THE COMMISSION ON THE FUTURE OF MARYLAND COURTS

FINAL REPORT

December 15, 1996

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Presented to the Governor and General Assembly of Maryland

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Commission on the Future of Maryland Courts

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James J. Cromwell
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Staff Director

December 15, 1996

The Honorable Parris N. Glendening
Governor of Maryland

The Honorable Thomas V. Mike Miller, Jr.
President of the Senate

The Honorable Casper R. Taylor, Jr.
Speaker of the House of Delegates

The Honorable Members of the General
Assembly of Maryland

Ladies and Gentlemen:

The Commission on the Future of Maryland Courts, created by Chapter 561 of the 1995 Acts of the General Assembly, has completed its study. It is our privilege to submit to you our Final Report.

In your charge to the Commission, you asked that we examine our existing court system to determine what, if any, changes should be made to ensure that the courts can fulfill their mission of administering justice wisely, fairly, and efficiently in the future. To meet this challenge, the Commission reviewed and studied every aspect of the Maryland judicial system. We looked at systems in other states, considered many of the extensive written studies on this subject, and held public hearings throughout the state. The Commission fully discussed and carefully evaluated all this information in making this Final Report.

As we are justly proud of the Maryland judiciary, we honor and respect its nobility and history. But in the near future, our Maryland court system will be challenged more than ever before. It must deal with new and troublesome problems, involving much more than increased caseloads and limited resources. While these problems cannot be solved, they must be faced. Change for the sake of change alone is meaningless, but change to meet the needs of our citizens in the future is truly worthwhile. Such changes should be considered and implemented.

The members of the Commission appreciate the opportunity you have afforded them to serve our State. We hope that our efforts will benefit you, our judicial system, and the citizens of Maryland.

Respectfully submitted,

James J. Cromwell

James J. Cromwell, Chair
Commission on the Future of Maryland Courts

JJC:sen

THE COMMISSION ON THE FUTURE OF MARYLAND COURTS

December 15, 1996

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Mission Statement For The State Court System

Under the law which created this Commission, we are to submit a Mission Statement for the State Court System. All of the Commission Recommendations and actions proposed in this Report reflect those changes needed in the current court system to implement the Mission Statement. The Commission believes that the appropriate Mission Statement for the Maryland Court System is as follows:

To provide accessible forums for the efficient, effective, and timely administration of justice, while respecting the dignity of all those who use and are served by the court system, in order to preserve the rule of law and to protect the rights and liberties guaranteed by the United States and Maryland Constitutions.

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INTRODUCTION

INTRODUCTION

The Commission on the Future of Maryland Courts was created by the General Assembly to examine the Maryland court system as it now exists and to determine whether changes should be made to ensure that, in the succeeding decades, the courts can fulfill their mission of administering justice wisely, fairly, and efficiently.

To carry out its purpose, the Commission was required to, and did, review closely every aspect of the Maryland judicial system—how it is structured and managed, how it operates, how it is funded, how its judicial and non-judicial personnel are selected and monitored, and how well it meets the needs of the citizens of the State.

Our conclusion is that Maryland is, and has been, blessed with one of the finest judiciaries in the United States. It consists of hardworking, diligent, and honorable people in both its judicial and non-judicial ranks. It has been well managed, and generally, it holds the confidence of the General Assembly, the Executive, and the people. Yet, like any institution or system created by human beings, some of its aspects are not beyond improvement, even as to its present operations.

This Commission was not created to "fix" any perceived immediate problems, but to look to the future: Will the system we have today be able to serve the needs of Maryland's citizens ten to twenty years from now, and, if not, what changes will be needed to achieve that goal?

The courts of today are already providing services and discharging responsibilities not envisioned even 20 years ago. Then, 88 Circuit Court Judges statewide managed 133,000 total filings, including criminal, held 13,000 trials on a total budget of $23 million, nearly equally supplied by the State and local governments. In 1996, 131 judges manage over 262,000 filings and the State funding is $62 million with local government spending $40 million more.

The courts now dispose of a greater volume and variety of cases and they provide, or are expected to provide, a range of non-judicial services including an array of medical, psychological, and social services, mechanisms to help litigants settle their disputes without the need of trial, and follow-up and monitoring services in criminal, juvenile, and family law cases. This demand is projected to double in the next two decades as indeed, it has doubled in the last two decades. The Commission is concerned, however, that resources will not be available in the future to fund another four fold increase in the circuit court system's budget over the next 20 years.

We foresee a steady increase in both the caseloads and the range and intensity of other services of a judicial system which is strained to its limits. We see growing numbers of dysfunctional families throwing off an unknown myriad of new problems. At the same time, we must deal with the dramatic increase in crime and a younger juvenile population becoming more restless and uncontrolled.

Of particular concern throughout the Commission's deliberation was the growing awareness that the cost of justice is too high for many citizens. No specific recommendation addresses this pervasive concern. Accessibility of the system by the poor should be constantly reviewed, however, and new initiates proposed and tried by the bar and the courts to assist the just resolution of disputes especially for those whose educational or financial resources limit their access.

While these problems cannot be solved, they must be faced. Change only for the sake of change is meaningless, but changes to meet the needs of our future are truly worthwhile. That is what we have sought to propose.

The Commission is aware that some of its recommendations have been made in the past and have engendered opposition, mostly from the groups or special interests most affected by them, and we have no illusion that they will be universally accepted now. Elected clerks will likely oppose the recommendation to remove clerks from the elective process; groups perceiving that they have an interest in seeing that Circuit Court judges continue to be subject to contested elections will likely oppose the recommendation to remove those judges from that process; Circuit Court judges who believe that they have formed cooperative working relationships with their county governments may oppose the proposal to unify the Circuit Courts and have them fully State funded. The expectation of political opposition, however, while important to consider and attempt to ameliorate, is not a reason to refrain from proposing a change that we honestly believe is needed. It will be up to other bodies—the Governor, the General Assembly, the Court of Appeals, and, ultimately, in some instances, the people—to determine whether these proposals should be implemented. The Commission has discharged its function by making them.

THE COMMISSION

THE COMMISSION

Creation and Composition of the Commission

The Commission on the Future of Maryland Courts was created by a 1995 Act of the General Assembly, Chapter 561, codified in §13-701 of the Courts and Judicial Proceedings Article of the Maryland Annotated Code. The members represented a broad spectrum of persons and groups interested in the Maryland judiciary. The eleven members appointed by the Governor included representatives from various State and local agencies.

- the Attorney General
- the Public Defender
- the State's Attorney's Association
- the Department of Juvenile Services
- the Department of Human Resources
- the Office of Administrative Hearings
- the Department of Public Safety and Correctional Services
- the general public
- county governments

Beyond those gubernatorial appointees, the Speaker of the House appointed four members of the House of Delegates, the President of the Senate appointed four Senators, and the Chief Judge of the Court of Appeals appointed twelve persons. Chief Judge Murphy's appointees consisted of an appellate judge, two Circuit Court judges, two District Court judges, one Circuit Court clerk, one District Court clerk, the State Court Administrator, one Orphans' Court judge, and three Maryland attorneys. One of those attorneys, James J. Cromwell, Esq. was elected by the members as Chair of the Commission.

The law required that, in making their respective appointments, the appointing officials attempted to reflect the racial, gender, disciplinary, and geographic makeup of the population of the State, and that balance was achieved. The names and titles of the Commission members are listed in Appendix 1 to this Report.

The Mission and Function of the Commission

The law required the Commission to look into six enumerated areas. The Commission was directed to provide recommendations in the following areas.

- Coordinate and promote fair and efficient criminal justice and public safety systems and create innovative and effective mechanisms to deal with crimes by juveniles.
- Incorporate modern court administrative practices designed to reduce the cost and improve the efficiency of the judicial system, such as differentiated case management systems and appropriate dispute resolution of civil cases.
- Resolve family-related cases more expeditiously and on a priority basis, with a special focus on providing court-related social services to provide for the legal needs of families and children.
- Ensure that the selection and evaluation of judges, prosecutors, clerks, and other public officials in the justice system are conducted fairly, based on merit, and designed to encourage diversity.
- Protect the jury system and preserve its independence.
- Provide for the appropriate funding of the court system and related agencies.

The Commission was directed to submit an interim report to the Governor and the General Assembly by December 15, 1995, which it did. It was to submit as well, by December 15, 1996, "a mission statement for the State Court System that includes recommendations for statutory and procedural changes needed to implement the statement."

This Report contains the substantive recommendations of the Commission and its Mission Statement. As explained in greater detail in the section entitled Summary of Recommendations, however, the Commission has not attempted to draft the specific constitutional amendments, legislation, rules, or regulations necessary to implement those recommendations. The Commission also urges that the Executive Committee of the Commission remain in existence for an additional year, to work with the Governor, the General Assembly, the Court of Appeals Standing Committee on Rules of Practice and Procedure, and other agencies in the development of such implementing documents.

Commission Methodology and Deliberations

The Commission held seventeen plenary meetings, eight for public hearings, the other nine for discussion and deliberations. All meetings of the Commission were advertised and open to the public, and accurate minutes were kept.

At its first meeting, the Commission created five substantive committees to consider specific areas. Those committees were:

- Structure and Governance;
- Operations and Management;
- Selection, Tenure, and Evaluation of Judges and Other Court Personnel;
- Criminal, Juvenile, and Family Matters; and,
- Funding.

The composition of the committees is listed in Appendix 2 to this Report.

Each committee enlisted the aid of volunteer attorneys or other staff assistants, held meetings, heard evidence, considered written material, and debated the various issues. The Commission considered the developmental history of the Maryland court system, including the debates and recommendations of the five Constitutional Conventions held in this State and reports of earlier judicial reform committees and commissions in Maryland. A brief summary of these prior studies is found in Appendix 3. The Commission also considered reports rendered by commissions in other states dealing with their respective judiciaries including those of Arizona, California, Colorado, Delaware, Georgia, Hawaii, Iowa, Illinois, Maine, Massachusetts, Michigan, New Hampshire, Tennessee, Texas, Utah, and Virginia. The Commission thus had the benefit not only of a wealth of specific material and testimony dealing with Maryland, but also of the conclusions of similar commissions around the country.

In May 1996, the five committees submitted preliminary reports to the Commission, which considered them in June 1996. As the result of the Commission's deliberation and additional public hearings, the committees further reviewed their recommendations and made final reports in early September 1996. Those reports were considered by the Commission and tentative votes were taken on September 12, 1996. Four additional public hearings were then held in Baltimore City, Frederick, Salisbury,

and Upper Marlboro. After considering the comments made at those meetings, the Commission had its final meeting on November 15, 1996, and voted to adopt this Report.

Many groups and individuals interested in or having contact with the judiciary appeared before the Commission to give testimony, present written material, and answer questions. They included the Conference of Circuit Judges, the Circuit Judges Association, the Maryland Circuit Court Clerks Association, the League of Women Voters, Registers of Wills and Orphans' Court Judges Associations, and the Maryland Association of Counties. A complete list of those groups and individuals is attached as Appendix 4 to this Report. In committee or in plenary session, the Commission investigated, considered, and debated nearly every aspect of the Maryland court system, and most particularly those areas enumerated in the 1995 Act.

The focus of the Commission was fourfold. It first became apprised of the current role, structure, operation, and funding of the judiciary. It then tried to ascertain the various problems, deficiencies, and concerns that have been expressed about how the judicial system is currently functioning. In this regard, the Commission gave attention to both documented and perceived problems, for public perception is, in many ways, as important as documented fact. The Commission then attempted to determine the pressures and needs that the system will likely face in the future, particularly within the next 20 years.

Finally, the Commission attempted to develop a model that would: (1) address the current and immediate deficiencies that must be faced; (2) meet, in a rational and efficient manner the needs that the Maryland court system will face over the next twenty years; and, (3) be fiscally and operationally feasible to create.

SUMMARY OF RECOMMENDATIONS

SUMMARY OF RECOMMENDATIONS

The detailed recommendations of the Commission, along with the reasons supporting those recommendations, are set forth in the section entitled The Current Maryland Court System of this Report. This section provides a summary outline of those recommendations.

Structure and Governance

RECOMMENDATION 1: The structure and method of governance of the Court of Appeals and the Court of Special Appeals are adequate to permit those courts to fulfill their constitutional and statutory mission. No change is necessary. However, the Legislature ought to consider an appropriate change in the name of the Court of Special Appeals.

RECOMMENDATION 2: The structure and method of governance of the District Court is adequate to permit that court to fulfill its constitutional and statutory mission. Although some changes in the court's jurisdiction are recommended, no change in its basic structure or method of governance is necessary.

RECOMMENDATION 3: The existing Circuit Courts should be consolidated into a unified statewide court, fully funded by the State, with a chief judge having general administrative supervision over it. The existing twenty-four Circuit Courts should remain in existence as units of the court, each with a county administrative judge to superintend the administration of the local court and to advise the Chief Judge.

RECOMMENDATION 4: A statewide judicial personnel system should be established for clerical and other non-judicial and nonprofessional personnel, to assure, subject to appropriate "grandfathering" arrangements, that persons doing essentially the same work and having the same responsibility receive essentially the same compensation and benefits.

RECOMMENDATION 5: The current Orphans' Courts should be abolished. Their jurisdiction and operations should be transferred to the Circuit Court and administered though a probate division of that court.

Operations and Management

RECOMMENDATION 6: Court-annexed programs of alternative dispute resolution, including arbitration, mediation, neutral case evaluation, neutral fact-finding, settlement conferencing, and, if feasible, mechanisms such as mini-trials and summary jury trials, should be developed and implemented in the Circuit and District Courts. Courts should have the authority, in appropriate cases, to refer litigants to those techniques.

RECOMMENDATION 7: The trial and appellate courts should make better and more uniform use of court technology, for purposes of information gathering and sharing, internal operations, public access to and use of the courts, and enhancement of rational, coordinated, and efficient decision-making. A permanent Court Technology Committee should be created to advise the judiciary and, through the judiciary, the Governor and General Assembly, on the availability and use of new technologies. The Administrative Office of the Courts should collect and make available, as needed, better data on judicial operations.

RECOMMENDATION 8: To make jury service more representative of the community, interesting, and palatable:

I. Jury service should be limited to one trial/one day.

II. Jurors should be selected not only from the voter rolls but also from the list of licensed drivers maintained by the Motor Vehicle Administration.

III. Juries in misdemeanor cases should consist of six rather than twelve persons.

IV. In civil cases, with the agreement of the parties, alternate jurors still serving when the jury begins deliberations should be permitted to serve as regular jurors and take part in deliberating and rendering the verdict.

V. Jurors should ordinarily be allowed to take notes.

RECOMMENDATION 9: Each courthouse should be fully accessible to the public in conformance with the Americans with Disabilities Act. Foreign and sign language interpreters should be reasonably available. Victims and witnesses should be provided safe, non-public waiting rooms and child care facilities. The courts should use information and communication technology to inform litigants and other interested persons about court procedures, requirements, and schedules, and where assistance may be available.

Selection, Tenure, and Evaluation of Judges and Other Court Personnel

RECOMMENDATION 10: Subject to Recommendation 13, the method of selection and retention of the judges and clerks of the Court of Appeals and the Court of Special Appeals should be maintained.

RECOMMENDATION 11: The current method of selecting and retaining Circuit Court judges should be changed. With the exception of the length of the term, the system for selecting and retaining Circuit Court judges should be the same as that used for appellate judges. A Circuit Court judge should be appointed by the Governor from a list submitted by the appropriate trial court judicial nominating commission, subject to confirmation by the State Senate. At the next general election following one year from the creation of the vacancy filled by the appointment, the judge should stand on his or her record for a fourteen-year term in a retention election, the voters voting for or against retention. At the next general election following the expiration of that term, the judge should again stand on his or her record for an additional fourteen-year term in a similar retention election. This would replace the current system that subjects Circuit Court judges to contested primary and general elections.

