of law, been United States District Attorney for the District of Maryland, and consequently was thoroughly experienced in both fields. He was a vigorous and formidable figure in the public and political life of the State, and there were few people in it of any prominence, whether major or minor, who did not personally know, and were not personally known by him. His name was repeatedly mentioned as possible Governor of, or United States Senator from, Maryland, before he determined to become Chief Judge of the Supreme Bench of Baltimore City. After that, all previous activities ceased and he devoted himself strictly to his judicial functions. He disapproved of the Bond Plan, and, in response to requests in legal circles, set forth his views in two articles in the Daily Record, respectively on February 15, 1943, p. 3, and March 13, 1944, p. 3. Because of his position, he engaged in no activities in respect to it, but his views of course were potent. None of the plan except that with respect to the Court of Appeals, got through the General Assembly, and the provisions relative to the appellate court were modified, in

part, in accordance with certain of his criticisms, although he continued to disapprove of those which still survived in the Constitutional Amendment known as the "Bond Amendment."

That amendment will, of necessity, adduce consideration in the course of this treatise, but every effort will be made to discuss it subjectively.

2. 1776 Decl., Art. I, and continued through the three subsequent Decl's., being in Art. II of the 1864 Decl.

3. 1776 Decl., Art. IV; and continued through the three subsequent Decl's., being in Art. VI of the 1864 and 1867 Decl's.

4. 1776 Decl., Art. V; and continued through the three subsequent Decl's., being in Art. VII of the 1864 and 1867 Decl's.

5. 1776 Decl., Art. XXX. The provision for tenure during good behavior had its roots in 12 and 13 Wm. III, Chap. 2, Sec. 3. Previous to that enactment judges in England held office during the pleasure of the King. In Maryland, due to the nature of the proprietary government, the tenure of judges previous to the Revolution was during the pleasure of the Governor. The Court of Appeals of Maryland, a History, p. 55, by Carroll T. Bond, (1928). The quoted portion of 1776 Decl., Art. XXX, to which this note applies, was continued in the three subsequent Decl's. down to the semi-colon after the word "people". The rest was changed in view of the abolition, in the 1851 Constitution, of the office of Chancellor, and the substitution by that and the two subsequent constitutions of a term of years instead of "during good behaviour" as the tenure of judges. The right of removal of judges, by the Governor and the General Assembly, and on conviction on certain grounds, provided in the 1776 Decl., Art. XXX, and as stated in that Constitution, Sec. 40, and further provided in the Const. Amend. 1804, Ch. 55, conf'd by 1805, Ch. 16, was continued, somewhat amplified, and the right of impeachment also stated, by the 1851 Decl., Art. XXX, Const., Art. III, Sec. 41, Art. IV, Sec's 4 and 9 (these sections not expressly alluding to impeachment), 1864 Decl., Art. XXXIII, Const., Art. III, Sec. 25, Art. IV, Sec. 4, and 1867 Decl., Art. XXXIII, Const., Art. III, Sec. 26, Art. IV, Sec's 3 and 4.

6. 1776 Const., Sec. 40.

7. 1776 Const., Sec. 48; see also Const. Amend. 1817, Ch. 189, conf'd by 1818, Ch. 159. 1776 Const., Sec. 25, provided for the election of the Governor by the General Assembly, and Sec. 26 provided for the election, by the General Assembly, of a Council to the Governor. Certain of the important powers of the Governor were exercisable only "with the advice and consent of the Council." By Const. Amend. 1836, Ch. 197, conf'd by 1837, Ch. 84, the Council was abolished, and

thereafter the Governor was to be elected by the people. His general appointive power thenceforth was to be with the advice and consent of the Senate, except for an interim until a Senate session. See also Const. Amend. 1840, Ch. 230, conf'd by 1841, Ch. 62 — December Session.

8. 1776 Const., Sec. 56. Although the publications containing the 1776 Constitution usually do not make reference to a section 61, The Laws Of Maryland, by William Kilty, in the beginning of his Volume I, after setting forth the Constitution, separately adds at the end of it after Section 60, a notation of such a section. This section, it is evident by its terms, was intended to initially bring about the organization of the state government under that constitution. The section noted, provided in part, "That to introduce the new government, ". . ."; and for filling, in the first instance only, all offices in the disposition of the Governor, with the advice of the Council," the General Assembly, in the manner therein stipulated, might recommend the persons to be appointed, and such persons were to be commissioned by the Governor.

No such recommendations for judges of the Court of Appeals were immediately forthcoming, and the State had no judges of that court from the time of the adoption of the Constitution until the end of 1778. In the meantime, the General Assembly enacted the Act of 1777, Ch. 5 — February Session, specifying the forms of commissions to various public officials, which referred to the commissions to the judges of the Court of Appeals as for "three or more". Without further enactment, but by an exchange of messages, the two houses agreed on five as the number of judges, and on December 12, 1778 made their recommendation of those to be commissioned. Votes and Proceedings of The House of Delegates, and likewise of the Senate: the House, Feb. 27 and March 4, 1777; the Senate, March 29, 1777; and both, March 28, 31, April 1, 1777 and December 1, 9, 12, 1778. A joint commission was issued to them by the Governor and Council under date of December 22, 1778, and on January 11, 1779, they were notified by a letter from the Council. Md. Arch., Vol. 21 — Journal and Correspondence of Council, 1778 to 1779, p. 277.

The Act of 1801, Ch. 74 — November Session, after stating in Sec. 41: "Whereas the constitution and form of government hath not prescribed the number of judges of which the court of appeals shall be constituted, and the same ought hereafter to be fixed by law:" provided by Sections 41, 42 and 43 that, after vacancy had reduced the membership of the court to three, thenceforth its membership was to be fixed at that number.

From the time of the adoption of the Constitution of 1776 to 1806, the number of the judges of the Court of Appeals, at the different

periods, was as follows: from the time of the adoption to the latter part of December 1778, none; from that time to 1784, five; from that date to 1792, four; from the last mentioned date to 1801, three; and from 1801 to 1806, five. Two judges were appointed just before the enactment of 1801, Ch. 74. The Court of Appeals of Maryland, A History, p. 63 and appendix, (1928) by Carroll T. Bond, Chief Judge of the Court of Appeals. See also Chapter III of that publication for fuller information as to how that first court functioned. Chief Judge Bond seemed to be uncertain as to whether the practice of appointing the judges on recommendation of the Legislature, ceased with the first judges, because, at page 60, he said that they were at least in the first instance so appointed. Chief Judge Samuel K. Dennis, of the Supreme Bench of Baltimore City, was evidently of the opinion that it did not, since his position was that they were thus in effect elected by the Legislature, and, apparently, until the Const. Amend. of 1804, Ch. 55, conf'd by 1805, Ch. 16. Daily Record, February 15, 1943, p. 3. The later Legislative Journals of Votes and Proceedings, have not been examined, in connection with this review, to ascertain the fact in that respect.

