First Report Of The Commission On Judicial Administration Relating To The Need For Additional Judges

The first matter for consideration by this committee is the Constitutional Amendment proposed by Chapter 607 of the Acts of 1953. Should this Commission recommend ratification or rejection of this amendment by the people? The proposal includes a number of details bearing no necessary relation to one another. It is, however, one amendment and must be ratified or rejected *in toto*. The voter has no opportunity to vote for or against any separate feature.

The main features are two: (I) Provision for (*a*) at least one judge for every county (except in the First and Second Circuits), (*b*) an additional judgeship in the Fourth Circuit (for Garrett County) and the Seventh Circuit (for St. Mary's County), (*c*) election of judges in the counties (except in the first two circuits) by the voters of one county only, not of the entire circuit, and (*d*) increase or decrease of the number of judges of any circuit or for any county by the General Assembly from time to time. (II) Provision for an additional judgeship in Anne Arundel, Baltimore, Montgomery and Prince George's Counties. Vacancies to be created by additional judgeships for Garrett, Montgomery and Prince George's Counties are to be filled by appointment, followed by election, as at present in all cases, but for Anne Arundel, Baltimore and St. Mary's Counties are to be filled only by election.

Within the last few years it has been repeatedly, or perhaps continuously, urged that a resident judge be provided in every county. Before the Act of 1953 no such proposal has ever been approved by the legislature or, so far as we can ascertain, by any commission or committee or other body which has considered the matter. It is convenient for lawyers in any county if a judge resides in the county. Still more convenient, no doubt, would be a judge for every election district.

The most plausible excuse for a judge in every county disappeared a generation ago with the arrival of automobiles and good roads. From 1642 until 1776 the Provincial Court, and thereafter until 1805 the General Court, had original as well as appellate jurisdiction throughout the State. Until 1790 the county courts had no professional judges; justices of the county courts were virtually justices of the peace. Only the judges of the General Court were required to be lawyers. In 1790 the circuit system (suggested by the federal judiciary act of 1789) was initiated by the creation of five circuits (till 1851 called districts), each with one chief judge of the county courts, who was a lawyer, and two lay judges. In 1805 the number of districts was increased from five to six and all three judges were required to be lawyers, the six chief judges constituting the Court of Appeals. Under the Constitution of 1851 and 1864 the counties were divided into seven and twelve circuits respectively, with one circuit judge for each circuit. Under the Constitution of 1867, the First, Second and Seventh Circuits contain thirteen counties with nine judges. For five judges (separately) to preside over the trial courts in every county in 1790, before even the turnpikes were constructed, seems comparable only to "circuit riding" by the six justices of the Supreme Court at that time.

For three judges (together, usually) to cover in 1867 the four counties in the First Circuit, or the five in the Second, or the four in the Seventh, or for that matter all the counties in any county circuit, would seem more burdensome for judges, lawyers and litigants than it would be now for one judge to cover Garrett and Worcester Counties.

The bill that became Chapter 607 of the Acts of 1953 was introduced by five Senators, from Worcester, Kent, Talbot, Garrett and St Mary's Counties, the five counties which now have no resident judge. As introdnced, the bill was applicable to all the counties. Before passage it was amended so as to except the First and Second Circuits, for the obvious reason that there is no need for judges in Worcester, Talbot and Kent Counties in addition to the six judges who are now fully and efficiently performing their duties in the nine counties of the Eastern Shore. We find no more reason for an additional judge in Garrett or St. Mary's County.

The only reason there has never been a judge in Garrett County is that none has ever been elected by the people or appointed by the Governor. The Bond amendment permits (does not require) two judges in Allegany County. A second judge is no more needed in Allegany County than in Washington County, but because Allegany County adjoins Garrett, the work in Garrett and Allegany Counties can more conveniently be done by two judges in Allegany County than by one in

200 in Baltimore City. In the nine years from October 1944 to October 1953, 1435 cases were decided with opinions by the Court of Appeals, of which 810 came from Baltimore City, 60 from Allegany County, 37 from Washington County, 10 from Garrett County, 5 from Calvert, 5 from Charles, 4 from Kent, 6 from Queen Anne's, 10 from Talbot, 5 from Somerset, 14 from Worcester, 9 from St. Mary's and 17 from Harford.