RECOMMENDATION 12: Subject to Recommendation 13, the method of selection and retention of the judges and clerks of the District Court should be maintained.

RECOMMENDATION 13: To assist the public in the second round of retention elections for appellate and Circuit Court judges (i.e., following the expiration of their initial ten-year or fourteen-year terms), to

assist the State Senate in determining whether to confirm a District Court judge for an additional ten-year term following the expiration of his or her initial term, and to apprise judges of their strengths and weaknesses, as perceived by those who come before them, a system of periodic judicial evaluations should be developed and implemented. Judges should be evaluated, rationally and efficiently, as to their judicial temperament and abilities by those persons who have, in fact, had judicial contact with them. The results should be shared with the individual judge and, if significant problems are indicated, with the Chief Judge of the judge's court. At the appropriate time, and in an appropriate manner, a summary of the evaluation, but not the raw data, should be made available to the Governor, the State Senate, and the public, to the extent they have a role to play in the judge's retention. The evaluations of Circuit Court judges should not be made public unless and until Recommendation 11 is fully implemented.

RECOMMENDATION 14: The current system of electing clerks of the Circuit Courts should be changed. The clerks should be appointed based on merit by the County Administrative Judge, subject to the approval of the Chief Judge of the Circuit Court.

RECOMMENDATION 15: The current system of electing registers of wills should be changed. The Register of Wills should be appointed based on merit by the County Administrative Judge, subject to the approval of the Chief Judge of the Circuit Court, and should be part of the Office of the Clerk of the Circuit Court.

Criminal, Juvenile, and Family Matters

RECOMMENDATION 16: Non-incarcerable traffic offenses should be decriminalized and made civil infractions. When practicable, the trial of those infractions, where the charge is contested, should be removed from the District Court and handled administratively.

RECOMMENDATION 17: Experienced prosecutors should realistically and aggressively screen criminal cases as soon as practicable after arrest to assure proper charging, explore alternatives to detention, determine the availability and appropriateness of alternative dispute resolution mechanisms, and evaluate dispositional and treatment alternatives.

RECOMMENDATION 18: There should be earlier involvement in criminal cases by defense counsel and improved pretrial communication between prosecutors and defense counsel regarding discovery, other procedural issues, possible diversion, and plea negotiations.

RECOMMENDATION 19: The District and Circuit Courts should develop and implement a system of differentiated case management for criminal cases. Status conferences, arraignments, and specialized litigation tracks should be designed and used where appropriate.

RECOMMENDATION 20: In those Circuit Courts in which a significant portion of the criminal docket consists of non-violent drug or drug-driven offenses, a special drug-treatment docket, similar in methodology to the "drug courts" currently operating the District and Circuit Courts in Baltimore City, should be established. Cases in which the defendant would more likely be

corrected and rehabilitated through intensive treatment than through traditional criminal dispositions should be placed on that docket.

RECOMMENDATION 21: Appeals in criminal cases from the District Court should be tried in the Circuit Courts on the record made in the District Court and not de novo.

RECOMMENDATION 22: To the extent practicable, jury trial prayers in the District Court should be required to be filed prior to the scheduled date of trial.

RECOMMENDATION 23: In those counties in which a sufficient number of judges exist to make it feasible, a family division should be established within the Circuit Court, to handle, in a coordinated and efficient fashion, family-related and juvenile cases. The District Court should retain concurrent jurisdiction over emergency proceedings for domestic violence *ex parte* orders.

RECOMMENDATION 24: Whether as part of a family division or otherwise, the Circuit Courts should have experienced case managers to implement a differentiated case management system for family and juvenile cases and to coordinate the efficient handling of those cases, including referral to appropriate and available parent awareness seminars, other alternative dispute resolution services, and indicated social, medical, or psychological services.

RECOMMENDATION 25: Contested juvenile cases should be tried by judges rather than masters.

RECOMMENDATION 26: Greater resources should be devoted to dealing with younger juveniles, to attempt to divert them from criminal and other anti-social behavior before they become too deeply enmeshed in it.

Funding

RECOMMENDATION 27: The courts of Maryland are State courts. They are created by State law for the purpose of interpreting and applying State law. Their operations should be State funded. At least for the foreseeable future, the counties should be required to continue to provide courthouse facilities for the Circuit Court, but the State, as part of its funding of the court's operations, should assume the cost of maintaining those parts of the courthouses actually used for court, rather than local government, purposes.

Implementation

RECOMMENDATION 28: Implementation of the Commission's recommendations should be phased-in in accordance with the section entitled The Commission's Recommendations to allow time for necessary planning and to avoid immediate and impractical shifts in fiscal and operational responsibilities.

THE CURRENT MARYLAND COURT SYSTEM

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The District Court

The first level in Maryland's four-tiered court system is the District Court—a statewide, State funded court of limited statutory jurisdiction. The District Court, created in 1971, has exclusive initial jurisdiction over: (1) motor vehicle code and boating law violations; (2) landlord-tenant actions; (3) replevin actions; (4) misdemeanors and certain felonies involving a penalty of less than three years imprisonment or a fine of $2,500 or less; and (5) civil actions involving $2,500 or less. It has concurrent jurisdiction with the Circuit Court over other misdemeanors and enumerated felonies, domestic violence actions, and other civil actions involving $20,000 or less.

The District Court is a unified court. It has a chief judge, who is the chief administrative officer of the court and is responsible for the maintenance, administration, and operation of the court. Her duties are set forth in Section 1-605 of the Courts and Judicial Proceedings Article of the Maryland Annotated Code. It also has a chief clerk appointed by the Chief Judge. The State is divided into twelve districts, each with a district administrative judge appointed by the Chief Judge. The court sits and has a resident judge in each county of the State.

The Chief Judge of the District Court is appointed by and serves at the pleasure of the Chief Judge of the Court of Appeals. The other judges are appointed by the Governor, from nominations submitted by the appropriate trial court nominating commission, subject to confirmation by the State Senate for a ten-year term. At the end of the term, the Governor submits the name of the incumbent to the Senate for confirmation to a further ten-year term. District Court judges do not face either retention or contested elections.

The District Court is a high-volume court. In FY 1995, 811,000 civil cases, 183,000 criminal cases, and nearly 1,100,000 motor vehicle cases were filed in that court. Most of those cases were not actually tried, but they all had to be docketed and processed. The great bulk of the civil cases were landlord-tenant actions (562,000), of which only 21,385 were ever contested, and contract and tort actions (216,000), of which only 35,544 were contested. Of the 1,100,000 motor vehicle cases, only 271,180 were tried; nearly 565,000 were disposed of by payment.

As of July 1, 1996, the court had 100 judges, including the Chief Judge. The budget for the court for FY 1996 was $71,701,600.

The Circuit Courts

The Maryland Constitution divides the State into eight judicial circuits, seven of which are multi-county, the eighth being Baltimore City. The actual Circuit Courts, however, exist in the individual counties, not the circuits. There are 24 Circuit Courts, one for each county and Baltimore City. They are courts of general trial jurisdiction, handling all criminal and civil cases not placed in the exclusive jurisdiction of the District Court. Their jurisdiction includes felony cases, misdemeanors in which the penalty can exceed three years in prison or $2,500 fine, civil cases exceeding $2,500 in value, divorce, adoption, and other domestic cases, juvenile cases (except in Montgomery

County), other equity matters, judicial review of decisions made by administrative agencies, and appeals from the District Court. In FY 1995, there were 262,000 filings in the Circuit Courts—148,000 civil cases, nearly 69,000 criminal cases, and almost 46,000 juvenile cases. There were, in addition, 6,500 appeals from the District Court and 4,100 "appeals" from administrative agencies.

Unlike the District Court, the Circuit Courts are not unified. There is no Chief Judge and, except for a Conference of Circuit Judges created by rule and having no operational authority, there is no central body to coordinate the operations of those courts. Administrative authority seems to be shared by a system of circuit administrative judges—one for each of the eight circuits—county administrative judges, and, to some imprecisely defined extent, by the judges themselves. There is a clerk for each of the 24 courts, elected by the voters in the county. Although the clerk is in substantial charge of the office, some administrative control over the operation of the office is exercised by the Administrative Office of the Courts. Also unlike the District Court, the Circuit Courts are funded in part by the State and in part by the local governments. The State pays the salaries of the judges and the operations of the clerk's office which, together, account for about 60 percent of the aggregate expenditures; the county pays the rest—jurors, secretaries, law clerks, bailiffs, librarians, professional staff, court reporters, and maintenance of the courthouse.

As of October 1996, there were 134 Circuit Court judgeships on the Circuit Courts. Circuit Court judges are appointed by the Governor from a list submitted by the appropriate trial court nominating commission. The initial appointment extends to the next general election following one year after creation of the vacancy filled by the appointment. The appointee then stands in the primary election against any legally qualified person who chooses to run. If the appointee is successful in either primary but does not win both, he or she may face a challenger in the general election as well. Whoever is elected at the general election then serves a 15-year term, at the end of which, he or she may, or may not, be reappointed by the Governor, from a list submitted by the nominating commission, for an additional term extending approximately one year to the next election. The judge may then, again, face challengers in the primary and general elections.

The Court of Special Appeals

The Court of Special Appeals is the State's intermediate appellate court. Created in 1967, it consists of thirteen judges and hears all civil and criminal appeals from the Circuit Courts except criminal cases in which the death penalty has been imposed, certain appeals emanating under the election laws, and appeals from a narrow class of savings and loan receivership orders, which go directly to the Court of Appeals. In all, the court handles about 2,100 appeals each year, of which over 1,600 require opinions. In addition, the court handles about 500 applications for leave to appeal in post conviction cases, violation of probation cases, and convictions based on guilty pleas.

The judges of the Court of Special Appeals are appointed by the Governor from lists submitted by the Appellate Judicial Nominating Commission, subject to confirmation by the State Senate. One judge comes from each of the seven appellate circuits created by the State Constitution; six judges may come from any part of the State. At the next general election following one year from the creation of the vacancy filled

by the appointment, the judge stands in a retention election as a representative of a designated appellate circuit or from the State at large, for a ten-year term. If there are no other candidates in the election, the voters vote for or against retention of the judge in office. At the conclusion of the ten-year term, the judge again faces the voters in another retention election for an additional ten-year term.

The Court of Appeals

The Court of Appeals is the State's highest court. An outgrowth of the colonial provincial court, it was first constitutionally created in 1776. It consists of seven judges selected from among the seven appellate circuits in the same manner described above for judges of the Court of Special Appeals.

The Court has both judicial and administrative/policy making functions. The Court has initial appellate jurisdiction, from judgments entered by the Circuit Courts, in only three areas—criminal cases in which the death penalty was imposed, certain cases arising under the election laws, and a narrow class of orders entered in savings and loan receivership actions. It is authorized by statute to answer specific questions regarding Maryland law certified to it by the federal courts. The great majority of its cases, however, come to it through its discretionary issuance of a writ of certiorari. Those are cases the court chooses, but is not required, to hear. Each year, the court receives between 600 and 800 petitions for certiorari, only about ten to fifteen percent of which are granted. The court attempts to limit its regular docket to about 160 cases per year.

The Court has a special initial jurisdiction to resolve legal challenges to the decennial reapportionment plan adopted by the General Assembly, and it has been required to exercise that jurisdiction with respect to the last two plans.

The administrative responsibilities of the court lie in two basic areas—the promulgation and monitoring of rules governing practice and procedure in the State courts, and supervision over judges, attorneys, and the practice of law. A great deal of the court's time and energy is devoted to those responsibilities. Upon recommendation of the Commission on Judicial Disabilities, the court determines what, if any, sanction should be imposed on judges found to have committed wrongdoing or otherwise should not remain in office because of a disability. Through its power to admit attorneys to practice in Maryland, its appointment and supervision of the Attorney Grievance Commission, and the adoption of both Rules of Professional Conduct and a disciplinary mechanism, the court exercises ultimate supervision over who may practice law in Maryland and how that practice may be conducted.

The Orphans' Courts

Although Maryland generally is regarded as having a four-tiered court system, there is a fifth component of it that dates back to 1777—the Orphans' Courts.

In 21 counties and Baltimore City there is an Orphans' Court consisting of three judges elected by the voters in the subdivision. The persons serving as judges need not be lawyers, and, except in Baltimore City, most of them are not lawyers. The positions are part-time; in most of the counties, the courts sit only a few days a week. In Montgomery and Harford counties, although the Orphans' Court has been retained in name, its functions have, in effect,

been transferred to the Circuit Court. The Circuit Court judges sit as judges of the Orphans' Court; the court has no separate judges.

The basic function of the court is to superintend the administration of decedents' estates. Most of its work is clerical and routine. Occasionally, a serious contested case dealing with the validity of a will or other such matter comes before the court. In those cases, a party has the right to have the issues transmitted for trial to the Circuit Court. Decisions of the Orphans' Court may be appealed and tried de novo in the Circuit Court or may be appealed directly to the Court of Special Appeals.

The principal staff to the Orphans' Court is the Register of Wills, who is elected by the voters in the county and who serves basically the same function as the clerk of the Circuit Court.

THE COMMISSION'S RECOMMENDATIONS

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Structure and Governance

Recommendation 1: The structure and method of governance of the Court of Appeals and the Court of Special Appeals are adequate to permit those courts to fulfill their constitutional and statutory mission. No change is necessary. However, the Legislature ought to give consideration to an appropriate change in the name of the Court of Special Appeals.

Until 1966, the Court of Appeals was the only appellate court. It handled all appeals—civil and criminal—from the Circuit Courts. Over time, as litigation increased, and especially as accessibility to the court in criminal cases increased through the appointment of counsel to represent indigent defendants, the court became unable to handle its workload. To remedy that problem, through a constitutional amendment and implementing statutory changes, the Court of Special Appeals was created in 1966 as an intermediate appellate court. It had a complement of five judges. The jurisdiction of the new court was initially limited to criminal appeals and related cases, such as post-conviction and habeas corpus appeals, but it was anticipated that the jurisdiction might be expanded somewhat in the future. Because the State already had a court named the Court of Appeals, the new court was named the Court of Special Appeals.

A year later, the Constitutional Convention that met in 1966-67 recommended retention of the two courts but urged that the Court of Appeals be renamed the Supreme Court, as in 48 other states, and that the Court of Special Appeals be renamed the Appellate Court.

Almost immediately after the creation of the Court of Special Appeals, the jurisdiction of the court was extended to various categories of civil cases. By 1974, the intermediate court was vested with jurisdiction over all appeals of right except capital cases and certain election cases. The number of judges on it was increased, incrementally, to its present complement of thirteen. The decision to vest the Court of Special Appeals with initial appellate jurisdiction over nearly all cases reflected a policy decision by the General Assembly that the Court of Appeals, like the Supreme Court of the United States, should be a court of discretionary review, taking only those relatively few cases that were of paramount importance.

The Court of Special Appeals is the principal "error correction" court. Most of its decisions, about eighty percent, are intended to resolve only the particular dispute. They are unreported in the official Maryland Appellate Reports and, by rule, have no precedential value and may not even be cited, except in certain limited circumstances. Almost by definition, all of the Court of Appeals decisions are of public interest and are therefore reported in the official Maryland Reports and regarded as governing precedent.

This division of function between the two courts has worked reasonably well. Each court fulfills its mission. The Court of Special Appeals is a high-production court, disposing of over 2,100 appeals and over 500 applications for leave to appeal each year. In

FY 1995, the court issued 1,644 majority opinions, of which 1,436 were unreported and 208 were reported. The efficiency of the court is notable. The average time from docketing of the appeal to argument was 5.1 months, most of which was required for getting the record from the Circuit Court and allowing time for briefs to be filed. The average time from argument to decision was only 1.5 months.