9. Chief Judge Samuel K. Dennis, of the Supreme Bench of Baltimore City, in emphasizing the wisdom of regional representation on the Court of Appeals, said:

> "In the abstract, it would make no difference in what part of the State a judge of the Court of Appeals lives. Practically, it makes a distinct difference. There are concrete ends to be served by courts. Practical experience is needed to make many statutes understandable. A working knowledge, first hand, of economic, social and other sectional conditions throughout the State is needed by a balanced court; hence, a geographical distribution of the appellate court judges is desirable."

Continued a little later in speaking of:

> ". . . the geographical location of judges, a system followed since the judges of the first court of appeals, paid $533.33 per year and sat only at long intervals, were elected by the Legislature from the State at large. Even when under no pressure, they were distributed. In 1805 the Constitution was amended to make distribution sure and systematic; judicial districts were set up; a judge should be appointed from each district. In 1851 the judges were elected by the voters of each section or district from their respective districts." Daily Record, February 15, 1943, p. 3.

10. Chief Judge Carroll T. Bond, of the Court of Appeals, in his history "The Court of Appeals of Maryland", after alluding to attempts,

which had been made, to appraise comparatively the ability of various judges, said at pages 195 and 196 as follows:

> "It is commonly assumed by thoughtful men that under a system of choosing judges by popular election there must be a falling off in quality of those chosen, and consequently in respect for the courts and the law which the judges administer; but whatever variation in ability there may have been, there seems to have been in general no perceptible change in the character of the men chosen for the Court of Appeals since the inauguration of the system of election in this State. And, in this, the testimony of older members of the Bar is given. The judicial ability of one judge and another is debated, of course, but no instance is known of reproach for deficiency in judicial or personal character."

He then continued, by applying the same statement to the local judges, and said that the two or three instances where there had been complaints as to them involved no such features.

Proceeding further, pp. 196-197, he said that any possible bad effects of choosing judges by election had not been realized in Maryland. He pointed out, in that connection, that judges were usually appointed first, and in most instances it had been followed through by election by the people. He proceeded as follows:

> "And apart from these facts, no lawyer in Maryland would feel able to say that there has been a difference in quality between the judges who have come on the bench in the State by one method or the other. Some of the best have come to the court originally by election."

Chief Judge Samuel K. Dennis, of the Supreme Bench of Baltimore City, vigorously maintained the wisdom and advisability of electing judges, and the judges of the Court of Appeals from and by the people of their separate respective areas, and not by the State at large, or the county members by the counties generally. As to instances in which judges who had been initially appointed had been replaced by the people at election, his position was that no generalization could be made between the judges so appointed and those elected by the people in their stead. He said:

> ". . . the question whether the Governor's appointees from the Bar when made under the check of success at judicial election, or the people's selections are the better, so far as can be seen, admits of no solution as the following tends to show:
>
> In recent years the following appointees have been defeated at the ensuing elections:

Governor's Choice	vs.	*People's Choice*
Daniel R. Randall	by	Frederick Stone
George M. Russem	by	James Alfred Pearce
James A. C. Bond	by	I. Thomas Jones
John G. Rogers	by	Wm. H. Thomas
Glenn H. Worthington	by	Hammond Urner
W. Laird Henry	by	John R. Pattison
W. C. Walsh	by	D. Lindley Sloan"

Daily Record, February 15, 1943, p. 3.

11. 1851 Const., Art. IV, Sec's 2 and 4.

12. 1851 Const., Art. IV, Sec's 8, 9, 10, 11, 12 and 13.

The provisions of the 1851 Constitution relative to the local courts, i.e., Art. IV, Sec's 8 and 9 in final form, did not contain an express age limitation of seventy years, or an express authorization of re-eligibility after the ten-year term, as to the judges of said courts. The provision as originally drafted by the Convention's Judiciary Committee, in stipulating the ten-year term, contained the age limitation and also the authorization of re-eligibility, within that limitation, but not thereafter. A minority substitute, for that provision, as offered, provided "for the term of ten years, or until they shall have attained the age of seventy years", without a re-eligibility provision. Debates and Proceedings of the Maryland Reform Convention To Revise The State Constitution, printed by William M'Neir, Official Printer, 1851, Vol. 1, p. 240, Feb. 11, 1851; Vol. 2, pp. 559 and 560, April 23, 1851. The substitute, with various minor amendments, was adopted. The discussions were so lengthy, and conducted in such frequent piecemeal re-discussions, and the Constitution was acted on in such a fragmentary manner, that it is difficult to say how the age limitation disappeared; and an examination which has been made of the debates and proceedings has been unsuccessful in discovering such an amendment. The Committee on Revision of the Convention, was constituted to review the draft of the Constitution and all amendments, and see that they complied with the actions taken. The Convention, however, wound up in a state of confusion very late at night. Many of the members were anxious to go home, and so insistent on immediate termination of the Convention, that it was claimed by certain of them that the Revision Committee had not been able properly to perform its undertaking. The attitude of the Convention, repeatedly demonstrated, does not justify the conclusion that it intended any such difference in tenure between the judges of the Court of Appeals and those of the lower courts.

13. 1851 Const., Art. IV, Sec. 25; and as to Senate recess, Art. II, Sec. 12.

14. 1864 Const., Art. IV, Sec's 2, 3, 17, 24, 26, 31 and 41.

15. 1864 Const., Art. IV, Sec. 5; and, as to Senate recess, Art. II, Sec. 14.

16. 1867 Const., Art. IV, Sec's 2, 3, 5 (and 5 as amended by 1880, Ch. 417, rat. Nov. 1881), 14, 19 (and 19 as amended by 1956, Ch. 99, rat. Nov. 6, 1956), 21, 31, 39 (and 39 as amended by 1892, Ch. 313, rat. Nov. 7, 1893). Section 21, and amendments thereof, had made provisions, as to the judges elected by the county circuits, being distributed as to residence in said circuits; and Const. Amend., Act 1953, Ch. 607, rat. Nov. 2, 1954, amending Art. IV, Sec's 3 and 21, further provided that the local judges of the various counties were to be residents of and elected by the people of their respective counties — and leaving likewise as before as to Baltimore City — except that, as to the First and Second local judicial circuits, i.e., the Eastern Shore circuits, the judges of those circuits (as previously the case) were to be residents (on the distributed basis of course) of, and elected by the people of, those respective circuits.

17. 1867 Const., Art. IV, Sec. 14. See 1864 Const., Art. IV, Sec. 19, and 1851 Const., Art. IV, Sec. 2, for previous forms of jurisdictional authority.

18. Act of 1943, Ch. 772, rat. Nov. 7, 1944, amending Sec's 5, 14 (and 14 as subsequently amended by 1956, Ch. 99, rat. Nov. 6, 1956, to remove obsolete language), and 21 of, and adding Sec. 18A to, Art. IV of the 1867 Const.