St. Mary's County has not been without a judge ever since 1867, but St. Mary's, Charles and Calvert have not had judges at the same time. They have not business enough to require three judges. Calvert is the smallest county in the state in population. It is the residence of Chief Judge Gray, who was elected and performs his duties, not in Calvert alone, but in the entire circuit. His work is done in all four counties, principally in Prince George's, which has much the largest amount of business. He has sat by special assignment in Baltimore City and on the Court of Appeals. If the business in each county, large or small, should be performed by a local judge, the judges would be restricted each to his own county. In Calvert County one of the ablest and busiest judges in the State would find his office reduced to a sinecure.

In the Seventh Circuit the opposing theories underlying the two parts of the proposed amendment would produce incongruous requests. St. Mary's would be given an additional judge, though no additional judge is needed. Prince George's would be given an additional judge on the theory that an additional judge is needed. The Seventh Circuit would then have two additional judges, though there is no evidence or even suggestion that the circuit possibly needs five judges.

Less than a year ago the Burke Commission refused to recommend a judge for every county. The Commission found "no reason for this requirement in view of the extremely light docket in many of the smaller jurisdictions."

Worse even than "a judge for every county" would be election of judges by single counties instead of by circuits. This proposal is unsound in principle and, so far as we can ascertain, unprecedented in Maryland or elsewhere. It appears that in Alabama, Arkansas, Illinois, Indiana, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Oregon, South Dakota, Tennessee, West Virginia and Wisconsin, where judges are chosen for circuits, they are elected by the vote of an entire circuit. The proposed innovation would be a plunge in a backward direction. With each judge confined by implication (though not by law) to a single county and the number of judges subject to change by legislation, the structure and personnel of the state judiciary would be thrown into the worst entanglements of local legislation—already a sufficiently large evil in Maryland.

After an exhaustive report to the Burke Commission, by its reporter, on the selection of judges, the Commission "recommended that no change in the method of the selection of judges be made at this time." This recommendation expressly included selection of judges by the combination of appointment and election which had virtually been in effect ever since 1867 and was made uniform by the Bond amendment.

If we were convinced that additional judges in Anne Arundel, Baltimore, Montgomery and Prince George's Counties were necessary or desirable, we should nevertheless recommend rejection of the proposed amendment for the reasons already indicated.

We are by no means convinced that all or any of these proposed new judgeships is necessary or advisable. We have studied the statistics furnished by reports of judges to the Chief Judge of the Court of Appeals and have written letters (similar but not identical) to every judge in the State (except the most recent appointee), and have received replies from all except one judge in the counties and three in Baltimore. We are not prepared to express at this time a definite opinion as to the needs of each local jurisdiction. We shall, however, outline reasons, some general, some particular, why we advise against creating any new judgeships without first exploring sources of information not now available but readily available through legislation.

In States like Maryland, where judges (at least judges of superior courts) are held in high esteem, increases in the number of judges are made, not lightly but reluctantly. Unnecessary high ranking judges, like high ranking generals, are not only expensive but cheapen the office and do not improve the quality of the incumbents. As Chief Justice Warren remarked (of the federal courts) at the recent Baltimore Bar Association dinner, Maryland is for-

creasing the number of judges. Leaders of the Bar and social workers in New York and elsewhere have advocated commissions to handle automobile cases, after the fashion of industrial accident commissions. We do not favor treating automobile risks in the ordinary venture of living like the risks of accident in the joint venture of industrial employment. We merely point out that multiplication of judges might be a dubious choice of evils.

The Bond amendment provides (Constitution, Article 4, Section 18A) that the chief judge of the Court of Appeals shall be the administrative head of the judicial system of the state, that he shall, from time to time, require from each of the judges of local courts reports as to their judicial work and business, and may also assign judges to sit temporarily in circuits other than their own. As was said by the reporter for the Burke Commission, "The Constitution thus vests broad administrative powers in the Chief Judge of the Court of Appeals. The difficulty has been that these powers have not been much used. The reason for this is that the Chief Justice has not had sufficient staff assistance for the effective performance of his administrative duties."

Under pressure of time to make its report, the Burke Commission recommended one additional judgeship in the Third, Fourth and Seventh Circuits and in Baltimore City and recommended further study of "four important problems which the Commission has been unable to complete in the limited time allotted to it", including, "(1) The provision of an Administrator of Courts * * * to assist the Chief Judge of the Court of Appeals in the performance of his duties as the administrative head of the State's judicial system." The reporter to the Commission suggested particularly the need of an administrative assistant to the Chief Judge "to take charge of the collection of judicial statistics".