The Court of Appeals, true to its function of considering only cases of particular importance and public interest, considered over 700 petitions for certiorari in FY 1995 but disposed of only 146 cases on its regular docket. It handled, in addition, 47 attorney grievance cases, 4 certified questions of law from the federal courts, and 47 miscellaneous appeals. In FY 1995, the average time from grant of certiorari to argument was 3.3 months, and the average time from argument to decision was 5.7 months. Much of the court's time and effort is taken up with consideration of rules of practice and procedure. Over the past few years, the court considered and adopted an entire new code of rules for the Orphans' Courts, a new code of evidence, and a thorough revision of the rules governing special proceedings in the Circuit Courts.

The Chief Judges of the respective appellate courts, with the assistance of the clerks, superintend the administration of their courts. They set the court's dockets and assign the opinions.

The Commission finds that both courts are doing what they are supposed to do and are performing their tasks well. It sees no need for any change in the structure of the courts or their method of governance. The Commission makes only one affirmative suggestion: that the General Assembly consider changing the name of the Court of Special Appeals. That name, since 1974, has been an anomaly and is confusing. The intermediate court is a court of nearly all appeals of right from the Circuit Courts. No other intermediate appellate court in the country has that name.

Recommendation 2: The structure and method of governance of the District Court are adequate to permit that court to fulfill its constitutional and statutory mission. Although some changes in the court's jurisdiction are recommended, no change in its basic structure or method of governance is necessary.

The District Court was created in 1971 to replace a polyglot of Peoples Courts, Magistrate Courts, the Municipal Court of Baltimore, and justices of the peace that previously handled minor civil and criminal matters. The structure, governance, jurisdiction, and caseload of the court have been described in the section entitled The Current Maryland Court System.

The evidence presented to the Commission shows that the court is carrying out its assigned duties quite well and is in no need of restructuring. The Chief Judge and Chief Clerk, working through the district administrative judges and clerks, provide efficient and centralized direction to the court, ensuring near uniformity in practice and procedure.

No evidence was presented to the Commission that any change in the structure or method of governance is warranted, and no one suggested any significant change.

Recommendation 3: There should be a unification of the existing Circuit Courts. The Circuit Court should be a statewide court, fully funded by the State, with a chief judge having general administrative supervision over it. The existing 24 Circuit Courts should remain in existence as units of the court, each with a county administrative judge to superintend the administration of the local court and to advise the Chief Judge.

In terms of structure and governance, this is the most significant recommendation of the Commission.

By way of introduction, it must be clearly recognized and understood that, notwithstanding their partially local flavor, the Circuit Courts are State courts. Although they do construe and apply local ordinances from time to time and handle "appeals" from local administrative agencies, they predominantly apply State, not local, law. The criminal cases, though often having a federal constitutional overlay, arise and are tried under State constitutional, statutory, and common law. Family and juvenile cases involve almost exclusively State law. Other civil cases are governed, both as to substance and procedure, mostly by State common law or statutes enacted by the General Assembly. In this broad sense, these courts are clearly State rather than county courts.

The Problem

There is currently a more or less autonomous Circuit Court in and for each of the State's 24 political subdivisions. For each such court, there is a county administrative judge appointed by the Chief Judge of the Court of Appeals with the duties and authority set forth in Maryland Rule 1200(d). The duties of the County Administrative Judge include:

- Supervision of the judges, officers, and employees of the court.
- Supervision over the disposition of cases and control over the court calendar.
- Preparation of the budget for the court.
- Ordering the purchase of all equipment and supplies for the court and its ancillary services.
- Subject to the approval of a majority of the judges of the court, supervision of the employment, discharge, and classification of court personnel.
- Implementation of the policies, rules, and directives of the Court of Appeals, its Chief Judge, the State Court Administrator, and the Circuit Administrative Judge.

In addition, Article IV, Section 19 of the Maryland Constitution divides the State into eight judicial circuits, all but one of which (the Eighth Circuit—Baltimore City) are multi-county circuits. In the seven multi-county circuits, there is a Circuit Administrative Judge, also appointed by the Chief Judge of the Court of Appeals, with the duties and authority set forth in Maryland Rule 1200(c). The authority of the Circuit Administrative Judge overlaps that of the County Administrative Judge. The Circuit

Administrative Judge, for example, is generally responsible for the administration of the several courts within his or her judicial circuit and for supervising the County Administrative Judge. He or she may perform any of the duties of the County Administrative Judge.

The result of this overlapping authority is that the relationship between the Circuit and County Administrative Judges and the degree of local supervision exercised by each varies from circuit to circuit and county to county, depending largely on the personal relationship between the two judges.

Unlike the appellate courts and the District Court, the Circuit Courts have traditionally been perceived to be county-based courts. In each court there is a clerk's office headed by a locally elected clerk. Security is provided by the locally elected sheriff. The courthouse is owned and maintained by the county. All employees, other than the judges and the employees in the clerk's office, are county employees. This includes court reporters, law clerks, secretaries, assignment and jury commissioners, and all other professional and clerical employees. Court officials, such as masters, examiners, and auditors, are appointed by the judges and, except to the extent paid on a fee-for-service basis by the litigants, are paid with county funds. Except for special grants, the State pays only the salaries and fringe benefits of the judges and the cost of the clerk's office.

There is no Chief Judge or other central statewide leadership for the Circuit Courts and, except with respect to the clerk's operations and other incidental services provided by the Administrative Office of the Courts, there is little structural coordination. There is a Conference of Circuit Judges established by Maryland Rule 1207 that meets periodically to discuss common problems, but it has no governing or administrative authority. The sole purpose of this Conference, consisting of the circuit administrative judges and one other judge elected from each circuit, is to exchange ideas and views with respect to the Circuit Courts and the improvement of the administration of justice and to make recommendations.

As a direct result of this diffusion of authority and funding, and in stark contrast to the situation of the District Court, or our appellate courts, the Circuit Courts vary widely in their resources, in practice and procedure, in the ancillary services they perform, and in their operations. There is not only a lack of uniformity, but often little similarity in the way Circuit Courts conduct day-to-day business. There is no central purchasing of supplies and equipment, including data processing equipment; there is no uniformity in the forms and documents used by the courts except in the limited area of recently devised domestic relations forms; the physical plant varies greatly from county to county; salaries paid to court employees vary significantly from county to county; jury plans differ; assignment practices in both civil and criminal cases vary; and case management plans differ significantly.

As a consequence, notwithstanding the statewide reach and applicability of the Maryland Rules of Practice and Procedure and notwithstanding that the basic jurisdiction of the 24 courts is essentially the same, practice and procedure in the Circuit Courts vary significantly from county to county. The case of a litigant in one court will not be handled in the same manner as the same kind of case of a litigant in another court; in some instances, the difference will be significant.

To a large extent, these differences are the result of the lack of central supervision and leadership and the nearly exclusive reliance on local administrative control. To a significant extent as well, however, they are driven by the differing resources of the courts. Those aspects of the court's operation that are State-funded are essentially uniform. Judges' salaries are the same throughout the State and, since the operation of the clerk's offices came under State control, there is much greater consistency in those operations. To the extent that the courts are dependent on local funding, however, unevenness in that funding has caused the problem. This is well documented in the following four charts which depict, in graphic and irrefutable terms, the inefficiency and irrationality of the current system of administering and funding the Circuit Courts, and the reader's attention is directed to them. The supporting data is found in Appendix 5.

Chart 1, for FY 1994 through FY 1996, shows the local budgets of the 24 subdivisions, by county and by circuit and the proportion of that local budget that is devoted to the Circuit Courts. The proportional figures depicted show the local effort going to the Circuit Court and the great disparity in that local effort. Montgomery County, for example, in FY 1996, spent 0.30 percent of its local budget on the Circuit Court and yet, because of the relative wealth of that county, was able to provide significant resources to that court. Somerset County spent nearly four times that relative amount (1.12 percent of its local budget) on the Circuit Court and yet is not able to provide many of the services and resources provided in Montgomery County. Baltimore City spent 0.42 percent, Frederick County spent only 0.25 percent, Anne Arundel County spent 0.64 percent, Baltimore County spent 0.48 percent, and Prince George's County spent 0.50 percent. Chart 1 illustrates this disparity. The smaller counties, by and large, are devoting a greater percentage of their local resources to the Circuit Court, but generally provide fewer resources as an absolute matter than do the larger counties.

One certain effect of this disparity is seen on Chart 2 which shows, for the last three fiscal years, the number of local dollars appropriated to the Circuit Court per case filing in that court. Dollars per case filing is an important indication of the ability of the court to manage its caseload and provide essential or desirable services. For FY 1996, the ratio ranges from over $455 per case in Anne Arundel County to $110 per case in Frederick County. That kind of disparity existed in FY 1995 and FY 1994 as well. Chart 2 illustrates the gross disparities for all three years.

Chart 3 shows a different, but equally relevant, measure of that disparity—the number of local dollars appropriated to the Circuit Court per judge. For FY 1996, that ranged from $633,000 in Anne Arundel County to $132,300 in Frederick County. Baltimore City contributed $297,000 per judge, whereas Baltimore County contributed over $417,000 per judge. Montgomery County contributed $352,000 per judge and Prince George's County contributed $450,000 per judge. Most of the rural counties contributed far less. At least six of the counties that increased this level of funding in FY 1996 had decreased it in FY 1995. Obviously, dollars per judge is also an important indication of the ability of the court to provide efficient service. The same wide variations are depicted on Chart 4, showing the amount of local dollars budgeted for the Circuit Court per judicial officer serving on the court (i.e., judges, masters, examiners, etc.).

CHART 1
Percent of the Total Local Budget Appropriated for the Circuit Court

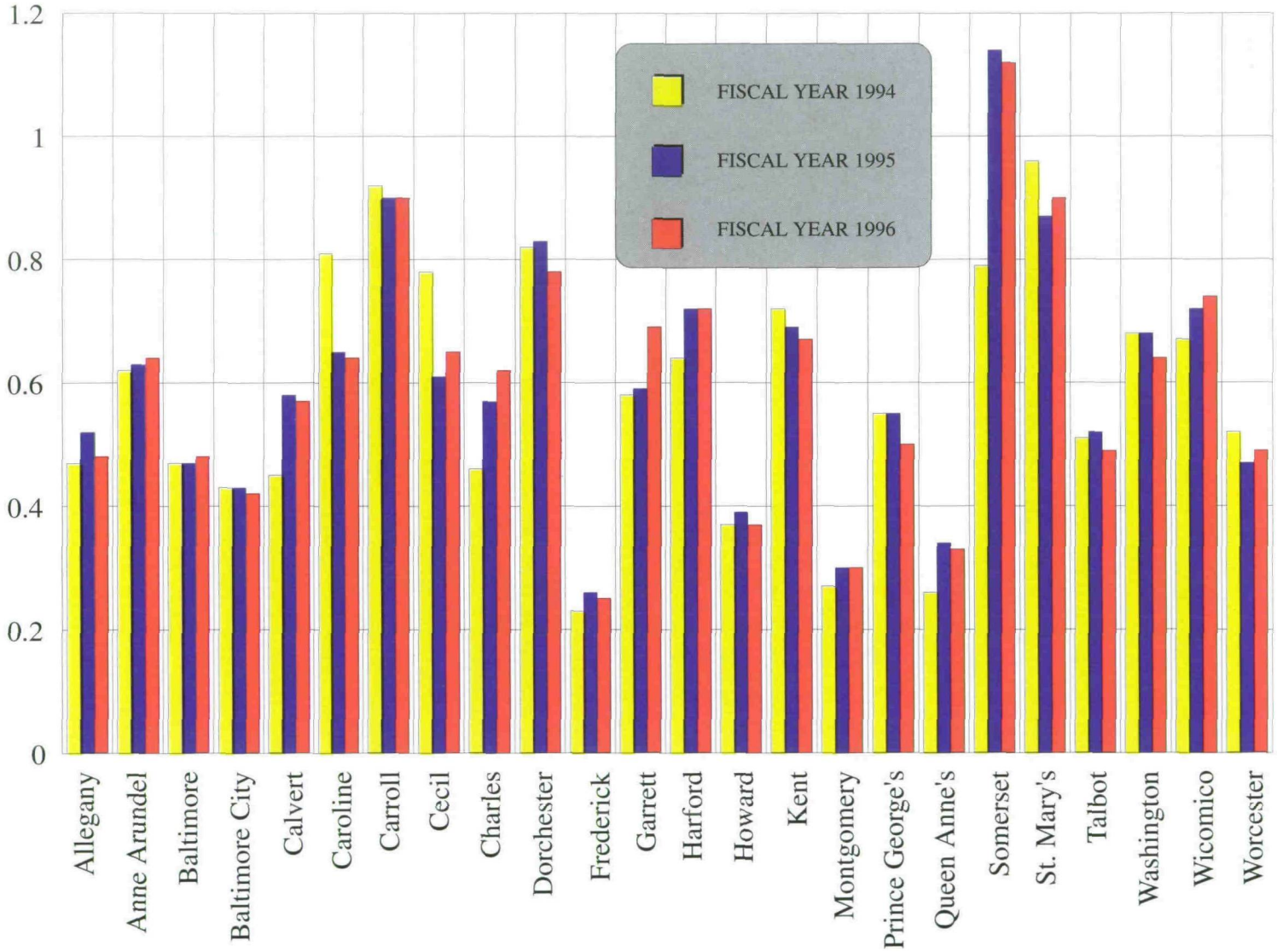


CHART 2
Ratio of Local Funds Budgeted for the Circuit Courts to the Total Number of Circuit Court Original Filings

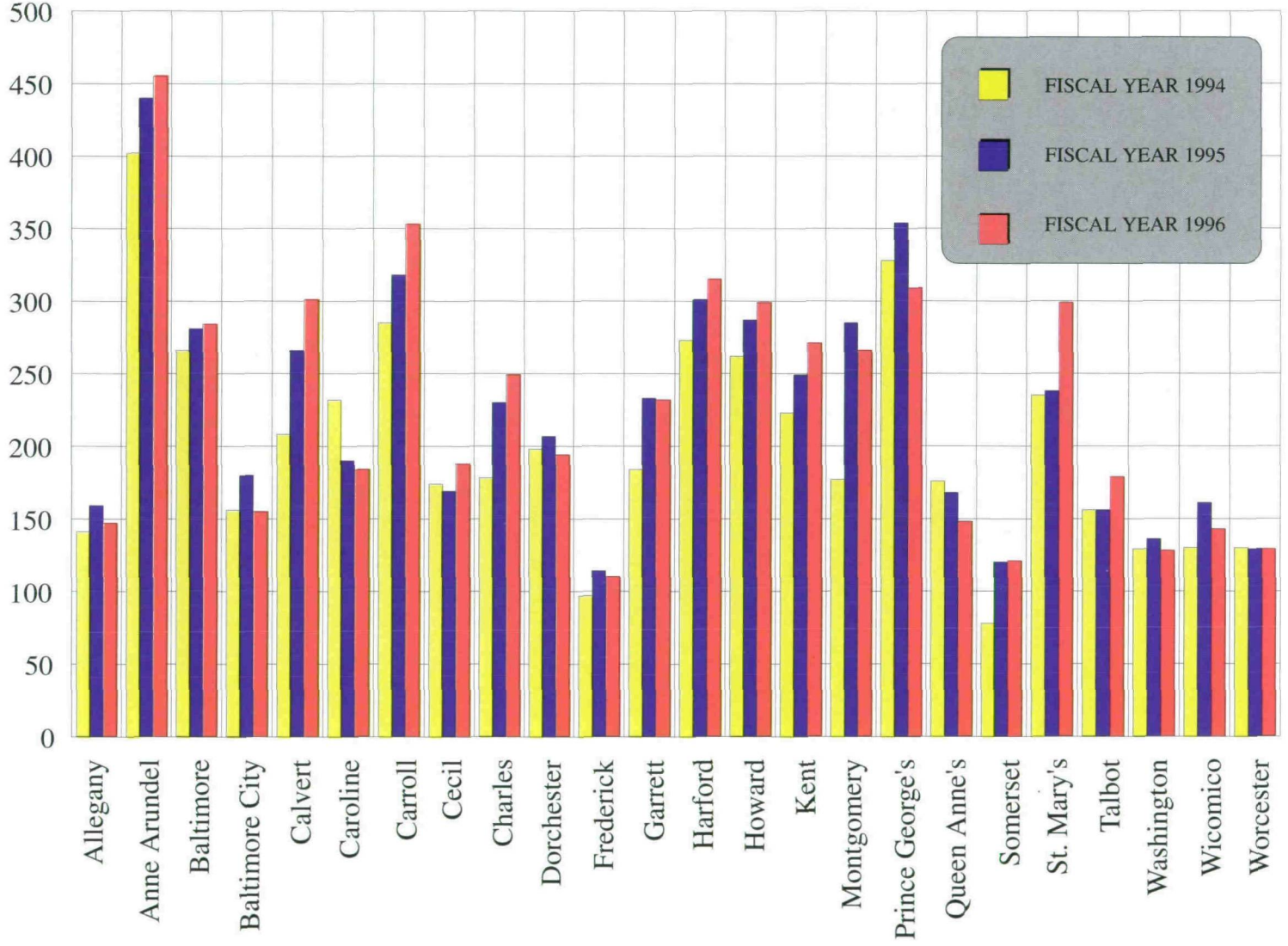


CHART 3
Ratio of Local Funds for the Circuit Courts to the Number of Funded Circuit Court Judges