19. It contained certain additional provisions clothing the Court of Appeals with the following powers relative to the local courts and their judges.

It made the Chief Judge of the Court of Appeals the administrative head of the judicial system of the State. Furthermore, it empowered him, in case of vacancy, illness, disqualification or other absence of one or more judges of that court, to designate, to sit temporarily in the appellate court in his or their absence, a judge or judges of the local circuits, including of the Supreme Bench of Baltimore City. It also empowered him to designate, to sit temporarily in any of the local circuit courts, including the courts of Baltimore City, any judge of the Court of Appeals or of any other of the local Circuit Courts, including of the Supreme Bench of Baltimore City. All such powers are subject to such rules and regulations, if any, as the Court of Appeals may make. (Also Const. Amend. 1943, Ch. 796, rat. Nov.

7, 1944, added Sec. 13A to Art. IV, authorizing the Legislature to empower the Court of Appeals to assign judges, including the Baltimore City judges, temporarily from one judicial circuit to another).

It authorized the Court of Appeals to make rules of practice and procedure in the courts throughout the State, which have the force of law until rescinded, changed or modified by the Court of Appeals or the General Assembly. This constitutional provision substantially extended the previous constitutional provision with respect to the authority of the Court of Appeals to make rules of practice and procedure for the lower courts. 1867 Const., Art. IV, Sec. 18 (and such section as amended, by Act of 1956, Ch. 99, rat. Nov. 6, 1956, to remove obsolete language). The Court of Appeals had previously been clothed, by statute, with somewhat similar general rule making authority. 1939 Md. Ann. Code Art. 26, Sec. 35.

Chief Judge Samuel K. Dennis, of the Supreme Bench of Baltimore City, was critical of the power vested in the Chief Judge of the Court of Appeals by the "Bond Amendment." His position being as follows:

> "If the Chief Judge is unreasonable, meddlesome, blundering, or disposed to evil, he can make judges subservient, plague and pack the courts, put judges of the Court of Appeals, nisi prius judges and the bar to irritating inconvenience and loss" Daily Record, March 13, 1944, p. 3.

The power of Chief Judge Dennis' criticism makes the mind immediately turn to the question of what safeguard exists against such an abuse of power. That the authority granted, if properly exercised, is advantageous, is clear, and in such circumstances safeguards do not occur to people's thoughts. Their importance only arises in case of abuse, and then they become vitally essential. There is, of course, the right of removal of the judge, but see Thomas Jefferson's views as to the practical difficulty to be encountered in that connection. Note 31. There is, however, another and inherent safeguard to be found in the basis on which the Court of Appeals is constituted and the judges thereof hold their office. They are all elected officials, and from and by different regions of the State, for limited terms, and are responsible to the people. The authority to the Chief Judge is controllable by rules and regulations which the Court of Appeals, i.e. judges of the court, may make, and, if abuses be indulged in, they are all responsible, and can expect to be held accountable.

Since the "Bond Amendment", there have cropped up, from time to time, suggestions to cloth the Chief Judge of the Court of Appeals with further additional and extraordinary powers; as an example, one

being to make it dependent on him, if and when there should be decreases or increases in judges of the seven local county circuits, or an increase up to a certain limit in those of the Court of Appeals, which was not regarded with favor. Trans. Md. St. Bar Ass'n, meeting, June 30, 1950, pp. 269 to 273, 275; meeting, January 27, 1951, pp. 32 to 48; meeting, June 22, 1951, pp. 168 to 200.

All such suggestions, vesting the Chief Judge of the Court of Appeals with powers beyond his normal functions as a member of the court, bring directly into operation the admonition of Chief Judge Dennis.

20. As to vacancy arising from creation of a new judgeship, previous to this amendment, see Reed v. McKeldin, Governor, 207 Md. 553.

21. Const. Amend. 1945 Ch. 703, rat. Nov. 5, 1946, further amended Section 5, by adding a special provision that an Associate Judge of the Supreme Bench of Baltimore City, designated to fill a vacancy in the office of Chief Judge thereof, might serve in that capacity during the remainder of his elected term as Associate Judge.

22. Act of 1957, Ch. 739, Sec. 60. Originally provided by Acts of 1943, Ch. 334, and Ch. 754.

23. Act of 1957, Ch. 739, Sec. 64.

24. Act of 1957, Ch. 739, Sec. 67.

25. Act of 1957, Ch. 739, Sec. 94(e). Originally provided by Act of 1941, Ch. 703.

26. The 1-2 year probationary period, for the purpose stated, is reasonable, but for a longer time would not be warranted. Maryland having firmly established its basic principle of an elected judiciary, the Court of Appeals, in Cantwell v. Owens, 14 Md. 227 (1859), speaking of appointments to fill vacancies arising among those on that basis, discharging functions of a judicial nature, said in its opinion:

> "They derive their powers originally from the people. When provision is made for filling vacancies in another mode, it results from the necessity of the case, and is allowed for convenience; the question being remitted to the people at the earliest practicable time."

27. In recent years, certain members of the legal profession, *i.e.*, of the judiciary and of the bar, and also certain elements of the press, have placed great emphasis on what they term the "sitting judge" theory. The extent to which that emphasis has been placed, if acceded to, would have the people continue in office wellnigh any judge once installed, whether by appointment or previous election, as a general

policy. The theory, within reasonable limits, is sound, and the people usually do retain incumbent judges, but it can be carried too far, and further than the people should permit. It could keep in office those who should not be so retained, and discourage those of superior qualifications.

28. Although at times such attitudes have been easily recognizable, at others they have been reflected in piecemeal features not calculated to attract attention. See Thomas Jefferson's views on the subject of the effect of such whittling process, if accomplished, in undermining the rights of the people. Note 31.

Chief Judge Samuel K. Dennis, of the Supreme Bench of Baltimore City, opposed a provision in the "Bond Plan", that the Governor's appointee, when he came up for election, should have the right to have his name go on the election ballot automatically, and to be unopposed unless the opposing candidate were nominated by a petition signed by a substantial number of voters. This proposal was a revival of a similar view of the majority of a greatly divided committee in 1924, which never reached the stage of any legislative consideration. "Report of Judiciary Commission, January, 1924." Also, 8 Md. Law Rev. 97 and 98. With respect to the provision in the "Bond Plan", Chief Judge Dennis' position was that its purpose was, in effect, to resurrect the repudiated appointive system in Maryland. He said:

> "The Bond Report does not quite solicit the full appointive power for the Governor. It does attempt to promote indirectly but in substance the like result by putting what was designed to be a back-breaking handicap upon candidates competing with the Governor's 1-2 year probationary appointee."