In our letters to the judges we did not mention an administrator of the courts. Nevertheless Judge Clark, of Howard County, in his letter said, "if you can persuade the legislature to authorize the appointment of a court administrator to work under the supervision of the Chief Judge of the Court of Appeals, you will have done a good job even if you accomplish nothing else". Later Judge Smith, of Baltimore, wrote, "The Miles Commission could make a great contribution to Maryland's Courts by making its chief and most insistant recommendation, the creation of an administrative office for the Courts". It may be that in a state as small as Maryland a full time administrator is not yet needed, but his duties may be combined with other duties in some administrative assistant. Subject to this qualification, we endorse the recommendation of Judge Clark and Judge Smith. With the assistance of such an administrator, the Chief Judge of the Court of Appeals (1) could, more effectively than this commission or a legislative or administrative body, advise the legislature what, if any, additional judgeships now are or hereafter may be needed and (2) could exercise the power to assign judges so as to make most effective use of existing judges. This matter has been mentioned to Chief Judge Sobeloff. He has authorized us to say that in his opinion no additional judgeships should be created before an administrator of courts, or an administrative assistant with such powers, is established or (he added) until an effort is made and exhausted to obtain relief by assignment of judges.

In advocating additional judgeships increases in population in various counties are stressed. Both the significance and the accuracy of such comparisons may be questioned. In some states for many years the work of the courts has been diminishing. It would be strange indeed if procedural improvements in Maryland and elsewhere had not increased the productivity of judicial work. The mass of cases handled by the State Industrial Accident Commission, the State Tax Commission and the Comptroller's office only to a small extent reach the courts at all. Trial of criminal cases without a jury speeds the process. Long distance commuting between rural residence and metropolitan business may actually decrease the proportion of urban to rural population but increase the proportion of business and of the work of courts and judges. Whatever the reason, Harford County has had one of the largest recent increases in population, but the Circuit Court for Harford County seems to be one of the most underworked courts in the State.

The number of judges of superior courts in Maryland is not small in comparison with other times or other places. When the Constitution of 1867 replaced 12 county circuits of one judge each with 7 of 3 judges and provided 5 judges in Baltimore City the number of city and county judges did not reflect population, still less amount of judicial business, but geographical considerations and distrust of "one-judge" courts in the counties. In the debates in the convention little at-

Judge) regularly sat in banc in the trial courts. This was expected and intended under the Constitution of 1867. The practice still prevails to a considerable extent in counties where the volume of business permits. But distrust of "one-judge" courts has disappeared. The Bond commission noted the needless consumption of time and labor in hearing ordinary cases in banc. Since the Bond amendment the practice is less frequent. The Bond amendment decreased the number of trial judges from 18 full time judges and 7 part time judges (of the Court of Appeals) to 21 full time judges, and thereby increased the effective number of judges. Today 21 judges, usually sitting alone, seem double in effectiveness (aside from geographical considerations) 21 judges usually (except in equity) sitting in banc in 1867.

New York State, with a population of about 15,000,000, 8,000,000 in Greater New York, has about 107 Supreme Court Justices (not assigned to the Appellate Division), about 64 of them in Greater New York. Massachusetts, with double the population of Maryland, has 32 Superior Court Justices, who sit from time to time throughout the State. North Carolina, with a population of 4,000,000, has 32 Superior Court Judges, 21 of whom rotate every six months among 10 or 11 out of 21 districts, thus spending only six months in five or six years in their home districts. Comparison of inferior courts in different states is difficult. New York has many such courts, some of large jurisdiction. Massachusetts, and still more North Carolina, have courts more similar to Maryland courts. Comparison of such courts, past and present, in Maryland is easy. Before the first establishment of the People's Court in Baltimore in 1912 and of Trial Magistrates in the counties much later, many Justices of the Peace were so low in ability and character that they could not be trusted and trials before them were often a mere preliminary to trial *de novo* on appeal. Improvements in this respect and enlargement of the jurisdiction of the inferior courts have not only decreased the work of the superior courts but, what is more important, have saved expense of appeals to litigants to whom such expense is most burdensome. Of the thousands of cases tried in the People's Court there were only 477 magistrate appeals in 1952; in 1911 there were 607 magistrate appeals.

Only in the Sixth Circuit are the judges agreed that an additional judge (in Montgomery County) is needed. The number of cases is large, but there is apparently no accumulated arrearage. A striking feature of the work is the large number of uncontested decrees and interlocutory matters. We lack sufficient information to suggest changes but it seems at least possible that an administrator of the courts, studying conditions in counties which, like Montgomery and Prince George's and even Baltimore County, have undergone rapid transition from rural to metropolitan counties, might perhaps suggest to the Court of Appeals or its rules committee simplified procedures whereby the Clerk may relieve the judge of signing routine orders.