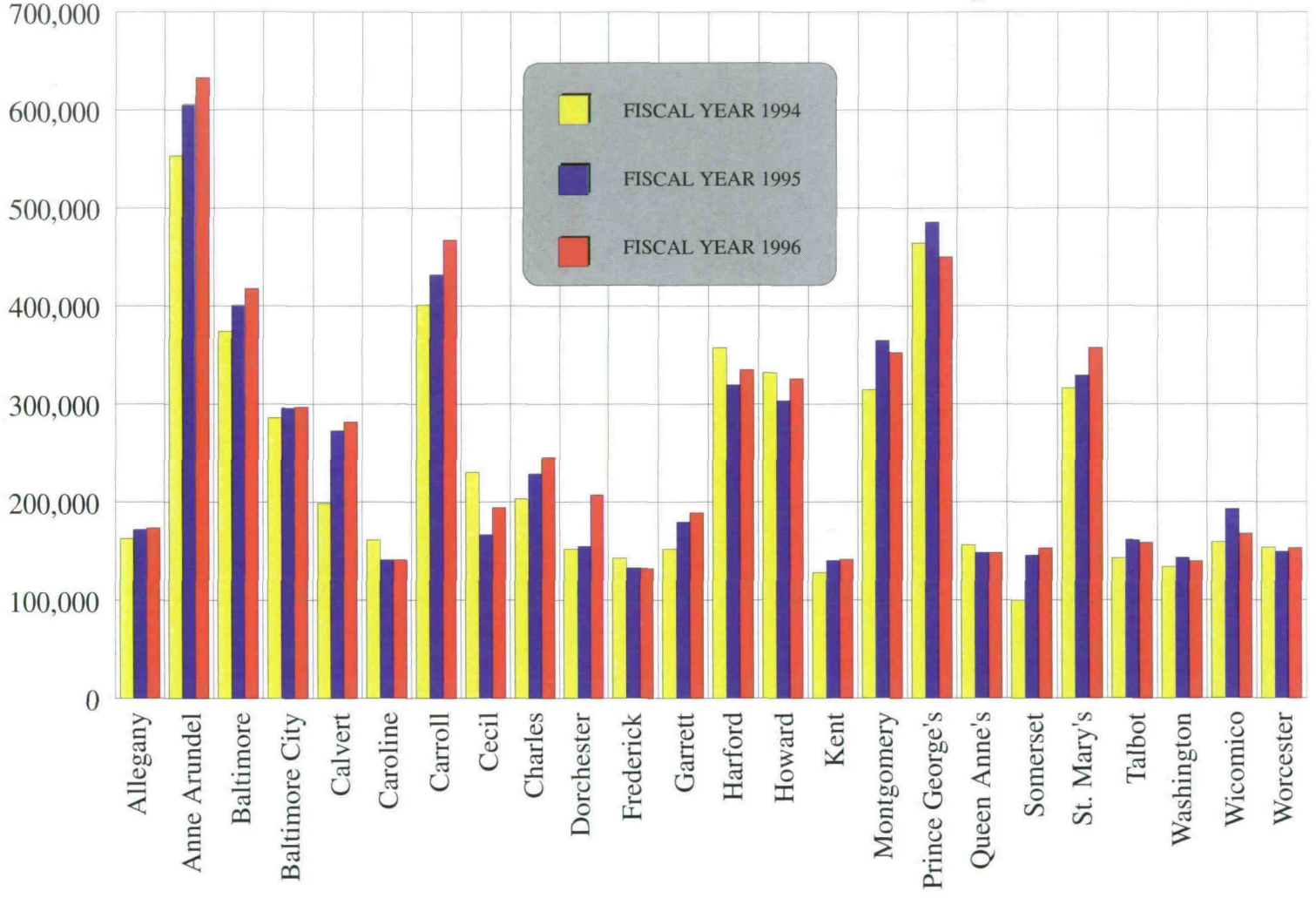


CHART 4
Ratio of Local Funds for the Circuit Courts to the Total Number Judicial Officers

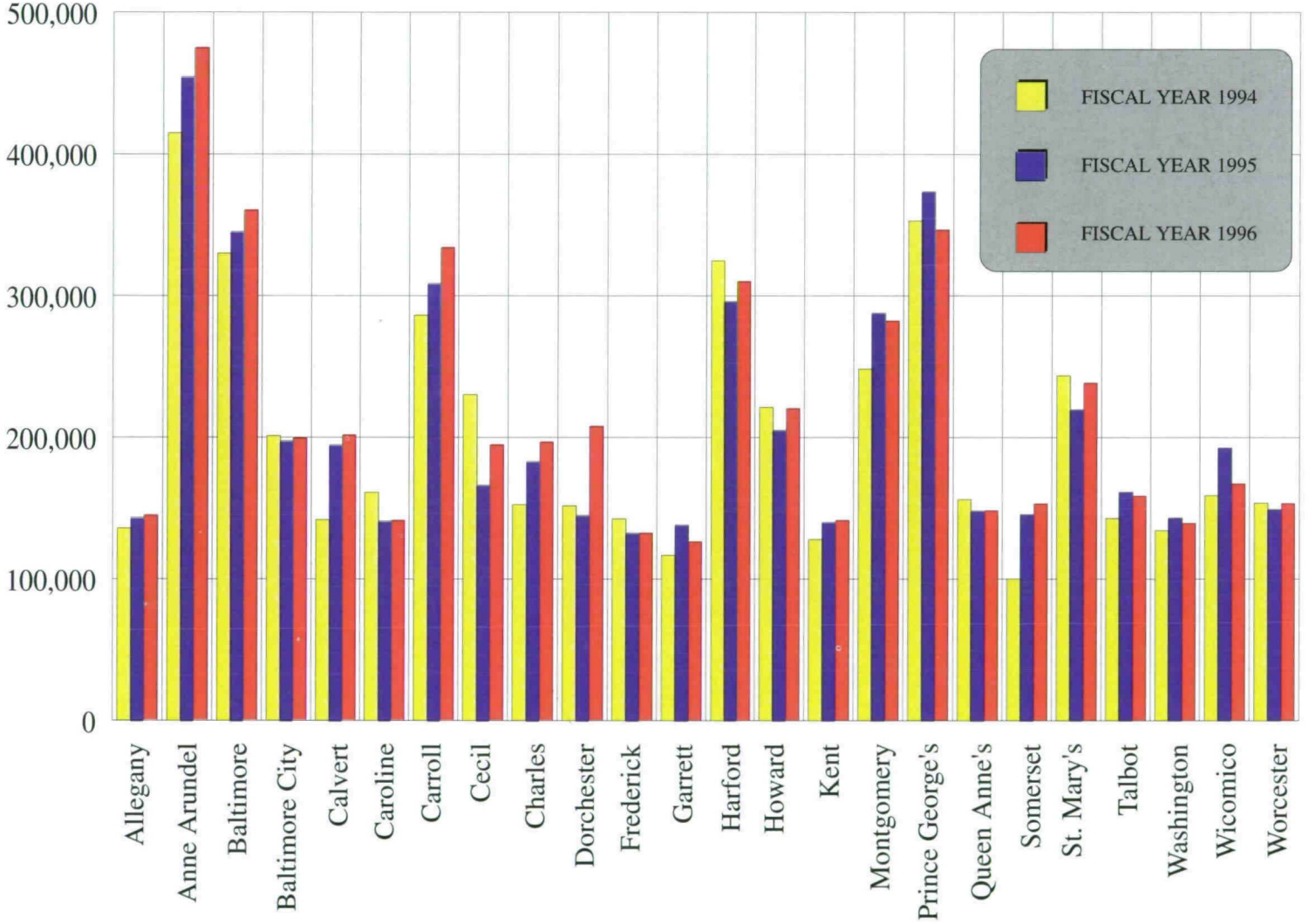
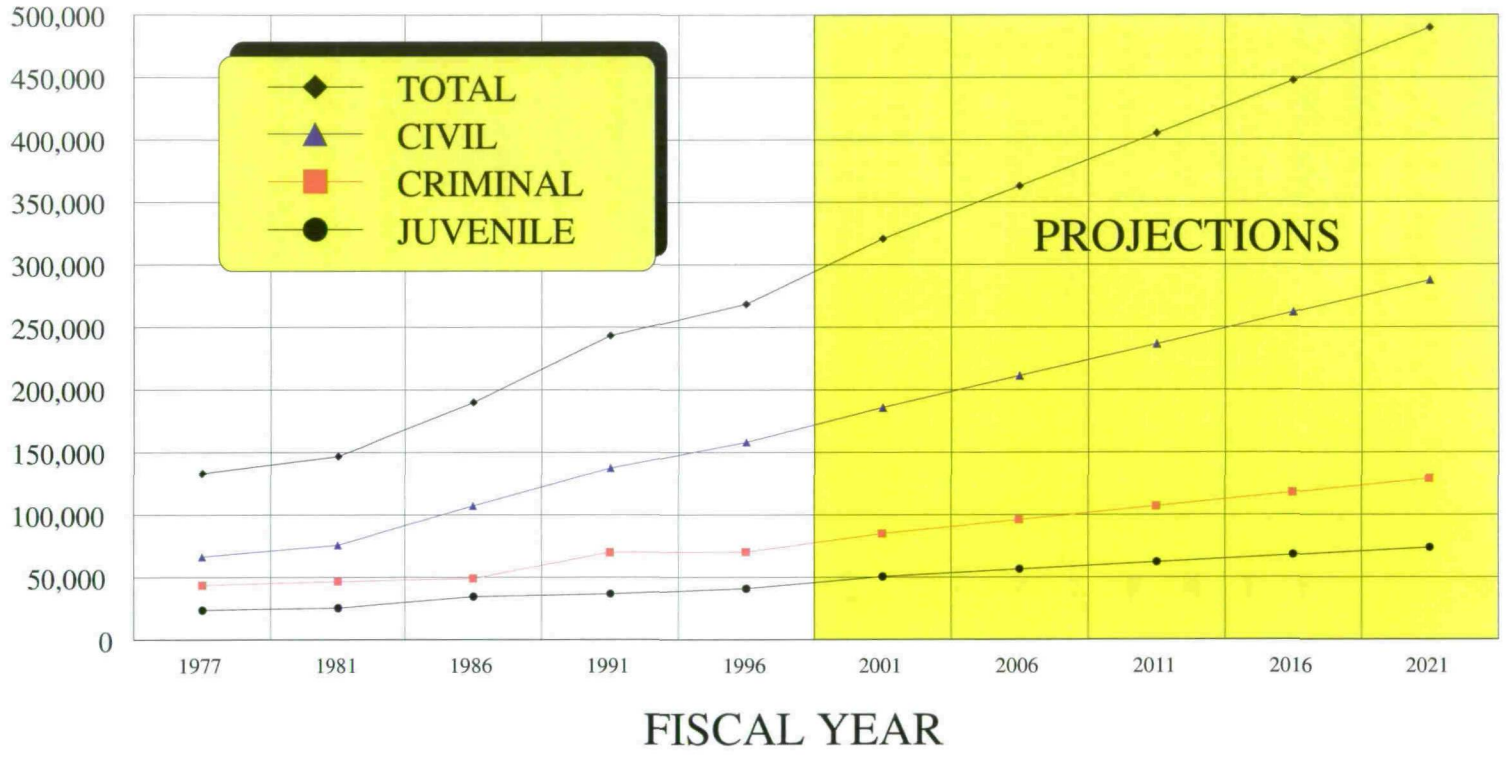


CHART 5
CIRCUIT COURT FILINGS



NOTE: Projections are determined by using linear regression for Fiscal Year 1977 through Fiscal Year 1996.
Numbers are taken from the *Annual Report of the Maryland Judiciary*.

This degree of disparity, fourfold or fivefold, necessarily impedes the ability of the various courts to provide a constant and even level of service.

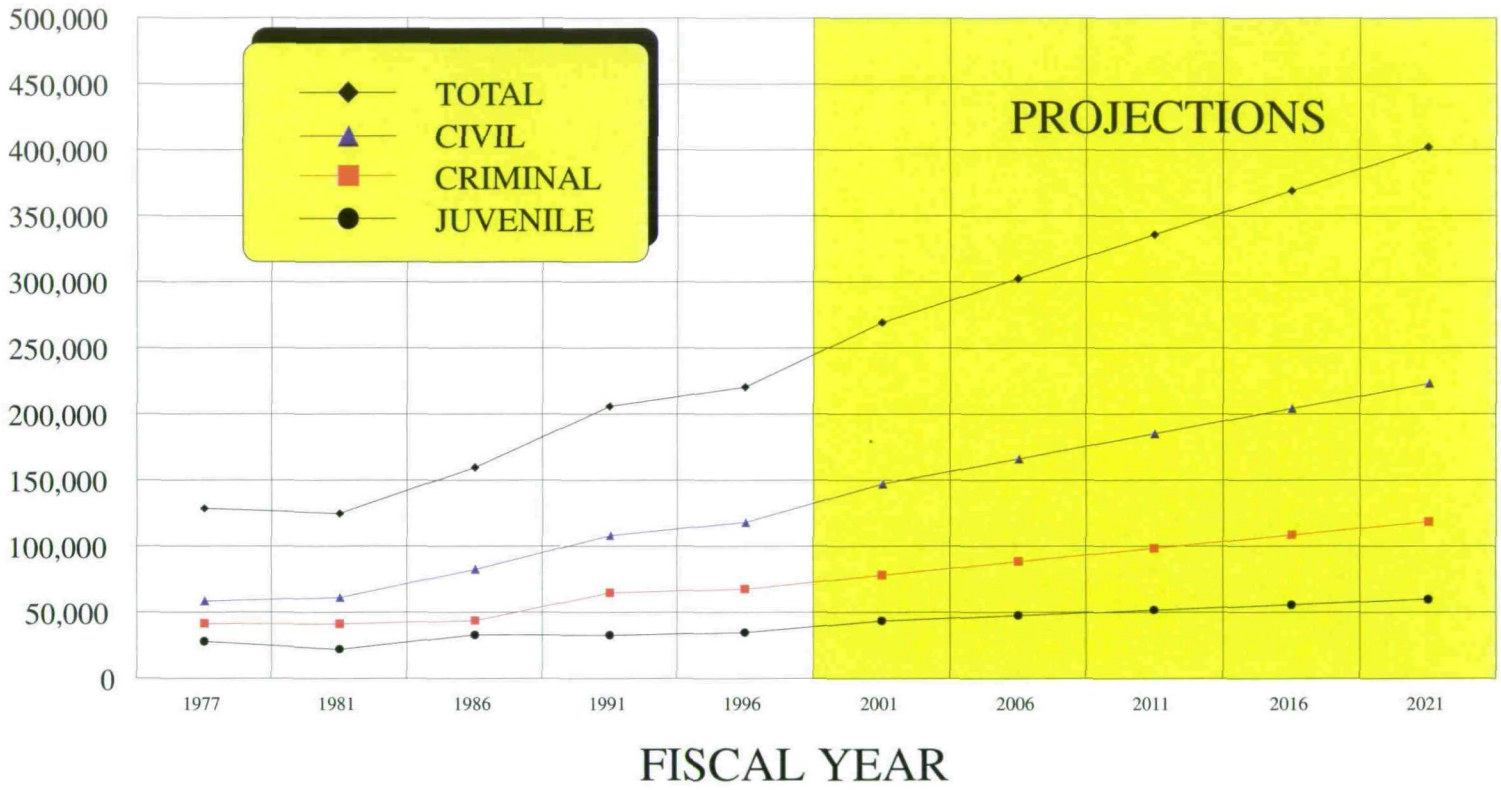
It is clear from testimony given to the Commission by the Maryland Association of Counties that these disparities will not be remedied by any increase in local funding in the foreseeable future. In its written comment, the Association made clear that local budget stress "will make it difficult for counties to even maintain existing Circuit Court commitments" and that "[t]his budget reality means that Circuit Courts will receive less county attention in the future. Circuit Courts will simply not be given the same priority as public school and safety concerns." This prediction is supported by past conduct.