He then further emphasized his position that the plan, in effect, would put the judges on an appointive basis, ". . . the actual if not the completely expressed hope of the Commission, as the Report necessarily implies." The provision was rejected by the General Assembly. Daily Record, Feb. 15, 1943, p. 3, March 13, 1944, p. 3.

In 1957 an agitation arose, to have Maryland inaugurate some such system as the Missouri System, which according to a former President of the American Bar Association, from Missouri, was occasioned by unfortunate political conditions in that State. 1951 Trans. Md. St. Bar Ass'n pp. 43 and 236. Under that system a commission, a majority of whose members are judges and lawyers, submits a list of names to the Governor from which he must make judicial appointments. The appointee then is entitled to have his name go on the election ballot, with no opposition, and the people can only vote for or against him. They have no freedom to select those whom they might desire as their judges.

Despite the earlier statement of Chief Judge Carroll T. Bond, of the Court of Appeals, that Maryland had not experienced bad effects from the election of judges by the people — see Note 10 — and subsequent admission by the committee itself of no comparable conditions, a committee was appointed by the Maryland State Bar Association and recommended a modified form of that system, whereby commissions would be constituted in the State, respectively having the majority of their members composed of judges and lawyers, who would propose lists of names to the Governor from which he would have to make judicial appointments. There likewise would be no primaries and the appointees' names would automatically go on the election ballot. There could be opposition, but an opposing candidate was required to be nominated by a petition signed by not less than 1% of the registered voters entitled to vote in the election, and which number would have to include, at least 10% of the lawyers of the particular area where the election would be held. It was stated on behalf of the committee that it was felt that there could not be a provision that the judicial appointee, should run on his record, alone, *i.e.*, without opposition as in Missouri, because it was not believed that the Legislature would accept it. Among those who opposed the proposal was Judge Joseph Sherbow, formerly of the Supreme Bench of Baltimore City, and his following remarks reflect the reaction which it aroused, (p. 253):

> "And I would like to read to you from the opinion of Judge Delaplaine, in the case of Smith v. Higinbothom, President of the Bar Association of Baltimore City, published in the Daily Record, September 11, 1946. And not one of these words is mine.
>
> > 'In California, first State to adopt the new plan, the Judges of the Supreme Court and of the intermediate appellate courts are appointed by the Governor with the consent of a Commission composed of the Chief Justice or Acting Chief Justice, the Attorney General, and the Presiding Justice of one of the District Courts of Appeal. According to the American Judicature Society this system, which has been adopted by Missouri, has been a disappointment because it has not succeeded in removing politics from judicial selection.
> >
> > 28 Journal American Judicature Society, at p. 91."

Continuing his address just a little further on (p. 254):

> "Keep what you have, guard it well, but fight for it when the time comes in the elections, don't sit back supinely and then when you find that conditions have changed seek to uproot the whole system because the Bar did not make the kind of fight it had theretofore always made."

The proposal would, in effect, have taken away from the people their right to select their own judicial officials, and transferred that right, from a practical point of view, to one segment of the body politic, *i.e.*, the judges and lawyers.

In that connection it is pertinent to note, that in the Constitutional Convention of 1851, which repudiated the continuance of the appointive basis, and carried the right to select their judges direct to election by the people themselves, it was asserted by certain prominent members of the Convention — although it was apparent that they felt embarrassed by the presence as members of the Convention of a number of prominent members of the judiciary including judges of the Court of Appeals — that in the past there had been too close relations between certain influential lawyers, judges and appointing power.

The above referred to proposal never reached the General Assembly, because it was rejected by the Maryland State Bar Association. 1957 Trans. Md. St. Bar Ass'n, Jan. 26, pp. 42 to 62; June 21, pp. 235 to 264.

The instances cited, suffice to show how all such proposals are aimed at taking away the rights of the people.

29. While firmly maintaining its principles of government with respect to its judiciary, Maryland, in keeping with those principles, has also afforded its judges security in office so as to insure their independence. Its fifteen-year tenure is the longest judicial term tenure in the nation as to trial judges, and, with one exception, *i.e.*, Pennsylvania, the longest such tenure in the nation as to judges of the highest courts. As to salaries, the trial judges of only Illinois, Massachusetts, New Jersey, New York, Pennsylvania, Connecticut, Delaware and Rhode Island, exceed the trial judges of Maryland, and the judges of the highest courts in the first five of those states are the only ones who exceed the judges of Maryland's Court of Appeals. (This was as of the years 1950 and 1951. Since then there have been substantial increases in salaries of Maryland's judges.) The Courts Of Last Resort Of The Forty-Eight States: A Report to the conference of Chief Justices, by The Council Of State Governments, Sept. 1950, pp. 4-5, Table 5 between pp. 22 and 23. The Courts Of General Jurisdiction In The Forty-Eight States, a similar report by the same Council, Sept. 1951, pp. 35, 36 and 39. These reports are cited because they are the most recent of their kind in the Pratt Library, of Baltimore City.

30. Recently, despite the previous adverse experience of the State, there have been suggestions that the age limitation be abolished or relaxed. These suggestions usually are based on a citation of instances where federal judges have been able to continue favorably beyond the seventy year age, or else they have been used as an argument to enable

judges to continue after that time on full salary. One of the arguments advanced is that, conceding that it would be unwise as a general policy, a provision could be made to have the Chief Judge of the Court of Appeals determine which judges and when to call back to the bench after the age limitation has been reached. This is all, however, in utter disregard of Maryland's conception of the basis on which it wants to maintain its judiciary as totally differing from that of the federal system, and could lead to a gradual breakdown of that difference. As to vesting any member of the judiciary with any such authority, Thomas Jefferson's view of the undesirable condition inherent in clothing the judiciary with authority to perpetuate itself is pertinent. See his letters to John Taylor, May 28, 1816 and Samuel Kercheval, July 12, 1816. Note 31.

31. The history of Maryland's judiciary conclusively shows, that from both points of view, *i.e.*, safeguarding the independence of and maintaining proper personnel of the judiciary, and eliminating those of its members guilty of abuses, the people can be relied on, even in the most extreme circumstances, if conditions be properly presented to them. See accounts of the new judgeship fight in Baltimore City (1882). The Story Of Maryland Politics, Chap. XI, p. 104, by Frank R. Kent, 1911. The Sun Papers Of Baltimore, Chap. VII, p. 142, by Gerald W. Johnson, Frank R. Kent, H. L. Mencken and Hamilton Owens, 1937, written from the point of view of presenting the Sun Papers' position in that and certain other contests.

In contrast is to be noted the widespread grave anxiety over the course of development of the entrenched federal court, which, created as one of the three co-ordinate branches of the federal government, and on a contemplated basis of different state and federal functions, has, going beyond the sphere of a court so created, by ever expanding assertions of overreaching authority, in the respects in which it has gone beyond that sphere, in effect, undertaken to constitute itself a super all powerful government in the nation and in the states.