In the Seventh Circuit the judges are of the opinion that an additional judge is not now needed but may become needed in the near future. Chief Judge Gray says, "All the work is current, * * *. This situation is possible because we have been able to work together in complete harmony and to divide the work throughout the Circuit on an equitable and mutually satisfactory and convenient basis".

In the Third Circuit the volume of work in Baltimore County is apparently the largest in any county in the state. Judge Gontrum is of the opinion that an additional judge is needed. Judge Murray says that "by 1956, at least, an additional judge will be desirable, and perhaps even needed in this County". The Burke Commission recommended an additional judge in Baltimore, Montgomery and Prince George's Counties, *not* in Anne Arundel. The reporter to that commission, however, pertinently remarked, "It * * * appears that within the various circuits, the burdens of individual judges are far from equal, and consideration might be given to taking appropriate steps to equalize them, whether an additional judge is decided upon in these circuits or not. Thus possibly if Judge Colbourn, for example, could take some of the work from Judge Murray and Judge Gontrum, it might be possible that three judges could handle the work of the Third Circuit." We concur in this view. We see no reason why a judge in Harford County, more than a judge in Calvert County, should restrict his work to one county. In the Fifth Circuit Judge Clark tries substantially all the contended equity cases and a number of non-jury law cases in Anne Arundel County and is able and willing to take even more Anne Arundel work if needed or requested. The Howard County business does not take half his time. He says that for many years his predecessors in Howard have

render assistance here [in Anne Arundel] as Judge Clark has done, then there would be no immediate necessity for an additional judge". We think it cannot be assumed that Judge Clark's successor will be any less willing than Judge Clark is to do his work wherever he is needed.

Power to assign judges outside of their circuits was sorely needed for many years before it was conferred by the Bond amendment. So far as we know, the chief judge of the Court of Appeals has never denied a request for assignment of a judge. Recently for several weeks Judge Hammond of the Court of Appeals has sat in the trial of cases in Baltimore County. In response to our inquiries all the judges in the First, Second and Fourth Circuits expressed themselves as able, consistently with their other work, and most of them as willing and glad, to accept assignment in other circuits. Such assignments, however, have comparatively seldom been requested. One judge gave, as a reason for an additional judge, lack of time even to recover from illness. A number of other judges who favor or oppose additional judgeships mentioned possibility of prolonged illness. It seems clear to us that there is no lack of assignable judges to handle cases of illness if they should occur. If county judges should be assigned to Baltimore City, the practice should be mutually beneficial, to Baltimore City and to the county judges, and conducive to uniformity in practice. Failure to invoke the power to assign judges is a waste of judicial resources.

The Burke Commission recommended one additional judgeship in Baltimore City. The reporter to that Commission aptly suggested consideration of consolidation of the courts "as it may have relevance to the number of judges required on the Supreme Bench". The conditions peculiar to Baltimore, and the various questions similarly related to the number of judges, make it especially advisable that an administrator of the courts be established before any action is taken to increase the number of judges. Of the eight Baltimore judges who replied to our letter, five are of the opinion that an additional judge is needed, three that one is not needed. Several of the five base their opinions in part on the risk of illness. Some envisage more or less temporary conditions which might or might not be relieved by assigament of county judges or establishment of an administrator of courts.

Lawyers sometimes mention, as a reason for more judges, difficulty or delay in bringing a case to trial when opposing counsel has many trial engagements. The judges have given us much statistical and other information as to the extent and reasons of such delays. We shall not dwell upon this matter at this time. For present purposes the matter was summed up by Judge Smith, "The principal reasons which prevent the prompt trial of cases are two, both lawyers." Obviously, if this difficulty requires increased personnel, what is needed is not more judges, but more lawyers for insurance companies or other frequent litigants. The real remedy, if any is needed, is a rule of court, to be drafted by the rules committee after investigation by an administrator of courts.

We therefore recommend (1) that the constitutional amendment proposed by Chapter 607 of the Acts of 1953 be rejected by the people and (2) that before any action be taken to increase the number of judges the legislature authorize establishment of an office of administrator of the courts.

As we have already said, we express no definite opinion at this time as to the needs of the several local jurisdictions (including Baltimore City) that we have discussed—other than those involved in the "judge for every county" proposal. We do not ignore the possibility that if the growth in population in some jurisdictions within the last few years continues and there is a substantially corresponding increase in litigated matters it may be that in some of these jurisdictions there will be the need of a permanent additional judge within the foreseeable future.

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