The Commission is convinced that it is unrealistic to expect, as some of the judges appearing before the Commission seemed to expect, that the counties, as a whole, will be willing, or able, to continue adequate funding for the Circuit Courts in the future. There is no evidence to support that kind of expectation; all of the evidence is to the contrary.

The size and needs of the Circuit Courts have grown considerably in the past few decades. As shown on Chart 5, FY 1977, there were 88 Circuit Court judges and 133,000 total filings—civil, criminal, and juvenile. There were fewer than 13,000 trials and some 14,000 equity hearings. The budget for the Circuit Courts consisted of $12,000,000 in local funds and just over $11,000,000 in State funds. In FY 1995, there were 131 judges, 262,000 filings, as shown on Chart 5, and over 225,000 matters terminated as shown on Chart 6. State appropriations exceeded $62,000,000; local funding was approximately $40,000,000. The invidious drug epidemic, the filing of mass toxic tort cases, the growing complexity of civil litigation, and the increased breakdown in family cohesion leading to more domestic violence, divorce, neglected and abused children, and juvenile delinquency have all contributed to this expansion in Circuit Court caseloads. It is not likely that this pressure will abate. Indeed, every indication is that it will get worse and create even greater demands on the Circuit Courts. If the total Circuit Court filings continue as projected in Chart 5, their number will approach 500,000 per year by 2021. If the total Circuit Court terminations continue as projected in Chart 6, their number will approach 400,000 by 2021. It should be recognized that there may be a number of hearings involved in terminating a Circuit Court case. As seen on Chart 7, the ratio of Circuit Court filings to judges has grown even though the number of judges has increased. If the filings increase as projected, the Circuit Courts must handle them. Either the number of judges must be significantly increased or the justice system must be made more efficient and effective.

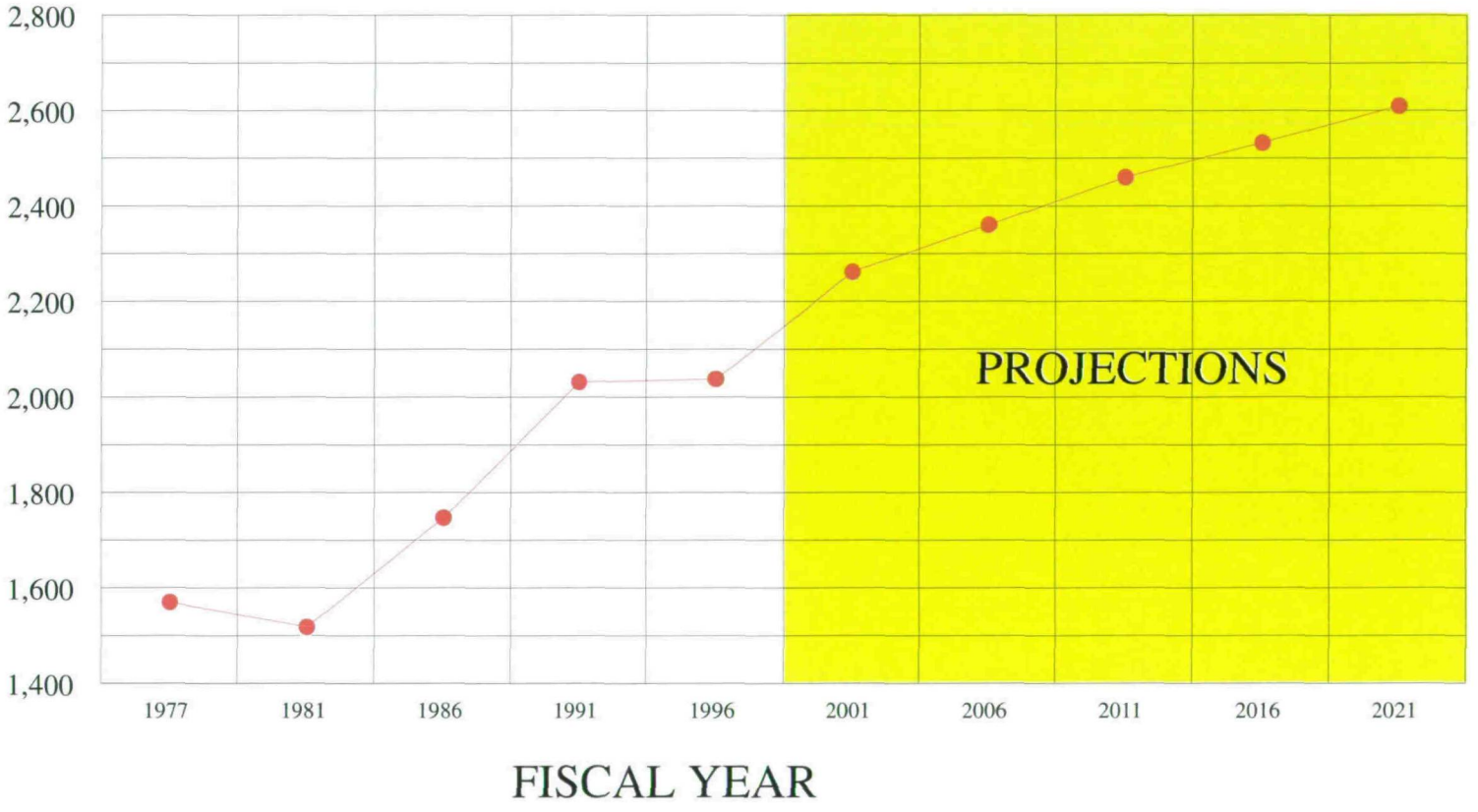
In spite of the tradition of Circuit Courts being locally funded and governed, the Commission believes that a significant change is needed. Virtually every judicial reform commission that has examined the issue in a conceptual, rather than a political, manner within the past 30 years has recommended unification and State funding of the Circuit Courts. This was true with the Constitutional Convention Commission in 1966, the Convention itself in 1967, and the Commission on Judicial Reform in 1974. The one exception, the 1982 Commission to Study the Judicial Branch, based its contrary recommendation largely on its perception that it was not "*politically* feasible to adopt the State funding/consolidation approach" at that time (emphasis added).

CHART 6
CIRCUIT COURT TERMINATIONS



NOTE: Projections are determined by using linear regression for Fiscal Year 1977 through Fiscal Year 1996.
Numbers are taken from the *Annual Report of the Maryland Judiciary*.

CHART 7
RATIO OF CIRCUIT COURT FILINGS TO CIRCUIT COURT JUDGES



NOTE: Projections are determined by using linear regression for Fiscal Year 1977 through Fiscal Year 1996.
Numbers are taken from the *Annual Report of the Maryland Judiciary*.

The 1974 Commission on Judicial Reform gave perhaps the most serious attention to the matter, examining in great detail, as this Commission has done, the then-existing pressures on the Circuit Courts and their ability to handle those pressures, and not considering the issue principally in a political context. That Commission, chaired by George L. Russell, Esq., also recommended the consolidation of the Circuit Courts into a unified, State-funded trial court, to be headed by a Chief Judge. After considering a great deal of caseload and budgetary data, the Commission found a number of disadvantages to the existing decentralized locally funded system, which it summarized as follows:

- Notwithstanding the authority of the Chief Judge of the Court of Appeals to assign judges on the basis of need, "the present structure of the Circuit Court makes speedy and effective reallocation of judicial manpower an administratively cumbersome and difficult process."
- There were positive administrative advantages to a statewide Circuit Court: "the possibility of establishing a centralized calendar system that would significantly reduce the possibility of conflicting trial settings; the possibility of sharing expensive and needed equipment such as microfilming and computer facilities; the possibility of lowering costs through joint purchasing and consolidation of forms and procedures; the possibility of closer control and better scrutiny over existing caseload problems and caseflow bottlenecks."
- One of the major drawbacks to the locally-funded county-based system was the extreme disparity in resources devoted to the Circuit Courts. The Russell Commission noted that "[s]ome counties spend as much as eight times as much as others for every case or appeal heard in Circuit Court." It expressed concern that the fiscal resources and legislative and budgetary policies of the counties "have such varying effects on the ability of the trial courts to perform their functions adequately." It concluded that "the discrepancies in the expenditure patterns and cost-per-case patterns outlines the fact that we in Maryland are paying a very serious price for the historical localism of our trial courts," and it opined that "these discrepancies between localities seriously affect the provision of even-handed justice throughout the State."

These concerns were echoed seven years later in the 1981 Report of the Task Force to Study State-Local Fiscal Relationships, chaired by Alfred L. Scanlan, Esq.

The problems noted and addressed by those bodies still exist. The solutions recommended by them 22 and 15 years ago retain their validity. This Commission can find no rational justification, other than tradition, for maintaining a four-level court system, three levels of which consist of fully State-funded consolidated courts and only one of which is thoroughly decentralized and significantly dependent on increasingly uncertain and widely disparate local funding.

The Solution

The Commission believes that a unification of the Circuit Courts can be achieved without sacrificing those positive attributes of local governance that do exist. It does not recommend precisely the District Court approach of nearly complete centralized control, but rather suggests a careful and rational delineation of functions, leaving to local control those which can best be

administered locally and centralization of those for which centralization can provide positive benefits.

The Commission recommends that there be a unified Circuit Court of Maryland, with a unit of that court—a Circuit Court—for each of the 24 subdivisions. The unified court should have a Chief Judge with general administrative supervision over the court and with the specific powers and authority set forth below. Each of the 24 courts should have a county administrative judge appointed by the Chief Judge and who, subject to the authority of the Chief Judge, would be responsible, with respect to his or her court, for:

- Day-to-day administration of the court, including the assignment and postponement of cases.
- Administration of the court's differentiated case management system.
- Administration of the court's jury plan.
- Assignment of judges within the court.
- Initial preparation of the court's budget, at least to the extent of recommending to the Chief Judge changes to the existing budget—major new items or the elimination or alteration of existing ones.
- Subject to the approval of the Chief Judge, responsibility for the appointment, supervision, discipline, and removal of masters, examiners, auditors, assignment and jury commissioners, other professional (medical, psychological, etc.) staff, and court reporters. Individual judges should continue to select their own law clerks and secretaries.

The Chief Judge should be responsible for:

- Preparation of a unified budget for the court for presentation to the Chief Judge of the Court of Appeals, who would continue to have the final word with respect to submission of the Judicial Budget to the Governor for inclusion in the annual State Budget.
- Removal of cases from one Circuit Court to another.
- Subject to some threshold for minor or unique items, centralized purchasing and procurement for the court.
- Assignment of judges from one Circuit Court to another, exercising concurrent authority with the Chief Judge of the Court of Appeals in that regard.
- With the advice of the County Administrative Judges, development of uniform forms and compatible, if not uniform, operating systems and procedures.
- Approval of major structural, operational, or procedural systems for the courts.

The Commission recommends a direct line of authority and linkage between the Chief Judge and the County Administrative Judges and that there not be intermediary circuit administrative judges. The coordinative functions currently performed by the circuit administrative judges would be handled by the Chief Judge.

Benefits

The Commission believes a number of benefits will accrue from the recommended consolidation. The paramount ones will be greater efficiency in the use and allocation of scarce resources, more similarity in practice and procedure in the courts, and much greater equity in funding the operations of the court.

I. With greater uniformity in the kinds of supplies and equipment purchased by the courts, with greater direction in the procurement of supplies and equipment, and with centralized purchasing and storing of such supplies and equipment, substantial cost savings can be realized.

There is no practical way under the current system to achieve that kind of uniformity, direction, and centralization. The Circuit Courts would undoubtedly resist that kind of control being exercised by the Administrative Office of the Courts, which, other than a chief judge, would be the only agency capable of performing that role. The Conference of Circuit Judges has neither the authority, the competence, the staff, nor the other necessary resources to become a central procurement agency.

That savings through rational central procurement can be achieved is well documented by the experience with the Circuit Court clerks' offices. Purchasing for those offices is now largely managed by the Administrative Office of the Courts, which, as the result of bulk purchases and competitive bidding, has documented significant savings over the prior practice of local procurement.

II. It should be a goal of the Circuit Courts to have the practice and procedure in those courts similar throughout the State. In 1984, the Court of Appeals formally abolished local rules of practice and procedure except in certain limited and specific areas. Nearly any lawyer or litigant who has been exposed to more than one Circuit Court will readily acknowledge, however, that, while formal local rules may not exist, substantial variations in actual practice and procedure do. That is not the case with the District Court, and it does not have to be the case in the Circuit Courts.

The Commission understands that, due to greater differences in the kinds of cases handled by the Circuit Courts, the same measure of uniformity existing in the District Court is probably not achievable in the Circuit Courts. The Commission is convinced, however, that much of the dissimilarity that now exists is not necessary and that far greater uniformity is both possible and desirable. Unlike the situation of 20 or 30 years ago, when only lawyers in the county practiced before that county's Circuit Court, lawyers in the State now practice routinely in several Circuit Courts. They should not have to keep abreast of different unofficial codes of practice and procedure.

The 1974 Russell Commission noted the advantage, achievable only through unification and central direction, of establishing a centralized docketing and calendar system. Without consolidation, the Circuit Courts have failed to achieve this important advantage to date. With unification and through such a statewide computerized system, courts could manage their dockets more efficiently, not having to face postponement requests because of

conflicting schedules caused by assignments made by other courts. To achieve that result, however, the courts must not only have computers that communicate with one another, which is not now the case (due, in large measure, to local procurement), but the incentive (or direction) to modify their operations to accommodate such a system.

III. An adjunct of more uniform practice is the more equal availability of court-related services. Some of this will be discussed in detail in later recommendations, but the fact is that services such as court-annexed or court-provided alternative dispute resolution, parenting classes, and medical, psychological, and social services, exist in some courts but not others. Where they do exist, they exist in different forms. In some counties, the service is free to the litigants; in others, the litigants must pay for it. Some courts have case coordinators to screen cases and make sure they get on the correct litigation track and do not get lost in the system. Other courts do not have such persons, mostly because they cannot get local funding for them.