Thomas Jefferson was thoroughly opposed to what he clearly considered to be the oligarchical and autocratic development of the entrenched federal court, holding office for life, and accountable to no authority. Impeachment he regarded as no safeguard, his position being that actual experience had shown it to be impractical and unavailable, emphasizing that in America, going even beyond the provision for a majority of each House of Parliament obtaining in England, the stipulation is two-thirds.

It is not possible here to present his many statements of that position, but they are reflected in the following brief quotations and references from The Writings of Thomas Jefferson, edited by Andrew A. Lipscomb and Albert Ellery Bergh, 1903, as are also the accompanying

citations, except one noted as coming from the edition of Paul Leicester Ford, 1899.

> "We already see the power, installed for life, responsible to no authority, (for impeachment is not even a scarecrow,) advancing with a noiseless and steady pace to the great object of consolidation. The foundations are already deeply laid by their decisions, for the annihilation of constitutional State rights, and the removal of every check, every counterpoise to the ingulfing power of which themselves are to make a sovereign part."

Letter to William T. Barry, July 2, 1822, Vol. XV, 388-390, at 388-389.

> "But it is not by the consolidation, or concentration of powers, but by their distribution, that good government is effected."

Protests, ". . . one of the great coordinate branches of government, setting itself in opposition to the other two, . . ."

Asserts, the necessity to restrain it from undertaking to exercise legislative powers: furthermore, his general repudiation of its encroachments on the other two coordinate branches.

Autobiography, Vol. 1, 120-122, at 122.

Letter to William B. Giles, April 20, 1807, Vol. XI, 190-191, at 191.

Letter to Edward Livingston, March 25, 1825, Vol. XVI, 113-114, at 113.

Letter to Caesar A. Rodney, September 25, 1810, Vol. XII, 425.

Letter to Judge Spencer Roane, September 6, 1819, Vol. XV, 212-215.

Declares his opposition to life tenure, approval of limited term tenure, and the salutary effect of having members of the judiciary come up for retention or rejection periodically.

Letter to Samuel Kercheval, July 12, 1816, Vol. XV, 34, 36-37, 39.

Letter to James Pleasants, December 26, 1821, Vol. X (Ford Edition), 198-199.

Letter to Monsieur A. Coray, October 31, 1823, Vol. XV, 486-487.

> "That there should be public functionaries independent of the nation, whatever may be their demerit, is a solecism in a republic of the first order of absurdity and inconsistency."

In similar vein: ". . . in a government founded on public will, this principle operates in an opposite direction, and is against that will."

Barry letter, supra, at 389-390.

Kercheval letter, supra, at 34.

Letter to Thomas Ritchie, December 25, 1820, Vol. XV, 297-298, at 298.

On this general subject further see letters to Judge Spencer Roane, March 9, 1821, Vol. XV, 326, and Charles Hammond, August 18, 1821, Vol. XV, 331-332.

Also see the report of the Committee on Federal-State Relationships as affected by Judicial Decisions, to the Conference of Chief Justices of the State Courts at Pasadena, California, August 20, 1958, approved and adopted by that Conference, of which Committee Chief Judge Frederick W. Brune of the Court of Appeals of Maryland, attending the Conference as the representative of that Court, was Chairman and presented the report. The Committee's findings, in protesting the course undertaken by the federal court as to, state and federal constitutional division of functions, and as to what in reality amounts to legislating, contain the following statements:

> "We are not alone in our view that the Court in many cases arising under the Fourteenth Amendment, has assumed what seem to us primarily legislative powers. See Judge Learned Hand on the Bill of Rights. We do not believe that either the framers of the original Constitution or possibly somewhat less gifted draftsmen of the Fourteenth Amendment ever contemplated that the Supreme Court would, or should, have the almost unlimited policy-making powers which it now exercises."
>
> "It is strange, indeed, to reflect that, under a Constitution which provides for a system of checks and balances and of distribution of power between national and state governments, one branch of one government — the Supreme Court — should attain the immense, and in many respects, dominant power which it now wields."

Further:

> "We believe that the great principle of distribution of powers among the various branches of government and between the levels of government has vitality today and is the crucial base of our democracy."

Again:

> "It has been an American boast that we have a government of laws and not of men. We believe that any study of recent decisions of the Supreme Court will raise at least considerable doubt as to the validity of that boast."
>
> United States News and World Report, August 29, 1958, pp. 63 and 64.

32. Since it became a state, Maryland has had the following numbers of judges of its Court of Appeals, at different times; not taking into consideration holdover additional membership during the short adjustment period following adoption of the "Bond Amendment".

2	Years —	none —	1776-1778
9	"	3	1792-1801
21	"	4	1784-1792, 1851-1864
28	"	5	1778-1784, 1801-1806, 1864-1867, 1944-1958
45	"	6	1806-1851
77	"	8	1867-1944

Accordingly an odd number 37 years, and an even number 145 years.

33. Address of Chief Judge Carroll T. Bond, of the Court of Appeals; Trans. Md. St. Bar Ass'n, June 26, 1942, pp. 214, 215, 216.

34. A former member of the judiciary, after his retirement, who is now deceased, in speaking of the eminence at the Maryland Bar and the astounding capacity of John Prentiss Poe, without undertaking to cover many of his offices and activities, cited the following features of his career. That he:

> was engaged in an active and varied practice, both office and trial, which in itself was sufficient to tax the ability and take up the time of any lawyer in the practice of his profession; the range of that practice being indicated by his appearance, as attorney, in litigations in the Court of Appeals in every volume, but one, of the Maryland Reports from 13 Md. previous to 112 Md., or almost 100 Volumes;
>
> was Attorney General of Maryland, City Counsellor of Baltimore City, and a member and the leader of the Maryland Senate;
>
> wrote his "Pleading And Practice" in 1880, which immediately became and continued to be the revered authority on those subjects in Maryland, and which he carried through three subsequent revisions in 1884, 1897 and 1906 respectively (it being carried through

a fourth revision in 1925, after his death in 1909, by Herbert T. Tiffany);

codified the Public General Laws of Maryland, 1888, and their 1898 Supplement, recodified them in 1903, and, because the bulk of that edition was destroyed in the Baltimore fire of 1904, again recodified them including the laws of that year;

codified the Public Local Laws of Maryland, 1888; having codified the 1885 Supplement to the existing Baltimore City Code, thereafter codified the Public Local Laws of Baltimore City, 1890, and the Baltimore City Code of 1893;

was one of the Regents of the University of Maryland, and Dean of the Faculty of its Law School, and a Professor of Law and regularly lectured there;

was President of the Maryland State Bar Association and also of the Baltimore City Bar Association;

was one of the leaders of and the counsel for the Democratic Party of Maryland, drafted its sponsored constitutional amendments and laws and party platforms, and, when occasion arose, was its representative in important proceedings of National Conventions, and he and his likewise eminent contemporary Bernard Carter (both featured in "Seven Great Baltimore Lawyers", by William Cabell Bruce, 1931) were its powerful champions in upholding its cause and presenting its positions to the public;

and with it all had the responsibilities of a large family.