This disparity in service is, in large measure, a direct result of the disparity in local funding. If the county will not provide funds for a master or a case coordinator or a mediator, that service will not be provided to litigants in the Circuit Court for that county, even though it might be available to litigants in the next county. While it is undoubtedly true that the General Assembly will examine a consolidated Circuit Court budget as closely as county councils and commissioners examine the local budgets and will not be amenable to funding every program sought by the court, it stands to reason that the Legislature, as a statewide body with statewide interests, will provide greater equity in the provision of these kinds of resources than what exists under the current system. Full State funding is not likely to occur in the absence of consolidation.

IV. In a unified court, non-geographically based divisions can be created to handle judicial review of complex State administrative orders, such as public utility, environmental, health cost and planning orders, as well as significant and complex corporate or business cases and mass toxic tort cases.

These kinds of cases now fall unevenly, sometimes by the luck of the draw, on individual courts or individual judges. A consolidated court will allow the creation of units of expertise among judges from different subdivisions and the ability to bring that resource to bear where it is needed. With respect to complex administrative and business cases, that resource can function as an alternative to the creation of separate specialty courts, as a few States have done.

V. Through the development and use of uniform forms, through the development of more uniform procedures for handling cases, through a more equitable distribution of resources, and particularly through the development of a statewide computer and information-sharing network, unification will allow for much greater efficiency and coordination in the handling of family and juvenile cases. The ability to discover, track, and consolidate proceedings in different courts will be easier. Resources can be shared.

VI. The sharing of resources can be of particular benefit to the Circuit Court libraries and those who use them. Evidence was presented to the Commission in this regard. Circuit Court libraries are locally funded, either by the county itself or through special fees charged as part of court costs. Funding levels vary, as do the resources available to the library. With the increasing presence of computerized data banks and research techniques and electronic transmissions, it may be possible to develop a statewide research network into which the local libraries and their users can tap. Instead of each library attempting to purchase what the other libraries have, individual libraries can devote some of their resources to specific areas and share the resource or information from it with other libraries.

Though this kind of coordination may be possible without consolidation, it will be much more practicable with unification. In the absence of the leadership of a Chief Judge, voluntary cooperation in changing current practices among the existing libraries for the common good will not be easy.

VII. Finally, a chief judge of a unified court would assume much of the supervisory responsibility, with respect to the Circuit Court, now exercised directly by the Chief Judge of the Court of Appeals. With respect to the Court of Special Appeals and the District Court, the Chief Judge of the Court of Appeals works through and relies upon the respective Chief Judges of those courts. Unification of the Circuit Court would necessarily relieve a significant measure of administrative burden on the Chief Judge of the Court of Appeals.

Recommendation 4: There should be a statewide judicial personnel system for clerical and other non-judicial and non-professional personnel, to assure, subject to appropriate "grandfathering" arrangements, that persons doing essentially the same work and having the same responsibility receive essentially the same compensation and benefits.

Clerical employees working for the Court of Appeals, the Court of Special Appeals, the Administrative Office of the Courts, and other statewide Judicial Branch agencies such as the Attorney Grievance Commission, the Client Security Trust Fund, and the Rules Committee are not part of any merit system. They serve at the pleasure of the Chief Judge of the Court of Appeals who, subject to approval by the General Assembly in the adoption of the State Budget, has salary-setting authority with respect to them.

The 1,100 clerical employees in the Circuit Court clerks' offices are subject to a personnel plan adopted by the Court of Appeals and implemented by the Administrative Office of the Courts, but, to a large extent, the Chief Judge has salary-setting authority with respect to them as well. The nearly 900 other clerical employees of the Circuit Courts, as county employees, are in whatever personnel system is maintained by the county and their salaries are set by the county. Clerical employees of the District Court, by statute, are included in the State Merit System.

This kind of fractured system no doubt produces some inequities, to the extent that employees doing essentially the same kind of work and having equivalent responsibilities receive different pay and benefits.

This is a problem that would have to be dealt with at the Circuit Court level simply by virtue of the unification and State funding. The current county employees would become State employees and equitable arrangements would have to be made to ensure that they do not suffer as a consequence, but to the extent they would receive greater benefits than other State employees doing the same work, adjustments would be made through attrition. With that kind of consolidation, there would be a full statewide judicial system. Efforts should then be made to ensure that clerical employees in any of the courts or Judicial Branch agencies doing the same kind of work and having equivalent responsibility receive equivalent benefits.

This Commission is not competent to devise a statewide Judicial Personnel Plan to achieve that result. It does believe, however, that such a plan should be developed and implemented as soon as practicable. It therefore recommends that a special task force, with appropriate representation from all interested groups and agencies and with sufficient assistance from personnel consultants, be created to devise that kind of plan.

Recommendation 5: The current Orphans' Courts should be abolished. Their jurisdiction and operations should be transferred to the Circuit Court and administered through a probate division of that court.

Orphans' Courts were first created in Maryland in 1777, to assume probate duties formerly exercised, for the most part, by the Commissary General. The initial act made clear, however, that, in contested cases, the parties were entitled to file their actions in the other courts of general trial jurisdiction then in existence—the general court, the chancery court, or the county courts. The Orphans' Courts have remained in existence as separate courts since 1777, although, as noted in the section entitled The Current Maryland Court System, in Harford and Montgomery Counties the judges of the Circuit Court sit as judges of the Orphans' Courts.

The jurisdiction of the court is limited. It is empowered by Section 2-102 of the Estates and Trusts Article of the Annotated Code to conduct judicial probate, direct the conduct of personal representatives, and pass orders that may be required in the course of the administration of a decedent's estate. The court may not exercise any power, authority, or jurisdiction not expressly conferred; however, as has been the case since 1777, at the request of an interested person, an issue of fact arising in an Orphans' Court proceeding may be transferred to the Circuit Court for trial.

Although the Orphans' Courts do occasionally try contested cases, the greatest part of their work is more routine. They approve a variety of orders dealing with the administration of estates. Evidence presented

to the Commission indicated that much of what they do is not so much adjudicatory as advisory. They meet with persons interested in an estate and attempt to be helpful and to guide them through the process. They seem to enjoy a high level of public satisfaction, even among the attorneys who regularly appear before them.

Except in Baltimore City, the court sits only part-time, a few days a week. The judges are not lawyers or law-trained, except to the extent they participate in legal education seminars devoted to probate law and administration. Although the courts are constitutional courts, the judges are not regarded as the equivalent of district, circuit, or appellate judges; they may not, like those judges, be assigned to sit in any other court.

The Maryland State Bar Association and most of the judicial reform commissions that have considered the matter in the past fifty years have recommended the abolition of the Orphans' Courts, regarding them as an unnecessary anachronism. For example, the 1942 Commission on the Judiciary Article of the Constitution chaired by Carroll T. Bond, then Chief Judge of the Court of Appeals, recommended abolition of the Orphans' Courts. Five years later, his successor, Ogle Marbury, echoed the recommendation in an address to the Maryland State Bar Association. Judge Marbury observed that, while lawyers appreciate the danger of non-lawyers making legal decisions, laypersons generally do not. He commented, however:

> *But when a layperson is made to understand that at least 90 percent of the orders signed by Orphans' Courts are merely matters of form which could be just as easily signed by the Register of Wills, he could see no reason for paying salaries to 72 now 66 extra State officials for doing this work. And when he understands that in the remaining cases important questions of law have to be decided by individuals who have no legal training, he will begin to wonder why we have kept this system so long.*

In response to Judge Marbury's argument, it was argued that transfer of the functions of the Orphans' Court to the Circuit Court would overburden the Circuit Court. In 1948, after actually surveying the work done by the two courts, the Maryland State Bar Association found that there would be no such overload—that "the slight additional work which will fall upon the county circuit judges is patently most insignificant and, when added to their existing duties, will cause little impact." The Constitutional Convention Commission, chaired by H. Vernon Eney, Esq., recommended abolishing the Orphans' Courts, as did the Convention itself.

The 1974 Commission on Judicial Reform analyzed the arguments for and against abolition of the Orphans' Court. Those for abolition included the routine nature of most of their duties, which could as easily be performed by the Register of Wills, the fact that contested cases are mostly referred or appealed to the Circuit Courts in any event, that the primary reason for the continued existence of the Orphans' Courts was that "these judgeships represent three relatively lucrative, undemanding elective political positions in almost every local jurisdiction in the State," and that abolition would have no adverse impact on the registers or the Circuit Courts. Against abolition, the Russell Commission noted the political and social tradition of the courts, the useful and effective role many Orphans' Court judges played in explaining the probate system to laypersons unfamiliar with it, and the fact that there had, as of then, been no reported abuses or scandals.

Balancing these interests, the Russell Commission opted for leaving abolition as a legislative choice, perhaps on a county-by-county basis.

The 1982 Commission to Study the Judicial Branch of Government did not address the issue of Orphans' Courts.

This Commission's focus is somewhat broader than those reporting in 1974 and 1982. Its mission extends beyond the present and the immediate future. It is to look 20 years into the future to devise a judicial system that will best be able to meet the needs of the citizens in the next two decades. As was evident in the discussion concerning the Circuit Courts, if the courts are to remain accessible to the public and capable of administering justice wisely and efficiently, increasingly scarce resources must be utilized in the most rational and efficient manner.

The undeniable fact is that it does not take a collegial body of three persons, whether law-trained or not, to make the kind of decisions that Orphans' Court Judges make. The routine decisions, which account for 80 to 90 percent of the total number of decisions, can as easily be made by a properly trained official serving in the Circuit Court. The more serious decisions, involving the resolution of contested cases and the application of often arcane principles of law to disputed facts, ought to be made by the judges and juries who make those kinds of decisions in other cases and who, for the most part, end up making them in probate cases as well.

There is another aspect to this consideration that has thus far escaped attention. Both the Circuit Courts and the Orphans' Courts have jurisdiction over guardianships of children. Well-established uniform procedures govern those cases in the Circuit Courts. No such procedures governing them exist in the Orphans' Courts. Indeed, some Orphans' Courts recognize the problem and shy away from exercising that jurisdiction. Because the Commission is recommending the creation of a family division within those Circuit Courts large enough to efficiently accommodate one and the inclusion of guardianship cases within the ambit of the family division, it would be inconsistent with that recommendation to have a class of guardianships administered in another court.

The Commission recognizes the importance of the service performed by some Orphans' Court judges in guiding laypersons (and lawyers) through the somewhat arcane world of probate practice. It believes, however, that this service can, and should, be maintained by creating a probate division within each Circuit Court. The division would be superintended by a Circuit Court judge. In the multi-judge circuits, the assignment would be made by the County Administrative Judge on either a long-term or rotating basis, as determined by the administrative judge and the wishes of any judge desiring long-term assignment. The superintending judge, in addition to overseeing the operation of the division, would try plenary proceedings. In order to spare that judge from the more routine matters, however, the Commission recommends that the County Administrative Judge, with the approval of the Chief Judge of the Court, also appoint one or more probate "judges" or masters who may, but need not be, lawyers, to handle the routine work now handled by the Orphans' Court judges. Those persons, along with such other innovations noted later in this Report, can provide the same kind of friendly and useful service now provided by Orphans' Court judges, and, indeed, incumbent Orphans' Court judges should be considered for initial appointment

to those positions. Orders should be reviewable by the Circuit Court superintending judge through an exceptions procedure.

Through this recommendation, the Commission believes that the cited advantages of the Orphans' Courts can be retained without the need for a separate, loosely controlled, court system.

Operations and Management

Recommendation 6: Court-annexed programs of alternative dispute resolution. including arbitration, mediation, neutral case evaluation, neutral fact finding, settlement conferencing, and, if feasible, mechanisms such as mini-trials and summary jury trials, should be developed and implemented in the Circuit and District Courts. Courts should have the authority, in appropriate cases, to refer litigants to those techniques.

Alternative dispute resolution, or ADR, is a relatively new term used to express a very old concept. People have long resorted to private negotiations, mediation, and arbitration to resolve their disputes. Indeed, most controversies arising between people are resolved in one of those fashions. Traditionally, at least with respect to civil disputes, it has been only when people have been unable to settle their differences in one of these ways that they have gone to court, to have a judge or jury hear their case and resolve it. Criminal cases tend to be court-bound from the beginning, for only a court can adjudge guilt and impose punishment, but even as to them the role of the court has traditionally been that of trier and adjudicator.

The courts in this State, and throughout the country, are facing a crisis. They are on overload. Increasing numbers of more and more complex and time-consuming cases are clogging their dockets. In terms of raw volume, most of the cases are fairly simple ones, but ones that are nonetheless exceedingly important to the litigants—landlord-tenant and traffic cases, for example. But the courts are also being flooded with far more complex litigation, such as thousands of mass toxic tort cases. Maryland has experienced that growth. So far, it has principally been in personal injury asbestos and lead paint poisoning cases, but the prospect exists for a mass of other kinds of toxic tort litigation as well.

A 1996 report from the National Center for State Courts estimated that, in 1994, 87,000,000 new cases were filed in State courts. Nineteen million civil and domestic cases were filed, 14,000,000 criminal cases, 2,000,000 juvenile cases, and 52,000,000 traffic and other ordinance violation cases. From 1984-1994 there was a 24 percent increase in civil filings, a 65 percent increase in domestic filings, a 35 percent increase in criminal filings, and a 59 percent increase in juvenile filings.

The Maryland record is equally alarming. In FY 1995, 262,000 new cases were filed in the Circuit Courts—148,000 civil cases, 67,000 criminal cases, and 46,000 juvenile cases. There were 131 Circuit Court judges available to handle that

caseload—2,000 cases per judge. In the District Court, over 2,000,000 new cases were filed—811,000 civil cases, nearly 1,100,000 motor vehicle/traffic cases, and 183,000 criminal cases. Ninety-seven District Court judges were available to handle those cases.

It is evident that 131 judges cannot try 262,000 cases, and 97 judges cannot try 2,000,000 cases. They don't. In the Circuit Courts, only 6.3 percent of the civil cases disposed of in FY 1995 were disposed of by trial—4.8 percent by court trial, 1.5 percent by jury trial. That was generally true with respect to criminal cases as well: only 8.1 percent of the cases disposed of were disposed of by trial—5.7 percent by court trial, 2.4 percent by jury trial. In the District Court, only 7 percent of the civil cases were even contested; only 21,000 of the 562,000 landlord-tenant cases were contested.

What this illustrates is that courts are not being used for their traditional purpose. Over 90 percent of the civil and criminal cases are being disposed of by means other than trial—some on motions of one kind or another, but far, far more frequently, by settlement. Criminal cases are plea bargained; civil cases are settled through negotiation or other means. The problem is that too many of the cases that settle do so late in the process, often on the eve of trial. In the meantime, they clog up the system; they produce motions and hearings; they engender cost to the litigants and they require court time to track. Even though the probability is that less than seven percent will require trial, no one knows which cases will fall into that seven percent; they are all in competition for scarce trial dates, making it difficult for busy courts to set reliable trial dates. Requests for postponements and postponements required for lack of immediately available judicial resources are all too common.

Increasingly throughout the country, both State and federal courts have turned to ADR as a way of ameliorating the problem. They have seen the benefit of ADR techniques that, when properly run, produce very high settlement rates, and build those techniques into their litigation systems. Although in the inception of these court-annexed ADR programs, ADR was viewed principally as a diversion device to assist the courts, more and more the courts have begun to appreciate the fact that they do more than simply divert cases from court dockets: they produce a better solution for the parties, either because the solution comes quicker and with far less expense or because it is qualitatively better in terms of actually resolving the underlying dispute. Studies made of these programs around the country document that, when the program is properly run, not only does it achieve its purpose of settling cases earlier in the process, but that litigant and attorney satisfaction is high. Cases are indeed resolved earlier and with less cost, and, more important, they are resolved without the animosity that litigation so often produces. Agreements reached through ADR also tend to hold up better, in terms of compliance, than do judgments imposed by courts on disgruntled litigants.

The Maryland courts have embraced this concept, at least in theory. Since 1988, by Court of Appeals Rule, most cases involving contested issues of child access—custody or visitation—are required to be referred to mediation, if both parties are represented by counsel and there is no history of spousal or child abuse. The problem is that, in most areas of the State, mediators are available only on a fee-for-service basis, and in about 20 percent of the cases, one party or the other is unrepresented. Use of the mandatory referral rule is therefore somewhat limited. Since 1994, the Circuit Courts have had the authority, pursuant to their

differentiated case management plans, to refer most other kinds of civil cases to a form of ADR. The problem is that, in many areas of the State, the ADR resources have not been organized, recruited, or trained and are therefore not readily available. As a result, thousands of cases that could be successfully resolved much earlier in the litigation process remain in the system for longer periods of time.

Each of the Commission's five committees independently came to the conclusion, in the context of its own separate area of inquiry, that a statewide system of court-annexed ADR was essential, from the dual perspective of providing a better solution for the litigants and removing large numbers of cases much earlier in the process. Such systems have been developed and implemented in other states by court rule, and many of the United States District Courts have developed such programs pursuant to the Civil Justice Reform Act. In Maryland, programs are in existence in the Circuit Courts in some of the major subdivisions, but they are not uniform and do not provide the same level of service. In most of the circuits, there is no systemic program; nor is there one in the District Court.

Although ADR is most often used in civil cases, some features of it may be applied to criminal cases—at least minor criminal cases—as well. A diversion program of this kind has been in operation in Montgomery County for some time. It is operated through the State's Attorney's Office and uses trained volunteers to assist the prosecutor in charge. An extensive ADR and diversion program has been in existence for many years in Philadelphia.

To make the Commission's recommendation feasible, some standardization will be required in terms of the design of the program and the recruitment, training, and monitoring of the personnel needed to provide the service. The Commission regards this as a high priority. It will require the adoption of rules by the Court of Appeals to design the program and funding by the Legislature to implement it. As is the case in other states, the rules should set the basic structure of the program and provide reasonable assurance that the persons employed or designated to provide the ADR services are competent and properly trained and monitored.

Recommendation 7: The trial and appellate courts must make better and more uniform use of court technology, for purposes of information gathering and sharing, internal operations, public access to and use of the courts, and enhancement of rational, coordinated, and efficient decision-making. A Court Technology Committee should be created to advise the judiciary and, through it, the Governor and General Assembly, on the availability and use of new technologies. The Administrative Office of the Courts should collect and make available, as needed, better data on judicial operations.

The dramatic growth in caseloads in the last decade is documented in the preceding discussion of ADR. The Maryland judiciary has been able to cope with that increase essentially in two ways—by

increasing the number of judges and by making the system more efficient. It is evident that fiscal constraints will not allow the judiciary to cope with future growth by continuing to add judges. Judges require courtrooms, offices, and libraries. They also require secretaries, law clerks, courtroom clerks, security personnel, court reporters or electronic recording devices, and other support personnel. The addition of a judge carries with it a significant annual expense and a potential capital expense.

The development of an efficient ADR system is a necessity, as noted in Recommendation 6. But even with functioning programs of court-annexed ADR, the courts will have to make more and better use of technology if they are to carry out their mission effectively and efficiently. Technology is essential for at least four purposes:

- To permit the courts to keep track of and efficiently process their cases.
- To generate the information necessary to conform with the requirements of various federal and State reporting and information-sharing laws.
- To keep the courts reasonably accessible to litigants, attorneys, and the general public.
- To allow judges to access more efficiently the information they need to decide cases.

It is now recognized, both nationally and in Maryland, that the key to the efficient handling of current and anticipated caseloads is a well-designed and administered differentiated case management (DCM) system. That system requires courts to establish standards for dealing with cases in accordance with their needs and not simply throwing them all into the same hopper. Since 1994, every Circuit Court has been under a mandate to establish such a system.

Under a DCM system, the court categorizes types of cases in terms of their difficulty, the amount of time they likely will require to get to trial, and the estimated length of trial itself. It then creates separate litigation tracks for the various categories, places each case on one of the tracks, and, through specific scheduling orders entered in the individual cases, establishes dates for such things as the completion of discovery, the filing of dispositive motions, resort to ADR, and pre-trial conferences.

A DCM system cannot work effectively without automation. Information on court calendars needs to be complete, accurate, and instantly retrievable in order to complete scheduling orders; the orders themselves need to be computer-generated. The whole DCM program needs constant monitoring to assure that scheduled conference, hearing, and trial dates can be met, and that can only be done through an automated information system.

In addition to basic case-processing, the courts are required to collect and have immediately available a variety of statistics for both internal use and use by other agencies. For many years, the courts have been a major contributor to the Criminal Justice Information System (CJIS), supplying criminal history information to, and retrieving it from, various law enforcement agencies. The courts are indeed the sole source of information concerning verdicts and sentences. Recently enacted federal laws requiring states to establish registries of persons convicted of certain crimes or to do background checks on persons convicted of certain crimes have added to that burden, and

thus require a greater use of computers and automated systems.

Traditionally, people who need information about cases, dockets, judgments, or court proceedings come to the clerk's office and interact with a clerk. Case information is stored in files and dockets; nearly all of it is written on paper. Increasingly, that is becoming an inefficient way of providing information. It is also causing serious storage problems, particularly in older courthouses.

Technology is now being developed, and some of it already exists, that will eliminate, or at least substantially reduce, the need for information to be stored on paper. Case files, court dockets, and other information can be stored electronically; people can access that information electronically—from their homes or offices, even from kiosks in banks, shopping centers, or other commercial or public facilities. Pleadings, motions, and other documents can be filed electronically. It is possible with current technology, and will become much easier as that technology develops further, for litigants, attorneys, and the public to be able to obtain more information much quicker, without having to travel physically to the courthouse and take up a clerk's time in retrieving and watching over files.

This will require not only reliable computer systems within the courthouse but connections to the outside and the ability to image paper documents on to computer systems quickly and accurately.

With the growth each year in the number and complexity of statutes, regulations, and court opinions, the task of simply discovering the available law is becoming an increasing problem. More and more, lawyers and judges are turning to computerized research to do their jobs. Statutes, regulations, court opinions, and other research material are available on computer databases. Indeed, through electronic transmission, they appear on such databases almost instantly upon their publication—far sooner than they can be printed and distributed to libraries. Computer databases are therefore far more current, and more accurate, than stored printed material. In addition to better availability, material stored on computer can be identified and retrieved much more quickly than it can be located in libraries. Rather than leaving the bench or chambers to rummage through court libraries looking for the necessary books, the judge can pull up on a monitor screen the very same information and print out what is needed. At least every Circuit Court judge ought to have that capability readily available, in chambers if not on the bench.

Courtrooms will also need to be accommodated to new technology. It will not be long before computer simulations and other electronic multi-media presentations will be commonplace. Under a grant from the State Justice Institute, the Court of Appeals Rules Committee is developing rules for the handling of that kind of evidence.

All of this needs to be carefully planned and monitored. Automation systems are expensive to buy, install, and update. In order to provide that guidance, the Commission recommends that a Court Technology Advisory Committee be appointed by the Chief Judge of the Court of Appeals, consisting of judicial and non-judicial members, to advise the judiciary on proper technology applications and the availability of emerging relevant technologies.

Recommendation 8: In order to make jury service more representative of the community, interesting, and palatable:

I. Jury service should be limited to one trial/one day.

II. Jurors should be selected not only from the voter rolls but also from a list of licensed drivers maintained by the Motor Vehicle Administration.

III. Juries in misdemeanor cases should be comprised of six, rather than twelve persons.

IV. In civil cases, with the agreement of the parties, alternate jurors still serving when the jury begins deliberations should be permitted to serve as regular jurors and take part in deliberating and rendering the verdict.

V. Jurors should ordinarily be allowed to take notes.

Jury service in this country is regarded as both a privilege and an obligation of citizenship. Evidence indicates, however, that many persons see such service less as a privilege and more as an onerous burden. Jurors receive only token compensation for their service—10 to 20 dollars per day; some counties reimburse them for parking or transportation expenses, some do not. There is no uniformity. In Cecil County for example, jurors receive 20 dollars per day plus 15 cents mileage allowance. If they serve after 6:00 p.m., they receive another day's pay. In Baltimore City jurors receive 10 dollars per day with no mileage allowance or other transportation expense reimbursement and no overtime.

State law sets forth the qualifications for jurors, requires that each county have a jury selection plan, and establishes some basic requirements for those plans. The County Administrative Judge is responsible for developing the local plan and submitting it to the Court of Appeals for approval. Subject to that supervening approval authority, the County Administrative Judge, working within the fiscal confines established by the county government, determines the details for the selection of jurors and the length of jury service.

At present, by law, juries in criminal cases consist of twelve jurors; juries in civil cases consist of six persons. In many cases, alternate jurors are chosen to sit with the jury throughout the case. If a juror is replaced during the trial, an alternate takes that juror's place. When the jury retires to consider its verdict, however, all persons then remaining as alternate jurors are excused.

Many of the counties have brief orientation programs for jurors. On the first morning of their service, the jury commissioner or someone else explains the nature of jury service and tries to answer any questions. Nonetheless, for many citizens, jury service can be a bewildering and inconvenient experience. They are likely to be unfamiliar with the law, with court procedure, and their roles vis-a-vis that of the judge.

I. Jury service should be limited to one trial/one day

The American Bar Association has recommended that jury service should be for the shortest period consistent with the needs of justice and that a term of one day or the completion of one trial is preferred. Most of the federal courts and many state courts throughout the country have adopted that approach. Five circuits in Maryland provide for that as part of the local jury plans—Baltimore City and Baltimore, Montgomery, Somerset, and Wicomico Counties. Other circuits range from one week to six months.

A one trial/one day system carries a number of benefits. First, because more jurors are required, jury service is more evenly distributed throughout the population. It is more important, from a jurisprudential point of view, for as many eligible citizens as possible to participate in and become knowledgeable about the administration of justice in the courts. To the extent jury service is a burden, fairness dictates that the burden be shared equitably throughout the population.

Second, the shorter time greatly lessens economic and other hardship. Although State law prohibits employers from depriving employees of employment because of jury service, employers are not required to pay employees when they are not at work due to serving on juries, although some employers, as a matter of policy, may do so. For many people, therefore, jury service can impose a real economic hardship. In place of their ordinary wages, they are forced to accept between ten and twenty dollars per day. For those who have young children or infirm relatives to care for, jury service can prove to be both an economic and personal hardship. They may not be able to find or afford persons to provide that care. Many people seek to escape jury duty precisely because of these kinds of hardships. A one trial/one day system at least minimizes these forms of hardships.

Third, there is greater certainty and more flexibility. Even when subject to longer periods of service, jurors may not actually be needed throughout that period; yet they remain on call. They may not know until the night before whether they will need to report to court, and if they report to court, they may wait all day and never be selected, or even considered. With a one trial/one day system, that uncertainty is fixed for only one day. Jurors who are not chosen are then free; those who are chosen know they must report until the trial is completed. In a number of instances, prospective jurors have legitimate reasons for being unable to report when summoned but are willing to serve at other times. A one trial/one day system allows much greater flexibility in rescheduling jury service.

The one disadvantage cited for shorter periods of juror service is the converse of the advantages noted above: more jurors are needed. Obviously, if a court requires a pool of 100 jurors each day, it will need to summon many more jurors at any given time with a one trial/one day system than it would if the jurors served for a longer period of time such as five days. The administrative expense will be greater, in terms of summoning and qualifying jurors, putting on orientation programs, and otherwise dealing with more new jurors. To some extent, through improved jury management systems and computer-generated mailings, which some of the Maryland circuits now have in place, some of that additional burden can be ameliorated. In the Commission's view, even if there is some additional burden to the

system, the net benefit derived form a one trial/one day system clearly justifies and outweighs the burden.

II. Jurors should be selected not only from the voter rolls but also from a list of licensed drivers maintained by the Motor Vehicle Administration

The right to trial by jury is founded on the idea that the jury represents a cross-section of the community. The cross-section requirement aids jury decision-making and ensures that the jury's verdict is viewed as legitimate by the community. Reliance solely on voter registration lists for jury selections leaves segments of the community unrepresented in the jury process. To remedy that problem, a number of states use driver license records to compliment voter registration lists and thereby ensure that the jury is truly a representative body. The Commission recommends that this practice of using both driver license records and voter rolls for jury selection be instituted throughout Maryland.

III. Juries in misdemeanor cases should be comprised of six, rather than twelve persons

Sometime in the fourteenth century, the size of the jury at common law came to be fixed at twelve, although the Supreme Court has explained that the number appears to have been an historical accident, unrelated to the great purposes which gave rise to the jury in the first place.

While the historically-rooted twelve-person jury should be preserved for felony cases, the Commission does not believe that the twelve-person jury is necessary in misdemeanor cases. Maryland has already gone to six-person juries in civil cases. That system appears to be working well. A six person jury in misdemeanor cases will save the valuable time of citizens without causing any meaningful loss to the judicial process or to defendants in misdemeanor cases.

IV. In civil cases, with the agreement of the parties, alternate jurors still serving when the jury begins deliberations should be permitted to serve as regular jurors and take part in deliberating and rendering the verdict

Under current Maryland law, juries consist of either twelve or six persons, depending on whether the case is criminal or civil. Although alternate jurors are often selected, they are routinely excused prior to deliberations unless, during the trial, they have actually been chosen to replace a excused juror. That form of jury service can be particularly frustrating; having sat through the entire trial, they are dismissed without having the ability to participate in the most important and interesting aspect of jury service—deciding the case.

There are good reasons why a party will not want more than six or twelve persons deciding the case. The party with the burden of proof may not be eager to have to persuade more than the minimum number of persons. With more jurors, a greater prospect exists for hung juries. The Commission does not, therefore, recommend that alternate jurors automatically or routinely be allowed to complete their participation. It recommends only that they be permitted to do so if the parties agree. If the parties have no objection, allowing the alternates to participate as additional jurors can make their jury service

more satisfying without harm to anyone. They would feel that their time has not been wasted.

V. Jurors should ordinarily be allowed to take notes

Historically, jurors were not allowed to take notes and instead were required to rely on their memories of the evidence. But the clear trend in federal and State courts is to allow jurors to take notes. Similarly, the American Bar Association's Standards Relating to Trial by Jury recommend allowing jurors to take notes. Surveys of jurors allowed to take notes consistently report that jurors find the practice beneficial. Therefore, as part of the Commission's recommendations for making jury service more palatable and improving the accuracy of jury decision-making, the Commission recommends that jurors ordinarily be allowed to take notes. Maryland circuit judges frequently permit the taking of notes at this time.

Note-taking, done properly, is a valuable method of refreshing memory, particularly in complex trials where there are numerous witnesses. Moreover, the practice of note-taking is likely to help the jurors maintain their concentration and prevent their attention from wandering.

To prevent abuses, jurors should be cautioned that their note-taking should not distract them from ongoing proceedings, to keep their notes private and secure as the court sees fit, and not to substitute their notes for their memories of the evidence, and not to accord greater weight to those jurors who have taken notes.

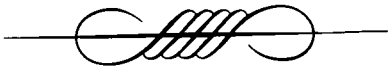
Recommendation 9: Each courthouse should be fully accessible to the public in conformance with the Americans With Disabilities Act. Foreign and sign language interpreters should be reasonably available. Victims and witnesses should be provided safe, non-public waiting rooms and child care facilities. The courts should use information and communication technology to inform litigants and other interested persons about court procedures, requirements, and schedules, and where assistance may be available.