35. These statements are to the effect that the 1908 Committee on Laws of the Maryland State Bar Association, in its report to the Association at its annual July meeting of that year, recommended that the membership of the Court of Appeals be reduced from eight to five. 6 Md. L. Rev. 120, 8 Md. L. Rev. 96: 1942 Trans. Md. St. Bar Ass'n, 216, 222, 223; 1943 Trans. Md. St. Bar Ass'n, 4; 1957 Trans. Md. St. Bar Ass'n, 278.

The Bar Library, of Baltimore, and the Pratt Library, both advise that they have no copy of that report, apart from that which is contained in the 1908 Trans. Md. St. Bar Ass'n. That volume does set forth the report, which recommended certain changes as to the Court of Appeals, but not as to any reduction in its members. Moreover, later, representatives of the Committee said that on the morning of the meeting when action was to be taken, all of the members of the committee had met and decided to recommend that the portions of the report not previously acted on, which included the portion relative to the Court of Appeals, be not acted on at that meeting, but be referred to the new

Committee on Laws for its consideration and report at the next annual meeting of the Association, and it was so referred. The new committee, in its report at the 1909 July annual meeting, stated that it had carefully considered the matter, and had no recommendation to make in reference to it. Therefore, it asked to be dismissed from its further consideration, which accordingly, apparently without opposition, the meeting did.

1908 Trans. Md. St. Bar Ass'n, 62, 109, 110, 111, 115, 122, 178; 1909 Trans. Md. St. Bar Ass'n, 57, 58, 359.

36. Report of Judiciary Commission, January, 1924. This report, at page 8, said that the majority recommendation to reduce the membership of the Court of Appeals from 8 to 5 was new. As to the majority recommendations not receiving any legislative consideration, see 8 Md. L. Rev., 98.

37. For the original five membership proposal, the proposal as changed by the committee of the Bar Association to six in an attempt to reduce opposition, and the failure to receive the General Assembly authorization, see 1941 Trans., Md. St. Bar Ass'n, 18-22, 29, 63, 64, 81, 82, 83-87, 142; the interim "Report Of The Committee On Reorganization Of The Court of Appeals", February 26, 1941.

38. 1943 Trans., Md. St. Bar Ass'n, 7, 17; 1951 Trans., Md. St. Bar Ass'n, 35.

39. For the original, "Bond Plan", see 1943 Trans. Md. St. Bar Ass'n, 3-14, 15-29, 110-111. For the portion authorized by the General Assembly, as changed by it, which became the "Bond Amendment", see Act of 1943, Ch. 772, rat. Nov. 7, 1944.

Chief Judge Carroll T. Bond, of the Court of Appeals, was in favor of a five membership court, with the members free of any local circuit court obligations. On that basis, in view of the then case load of the court, he was of the opinion that the five members would be sufficient. 1941 Trans. Md. St. Bar Ass'n, 25, 26. For other views to that effect, see the same Trans., 18 and 6 Md. Law Rev. 143, 144; the same Bar Ass'n's 1942 Trans., 224, 247; 8 Md. Law Rev. 111, 112.

Chief Judge Samuel K. Dennis, of the Supreme Bench of Baltimore City, said, with respect to the reduction in the membership of the Court of Appeals:

> "A Court of Appeals of five men is not equal to the task, especially if the Chief Judge is partially preoccupied with fresh administrative duties."

His further position was, that the members of that court should engage in only such local circuit court activities, if any, as they felt they could without interferring with their duties on the Court of Appeals; moreover, that, if on that basis the court became overworked, the membership should be increased to nine, with the additional judge coming from Baltimore City. As to the local courts, he had previously taken the position that Baltimore City was, under the then conditions, over-supplied with judges, but he stated that if, as suggested, further duties were to be visited on them, he was opposed to any reduction in their number. As to the county judges, he was opposed to any drastic reduction of them. As to the judicial structure of the State, his position was likewise, his approach being that it was against the trend of the State's conditions.

Daily Record, February 15, 1943, p. 3, March 13, 1944, p. 3.

Judges F. Neal Parke and Hammond Urner had recently retired from the Court of Appeals, and had been appointed members of the "Bond Commission." Judge Parke was not in favor of a reduction in membership, and predicted that the case load of the court would increase. He dissented from the Commission's reports, and his objections are attached to them as referenced in this note. See also 1942 Trans. Md. St. Bar Ass'n, 230. Judge Urner had previouly stated that he had been unable to decide whether the number of judges should be five or seven, but that he would defer to Chief Judge Bond's view, 1941 Trans. Md. St. Bar Ass'n, 28. He therefore did not offer any objection as to the number as recommended by the Commission.

40. It is pertinent to note that, in its earlier interim report to the 1958 mid-winter meeting of the State Bar Association, the previously mentioned committee of the Association stated that it had intended to recommend an increase in the membership of the Court from five to seven with the stipulation that only five judges sit at a time, and refrained from doing so because the present members of the court prefer five to seven judges. (Int. Rep. p. 18). However, the Committee, in the course of discussing a possible increase of the judges from five to seven, while taking note of the argument that it would make a more cumbersome court, made the following comments. It made the statement, already quoted in this review, about the highest courts of twenty-one states being composed of seven judges. It stated further that of the twelve judges who had served on the Court of Appeals since the "Bond Amendment" became effective, the views of two had not been obtained, and the remaining ten had divided, four in favor of a seven rather than a five member court, and six taking the opposite view. In analyzing this difference of views it commented: "It should also be observed that three of 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 had served only on a five man court. Three of the five judges who had served on both a seven and a five man court favor a seven man court, and the other two favor a five man court." (Int. Rep. pp. 16 and 17.)

Furthermore, it stated that an increase in the number of judges from five to seven with the requirement that only five sit at a time, would clearly help to relieve the present burden on the judges. In explanation it said:

> "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 were hearing arguments, thus giving each judge two or three days per month additional time for opinions and yet continuity in personnel of the court would still be maintained." (Int. Rep. pp. 18 and 19.)

By the reference to continuity of the court, the committee meant to distinguish this remedy from a proposal to have a larger court than seven functioning in separate panels which the committee disapproved. The committee did not feel that, from a practical point of view, there should be any difficulty as to continuity in a court of seven with the requirement that only five sit at a time. (Int. Rep. p. 18.)

41. The Court Of Appeals Of Maryland, A Five Year Case Study, by Herbert M. Brune, Jr. and John S. Strahorn, Jr., 4 Md. L. Rev. 350, 351, 366.

42. An article published in the Daily Record, May 25, 1942, p. 4, cited the following facts: that, subsequent to the annexation of territory by Baltimore City in 1918, the City's percentage of the State's total population had thus declined between 1920 and 1940, i.e., it was in 1920 — 50.6%, in 1930 — 49.3%, in 1940 — 47.2%; also, that between 1910 and 1940 Baltimore City's percentage increase of its own population was 54%, and the similar percentage increases in certain counties, being the ones in which such largest county increases had occurred, were as follows: Baltimore County 27%, which did not accurately reflect the growth of that county percentagewise because of the territory withdrawn from it and added to Baltimore City by the 1918 annexation Act; Anne Arundel County 74%; Prince George's County 150%; Montgomery County 162%.

43. 1867 Const., Art. XIII, Sec. 1. See also 1864 Const., Art. X, Sec. 1.

44. Wright v. Hamner, 5 Md. 370, 376, State of Maryland v. Shillinger, 6 Md. 449, 451, Mayor and City Council of Baltimore v. State ex rel. of Board of Police, 15 Md. 491, Baltimore City v. Gorter, 93 Md. 6, Pressman v. D'Alesandro, Mayor of Baltimore City, et al., 211 Md. 57. Maryland Rules — 5, h.

45. Daily v. Morgan, 69 Md. 460, 464-466. McGraw v. Merryman, 133 Md. 247, 249-261, in which case the court implied that it did not agree with the previous ruling but felt bound by it.

46. The following are certain laws in that connection:

1729, Ch. 12 (July), 1732, Ch. 14 (July), 1745, Ch. 9 (August), 1747, Ch. 21 (May), 1750, Ch. 11 (May), 1753, Ch. 20 (October), 1765, Ch. 2 (November), 1766, Ch. 22 (November, as altered by 1768, Ch. 22, 1770, Ch. 7, 1779, Ch. 20), 1773, Ch. 4 (June), 1773, Ch. 21 (November), 1781, Ch. 24 (November), 1782, Ch. 2 (April), 1782, Ch. 8 (November, see also 1805, Ch. 42 November), 1796, Ch. 68 (November), 1797, Ch. 54 (November); Baltimore City Ordinances, February, 1799, pp. 24-26, printed by Thomas Dobbin; 1816, Ch. 209, 1888, Ch. 98, 1918, Ch. 82.

47. Const. Amend., Act of 1947, Ch. 618, rat. November 2, 1948.

48. The statements as to manufacturers operations, retail trade and building permits, are based on information obtained at the office of the Maryland State Planning Commission. As to manufacturers operations the information is based on that Commission's "News Letter, September 1956", Vol. 9, No. 9, and it is as to Value Added By Manufacturers. That office advises that the reports on which the News Letter is based, only come out every seven years. Therefore, the years, 1947 and 1954, are given. As to retail trade the information supplied by the above mentioned office, is based on "Bulletin R-1-20, Retail Trade, Maryland", "1954 Census of Business", published by the United States Department of Commerce, Bureau Of The Census, Washington, 1956. That publication says that there cannot be an accurate comparison between the 1948 and 1954 figures because there are slight variations between the bases on which they were compiled. Therefore, the percentage computations supplied by the writer of this review, must be understood with that reservation. The office of the Planning Commission advises, that such reports only come out periodically, and that this is the latest available for the specific purpose. The statement as to building permits is founded on information, which is not complete as to certain counties, but supplying sufficient data to justify the statement.

49. 1957, Trans., Md. St. Bar Ass'n, p. 280. These figures as to lawyers are probably approximate. Furthermore, it has been noted that many lawyers in Baltimore City do not actually practice law. 4 Md. L. Rev. 154, 155.

50. See notes 37 and 39 for the citations for the 1941, and "Bond Plan", proposals.

51. See note 28 and the paragraph of this review to which it applies.

52. See position of Chief Judge Samuel K. Dennis, of the Supreme Bench of Baltimore City, in note 19.

53. Trans. Md. St. Bar Ass'n, June 26, 1943, p. 176.

54. Trans. Md. St. Bar Ass'n, June 26, 1942, p. 219.

55. In some of the states which have installed the intermediate appellate court system, the number of judges of that system has run up as high as 33. See the Report Of Committee To Study Case Load Of The Court Of Appeals, Annex E, October 22, 1958.

56. The Virginia lawyers have found their system of review satisfactory. See page 6 of the Report cited in Note 55.

57. 1867 Const., Art. IV, Sec. 22, makes certain provisions for a court in banc in the county circuits, but they are very inadequate, and in effect, by compelling a litigant, who might contemplate resorting to the court in banc, to choose between the court in banc and the Court of Appeals, channel cases to the latter court. Sec. 33 of that Article also makes certain provisions for court in banc operations by the Supreme Bench of Baltimore City, but they have not been practical, and were made further impractical by the Act of 1870, Ch. 177, enacted under Section 39 of the same Article empowering the General Assembly to make changes in the jurisdiction of the Baltimore City courts. Consequently, to have successful courts in banc in Maryland, it would be necessary to make proper and adequate provisions therefor. Although Section 39 above mentioned gives authority to the General Assembly to make changes, as already stated, in Baltimore City, and Section 22 of the Constitution states that it is "subject to such provisions as may hereafter be made by law", it may be that adequate provisions would call for a constitutional amendment, which question, due to pressure of time, has not received the necessary investigation in connection with this review.

The present broad rule-making power of the Court of Appeals, and its power to assign judges, would go a long way toward insuring the successful operation of the courts in banc.

58. As to changes in the early courts and the county courts bringing court proceedings closer to the people, see The Court Of Appeals Of Maryland, pp. 58 to 62, 87 to 97, by Chief Judge Carroll T. Bond, 1928.

59. 1951 Trans., Md. St. Bar Ass'n, January 27, pp. 35, 36, 44, 45, 48; 1951 Trans., same Ass'n, June 27, pp. 186, 187, 195, 198 to 200, and 208.

60. 1867 Const., Art. IV, Sec's 18 and 18A, confer on the Court of Appeals the power to make rules and regulations. The latter section, in conferring on the Chief Judge the power to assign judges, specifically provides that such power is to be subject to the rules and regulations which the Court may make. The power proposed in this instance should be brought into line with the other two. The office of Chief Judge should not be clothed with independent powers over the other members of the Court of Appeals, or indeed over the judges generally of the State. It might have very detrimental consequences. To guard against any erroneous impression on the part of readers, it is simply stated that the present Chief Judge and the writer of this review are old friends, and there could be no reflection intended. The remarks refer to the office held from time to time by numerous persons. As previously noted, in 1950-51, a suggestion was made to the State Bar Association that the office of Chief Judge be, in effect, given control over an increase in the membership of the Court of Appeals, and certain increases and decreases in the membership of the local courts. While intending no reflection on the then Chief Judge, the suggestion was vigorously opposed and was rejected. 1950 Trans., Md. St. Bar Ass'n, June 22, pp. 269 to 275; 1951 Trans., same Ass'n, January 27, pp. 32 to 48; 1951 Trans., same Ass'n, June 22, pp. 168, 187, 191, 208.

At the time of the enactment of the "Bond Amendment", the ground on which the prominent member of the judiciary whom the proponents of that amendment selected as their spokesman, justified vesting in the Chief Judge the powers specified therein, was that they were subject to the control of the other members of the Court of Appeals. 8, Md. L. Rev. 17 and 19.

TABLE I.

	1930	*1940*	*1950*	*July 1, 1958*	*Percentage Change from April 1, 1950 to July 1, 1958*
Garrett	19,908	21,981	21,259	19,000	—6.3
Allegany	79,098	86,973	89,556	83,000	—7.3
Washington	65,882	68,838	78,886	87,500	10.9
Frederick	54,440	57,312	62,287	69,500	11.6
Montgomery	49,206	83,912	164,401	291,000	77.0
Carroll	35,978	39,054	44,907	54,500	21.4
Howard	16,169	17,175	23,119	30,500	31.9
	320,681	375,245	484,415	635,000	
Harford	31,603	35,060	51,782	67,000	29.4
Baltimore	124,565	155,825	270,273	444,000	64.3
Prince George's	60,095	89,490	194,182	335,000	72.5
Anne Arundel	55,167	68,375	117,392	188,000	60.1
Charles	16,166	17,612	23,415	30,000	28.1
Calvert	9,528	10,484	12,100	15,000	24.0
St. Mary's	15,189	14,626	29,111	39,000	34.0
	312,313	391,472	698,255	1,118,000	
Baltimore City	804,874	859,100	949,708	984,000	3.6
Cecil	25,827	26,407	33,356	48,000	43.9
Kent	14,242	13,465	13,677	15,500	13.3
Queen Anne's	14,571	14,476	14,579	15,200	4.3
Talbot	18,583	18,784	19,428	20,500	5.5
Caroline	17,387	17,549	18,234	18,800	3.1
Dorchester	26,813	28,006	27,815	28,800	3.5
Wicomico	31,229	34,530	39,641	48,500	22.3
Somerset	23,382	20,965	20,745	19,500	—6.0
Worcester	21,624	21,245	23,148	25,000	8.0
	193,658	195,427	210,623	239,800	

NOTE: The 1930, 1940 and 1950 figures are as of April 1, and from the National Censuses. The July 1, 1958 figures and the percentage changes are estimates by the Maryland State Department Of Health, Division of Vital Records and Statistics, in its release of August 18, 1958.

The groupings and totals are by the author of this review.

TABLE II.

	1930	1940	1950	July 1, 1958	Percentage Change from April 1, 1950 to July 1, 1958
Garrett	19,908	21,981	21,259	19,000	—6.3
Allegany	79,098	86,973	89,556	83,000	—7.3
Washington	65,882	68,838	78,886	87,500	10.9
Frederick	54,440	57,312	62,287	69,500	11.6
Montgomery	49,206	83,912	164,401	291,000	77.0
Carroll	35,978	39,054	44,907	54,500	21.4
Howard	16,169	17,175	23,119	30,500	31.9
	320,681	375,245	484,415	635,000	
Harford	31,603	35,060	51,782	67,000	29.4
Baltimore	124,565	155,825	270,273	444,000	64.3
	156,168	190,885	322,055	511,000	
Prince George's	60,095	89,490	194,182	335,000	72.5
Anne Arundel	55,167	68,375	117,392	188,000	60.1
Charles	16,166	17,612	23,415	30,000	28.1
Calvert	9,528	10,484	12,100	15,000	24.0
St. Mary's	15,189	14,626	29,111	39,000	34.0
	156,145	200,587	376,200	607,000	
Baltimore City	804,874	859,100	949,708	984,000	3.6
Cecil	25,827	26,407	33,356	48,000	43.9
Kent	14,242	13,465	13,677	15,500	13.3
Queen Anne's	14,571	14,476	14,579	15,200	4.3
Talbot	18,583	18,784	19,428	20,500	5.5
Caroline	17,387	17,549	18,234	18,800	3.1
Dorchester	26,813	28,006	27,815	28,800	3.5
Wicomico	31,229	34,530	39,641	48,500	22.3
Somerset	23,382	20,965	20,745	19,500	—6.0
Worcester	21,624	21,245	23,148	25,000	8.0
	193,658	195,427	210,623	239,800	

NOTE: The 1930, 1940 and 1950 figures are as of April 1, and from the National Censuses. The July 1, 1958 figures and the percentage changes are estimates by the Maryland State Department Of Health, Division of Vital Records and Statistics, in its release of August 18, 1958.

The groupings and totals are by the author of this review.

TABLE III.

	1930	*1940*	*1950*	*July 1, 1958*	*Percentage Change from April 1, 1950 to July 1, 1958*
Garrett	19,908	21,981	21,259	19,000	—6.3
Allegany	79,098	86,973	89,556	83,000	—7.3
Washington	65,882	68,838	78,886	87,500	10.9
Frederick	54,440	57,312	62,287	69,500	11.6
Montgomery	49,206	83,912	164,401	291,000	77.0
	268,534	319,016	416,389	550,000	
Prince George's	60,095	89,490	194,182	335,000	72.5
Charles	16,166	17,612	23,415	30,000	28.1
Calvert	9,528	10,484	12,100	15,000	24.0
St. Mary's	15,189	14,626	29,111	39,000	34.0
	100,978	132,212	258,808	419,000	
Anne Arundel	55,167	68,375	117,392	188,000	60.1
Howard	16,169	17,175	23,119	30,500	31.9
Carroll	35,978	39,054	44,907	54,500	21.4
	107,314	124,604	185,418	273,000	
Baltimore City	804,874	859,100	949,708	984,000	3.6
Baltimore	124,565	155,825	270,273	444,000	64.3
Harford	31,603	35,060	51,782	67,000	29.4
	156,168	190,885	322,055	511,000	
Cecil	25,827	26,407	33,356	48,000	43.9
Kent	14,242	13,465	13,677	15,500	13.3
Queen Anne's	14,571	14,476	14,579	15,200	4.3
Talbot	18,583	18,784	19,428	20,500	5.5
Caroline	17,387	17,549	18,234	18,800	3.1
Dorchester	26,813	28,006	27,815	28,800	3.5
Wicomico	31,229	34,530	39,641	48,500	22.3
Somerset	23,382	20,965	20,745	19,500	—6.0
Worcester	21,624	21,245	23,148	25,000	8.0
	193,658	195,427	210,623	239,800	

NOTE: The 1930, 1940 and 1950 figures are as of April 1, and from the National Censuses. The July 1, 1958 figures and the percentage changes are estimates by the Maryland State Department Of Health, Division of Vital Records and Statistics, in its release of August 18, 1958.

The groupings and totals are by the author of this review.