The Americans with Disabilities Act of 1990 (ADA) proscribes discrimination against disabled individuals across a broad spectrum of activities, including the provision of governmental services and governmental employment. Even without the passage of this Act, Maryland courts have attempted for years to make their facilities more accessible, both for those who are not English speaking and for those who have sight or hearing impairments. These efforts face substantial hurdles considering that some courthouses, particularly at the Circuit Court level, are over two hundred years old and were built in times when disability issues simply were not given any consideration. Judiciary efforts are further complicated by the fact that none of the facilities that house judiciary functions are under the direct control of the Judicial Branch. Circuit courthouses are maintained by individual county governments, while State facilities are maintained by the Department of General Services within the Executive Branch. Nonetheless, the Judicial

Branch is responsible for making its services accessible, regardless of physical barriers in those facilities.

To facilitate compliance of the Judicial Branch with the ADA, the Maryland Judicial Conference's Executive Committee authorized the creation of an Ad Hoc Committee (ADA Committee) in 1991, charged with identifying areas of potential concern in the Judicial Branch, recommending priorities with respect to addressing problems, and recommending possible solutions to the problems. Identifying areas of non-compliance required an extensive evaluation of the services and facilities for each court house. The ADA Committee reviewed the findings and recommendations and approved a set of guidelines, outlining priorities with respect to removal of physical barriers to judicial services and noting acceptable and unacceptable alternatives pending such removal. The ADA Committee issued its final report on September 21, 1993. The Commission recommends that these guidelines and priorities remain active as Maryland courts move into the future. They include:

- The designation, for each court facility or complex under the jurisdiction of the administrative judge, of an ADA coordinator to whom complaints under the ADA can be addressed for resolution.
- The establishment of a Task Force on Interpreters to formulate policy recommendations for use of interpreters for spoken languages as well as sign languages.



Selection, Tenure, and Evaluation of Judges and Other Court Personnel

Recommendation 10: Subject to Recommendation 13, the method of selection and retention of the judges and clerks of the Court of Appeals and the Court of Special Appeals should be maintained.

As noted in the section entitled The Current Maryland Court System, judges of the two appellate courts are appointed by the Governor from lists submitted by the Appellate Judicial Nominating Commission, subject to confirmation by the State Senate. At the next general election occurring one year or more after the vacancy filled by the appointment, the judge goes on the ballot for retention to a ten-year term. There are no challengers in the election; the voters vote yes or no for retention. If the judge is retained, at the conclusion of the ten-year term, the judge faces another retention election.

This system was created for appellate judges in 1976 by an Amendment to the Maryland Constitution. In adopting that Amendment, the Legislature and the voters decided that the former process of having appellate judges face contested elections, as the Circuit Court judges still do, was inappropriate, and that the combination of gubernatorial appointment from nominating commission lists; Senate confirmation, and retention elections sufficed to provide for both quality appointments and accountability.

No evidence was presented to the Commission that this system has not worked well, and no person or group recommended

that it be changed. Accordingly, subject only to Recommendation 13—that, prior to being subjected to the second or succeeding retention elections, the judge be evaluated and the results of the evaluation be made known to the public—the Commission recommends no change in the current system for selecting and retaining judges.

The clerks of the two appellate courts are appointed by the respective courts and serve at their pleasure. No evidence was presented to the Commission that this method of appointment and tenure has not worked well, and no suggestion was made by anyone to change it. Accordingly, the Commission recommends no change in the method of selecting and retaining the clerks of the two appellate courts.

Recommendation 11: The current method of selecting and retaining Circuit Court judges should be changed. With the exception of the length of the term, the system for selecting and retaining Circuit Court judges should be the same as that used for appellate judges. A Circuit Court judge should be appointed by the Governor from a list submitted by the appropriate trial court Judicial Nominating Commission, subject to confirmation by the State Senate. At the next general election following one year from the vacancy filled by the appointment, the judge should stand on his or her record for a 14-year term in a retention election, the voters voting for or against retention. At the next general election following the expiration of that term, the judge should again stand on his or her record for an additional 14-year term in a similar retention election. This would replace the current system that subjects Circuit Court judges to contested primary and general elections.

For the first 75 years of Maryland's existence as an independent State, judges were appointed by the Governor, initially with the advice of his council, and held their office during good behavior. Indeed, Article 30 of the first Declaration of Rights (1776) declared that approach to be necessary to ensure "the independency and uprightness of judges."

That practice came under attack at the 1850-51 Constitutional Convention and was changed in the Constitution emanating from that Convention. Some historical perspective is therefore helpful to understanding why the practice was changed. Historians regard the Convention called in 1850 as a fractious one, and its recorded debates confirm that view. The Convention had three principal goals, around which much of the debate swirled: (1) to preserve inviolate the institution of slavery; (2) to extricate the State from its fiscally imprudent investments in railroad and canal companies and to ensure that the State's credit would never again be so ruinously extended; and, (3) to make the State government generally more efficient and accountable.

The first of these goals was achieved by the inclusion of Section 43 of Article III of the Maryland Constitution, forbidding the Legislature from enacting any law abolishing the relation of master and slave as it then existed in the State. The second goal was driven by the fact that, without an effective system of checks and balances in the 1776 Constitution, the General Assembly had committed the State to expensive and unproductive investments in canals, railroads, and other works of internal improvements that ended up nearly bankrupting the State. Actual insolvency was averted in the 1840's only by the enactment of a Stamp Tax that proved exceedingly unpopular. Much of the debate in the 1850-51 Convention concerned how to best extricate the State from those investments and assure that no more of them would ever be made. That latter goal was accomplished by Section 22 of Article 340 of the Constitution, limiting the authority of the Legislature to contract State debts and extend the State's credit.

The goal of making the government more accountable was implemented in part by reorganizing the government and in part by making nearly every State official subject to the elective process. This proved true with respect to the judiciary as well. The existing system of County and Chancery courts was abolished as was the office of Attorney General. The Court of Appeals was reconstituted. The number of judges at every level was reduced.

There was much spirited debate on the issue of whether judges should (1) be elected, and (2) have a fixed term rather than serve during good behavior, and, indeed, those two issues became very much entwined. Delegate Bowie, who chaired the Committee on the judiciary and pushed for elections and fixed terms, complained that the Governor had "placed upon the bench old and infirm men, not fit, either mentally or physically, to perform the duties which the Constitution or the public exigencies require of them." When challenged, Bowie admitted that he did not have in mind the then-present judiciary, which he felt, for the most part, was good, but was more concerned generally about the evils of long continuance in office.

The contrary argument was expressed by Delegate Chambers, who contrasted the role of judges with that of legislative and executive officials. The latter, he said, were chosen precisely to represent the political opinions of those who elect them, to give their vote as the electorate itself would. If they fail to perform that role, they ought to be recalled by the people and replaced with representatives who would be more faithful. Judges, he argued, were not intended to serve that same purpose. They were entrusted to apply their superior knowledge of law, a knowledge of which the electorate simply did not have. They were to exercise their own

judgment based on the law, not the political judgments of the voters.

Bowie's position prevailed. By a vote of 49 to 23, the Convention opted for elected judges for a 10-year term.

In the 145 years since that vote was taken, the focus of the debate over the selection and tenure of judges has changed somewhat, although the underlying issue still revolves around the question of the perception of judges and the independence of the judiciary. In a system in which elections are so heavily influenced by political organizations, by other organized interest groups, and by expensive media exposures, subjecting judges to contested elections necessarily causes them either to curry favor with those political or interest groups capable of helping or hurting their chances of election or to engage in extensive fundraising or support-building activities on their own. It is not merely commonplace, but almost universal for judges facing the prospect of a contested election to begin attending political functions throughout the county almost from the day of their appointment. They acquiesce in, if they do not in fact, enlist lawyers and others with whom they must deal to raise or contribute funds to finance their campaigns, making uneven and largely uncontrolled efforts to shield themselves from knowledge of who contributes and who does not.

That this is the case, and that it is the direct and inexorable result of putting judges through a contested election process is undisputed and undeniable. It is a given. The question is whether it serves any useful purpose that outweighs its negative effect. As noted above with respect to appellate judges and as noted below with respect to District Court judges, the General Assembly and the people have already determined that it is not the best way to select and retain judges. Only with respect to Circuit Court judges has this system been retained.

Three principal arguments have been made for retaining the contested election process for Circuit Court judges: (1) judges, like other public officials, should be accountable to the public; (2) judges often "lose touch" with ordinary people, and it is helpful to have them walk the campaign trail periodically to meet and listen to the voters; and, (3) only through this process can "diversity" on the Circuit Court bench be assured (i.e., representation of minority groups and women on the bench). These arguments are deserving of attention and the Commission has given careful consideration to them.

The issues arise in two different contexts—initial selection of the judge and retention in office. The difference often is lost in the debate. At present, all judges initially appointed by Governors are appointed from lists submitted by nominating commissions consisting of lawyers and laypersons. Those commissions receive detailed applications from persons seeking appointment. They receive recommendations from various bar associations and letters from other interested persons. They interview the applicants. From all of this material and their own perceptions from the interviews, they nominate the persons they believe most qualified. Governors also receive the applications of the nominees, along with whatever other material may be sent. Governors usually interview the nominees before making a choice. The process involves a careful examination of the qualifications of all who seek the appointment and the elimination of those thought to be unqualified or less qualified.

That review, that screening, is entirely absent when a challenger is initially elected.

Anyone who is thirty years old, who has resided in Maryland for five years, in the circuit for six months, and who is a member of the Maryland Bar can enter the race, whether or not he or she has been subjected to the nominating process. If the challenger wins, simply by getting more votes he or she is in office for 15 years. The notion that the voters at large are capable of truly screening the candidates in a judicial election in the same manner as the nominating commissions or Governors is, of course, highly suspect. The voters generally know very little about the candidate's temperament, background, or technical qualifications. Quality control at the very beginning is absent.

It is true, of course, that when a judge faces another election at the end of his or her term, the judge has a judicial record that can be examined. But that judge then faces the very same prospect of being unseated by a challenger whose credentials are untested.

Judges should be accountable to the public. The Commission does not propose the federal or early Maryland system of essentially lifetime appointments. The Commission concludes, however, as have the people with respect to appellate and District Court judges, that a contested election process is not necessary to assure accountability. Accountability can be assured in other ways. Appellate and District Court judges require, in addition to appointment from lists submitted by nominating commissions, Senate confirmation. Questions regarding the appointee's qualifications, temperament, and sensitivity can be explored at that stage. Although no appellate judge has yet lost a retention election in Maryland, there is no evidence that any deserved to lose such an election. Experience in other states indicates that, when a judge has behaved inappropriately, the judge has not been retained. Retention elections are not, in other words, merely pro forma affairs. Accountability, then, can be assured as much by the process applicable to appellate judges as by contested elections.

The question of judges "losing touch" with the people is, to some extent, overblown, but at its heart goes to the nature of the function that judges perform. It is, perhaps, an aspect of the general notion of accountability.

Circuit Court judges do not live in ivory towers or monasteries. They are human beings with families, who live in neighborhoods with other people and who engage in most of the same kinds of community activities as their neighbors do. Even as judges, many of them participate in various kinds of outreach programs, appearing in schools and at religious and other community functions to explain the judicial process and their role in it. The Commission does not believe that a judge has to make the rounds of political bullroasts and rallies in order to avoid "losing touch" with the people.

Equally important is the lurking problem of the judge compromising his or her independence by this kind of activity. Candidates for a legislative body or for Governor, or Mayor, or County Commissioner or Executive can put forth a political platform and can be called upon to defend it. They can make promises of what they will do if elected to solve particular problems of interest to the voters. A judge can have no political platform. A judge cannot make promises as to how he or she will decide particular cases. A judge can promise only diligence, honesty, and integrity. That message does not require attending political gatherings, much less contributing money to political organizations, in order to be included on the organization's sample ballots or in other literature.

Finally, there is a contention that contested elections are necessary to assure the equitable representation of women and minorities on the bench. Regrettably, for a long period in the State's history, that argument could be factually supported. It no longer can. The fact is that there is a far greater percentage of women and minorities currently serving on the District Court, which is not subject to the contested election process, than on the Circuit Courts. Studies in other states confirm that contested elections do not increase the number of women and minorities on the bench. These groups are far better organized politically now than they were in the past, and recent experience has shown that Governors in the appointing process, and the Senate in the confirmation process, are more sensitive to the need for greater diversity of race, culture, and gender on the bench.

Moreover, contested elections easily could thwart efforts at putting more qualified women and minorities on the Circuit Court. One need look no farther than the current experience in Howard County, where the first women and the first African-American appointed to the Circuit Court in the county's history suffered through a tight, hard-fought and very expensive campaign by two challengers, and the African-American appointee lost the election. Racial and gender politics can play as great if not greater role in elections as in appointments.

At present, Circuit Court judges, following a successful election, serve for a 15-year term. The odd number of years in the term assures that the term will expire in a non-election year. Thus, incumbent judges must again be appointed by Governors for a one-year term in order to be eligible to face the voters again at the next election. There is no need, and no advantage, to such arrangement, and it can be made unnecessary by having the judges serve a term containing an even number of years. Accordingly, the Commission recommends that the term of a Circuit Court judge be 14 years following retention. There will always be another general election at the conclusion of that term and therefore no need for any interim appointment.

Recommendation 12: Subject to Recommendation 13, the method of selection and retention of judges and clerks of the District Court should be maintained.

When the District Court was created in 1971, the Legislature and the people opted for a different method of selecting and retaining the judges of that court. They rejected the contested election approach then in effect for all judges and rejected as well the more common alternative, later adopted for appellate judges, of retention elections. Instead, they chose to have the judges appointed by Governors from lists submitted by trial court judicial nominating commissions, subject to confirmation by the State Senate for an initial term of 10 years. At the conclusion of that term, a Governor is directed to submit the name of the incumbent judge to the Senate for confirmation to an additional 10-year term. District Court judges are not subject to any election process, contested or retention.

The Commission considered changing that system to make it parallel to that now applicable to appellate judges and to that being recommended for Circuit Court judges. The argument was made that the process should be the same for all judges and that, especially as the District Court is the one court that the public will most likely come into contact with, the voters ought to have a

voice in the tenure of judges of that court. It was also pointed out that, under the current system, Governors must submit the incumbents' names to the Senate, even if he or she has reason to believe that the incumbents should not remain in office.

The Commission voted to recommend that the current approach be maintained. There were two principal reasons: (1) there was no evidence that the current system has not worked well or has caused any problem; and, (2) there was little likelihood that the voters would know anything about District Court judges and their records.

The District Court has been remarkably free of scandal in its twenty-five year history. The Commission was made aware of only two examples of a District Court judge facing either confirmation for an initial term or reconfirmation for an additional term being subjected to charges of ethical violations or insensitivity, but in both cases the charges were brought to light in the confirmation process. In one case, the judge was not confirmed; in the other, he withdrew his request for reconfirmation. In other words, in terms of providing a forum for airing these kinds of challenges to a judge's fitness, the current process worked.

The Commission gave careful consideration to the argument that, by requiring Governors to submit the incumbents' names to the Senate, the law puts Governors in an intolerable position, especially if he or she has reason to believe that the incumbents should not be retained. Governors may have information indicating that incumbents are ethically unfit or have some disability, and yet he or she has no choice but to recommend the individual.

The Commission believes that the dilemma is more apparent than real. In submitting names to the Senate, Governors are not making an endorsement of the incumbents; he or she is simply triggering an evaluation process that the law places with the Senate. Absent submission of the name, there is nothing before the Senate to consider. There is nothing to prevent Governors from recommending against reconfirmation if he or she believes that judges should not be retained. The Senate can then consider the Governors' objections, and those of anyone else who care to make them, along with the judge's response. There is, however, some danger in allowing Governors free discretion simply not to submit an incumbent's name. The Commission was concerned that Governors might decline to reappoint judges who have served honorably and well, simply because Governors want someone else on the bench. Persons are often appointed to the District Court at an earlier age than those appointed to the higher courts, and they serve only a 10-year term. It can be most unfair to such a person, who has given up and been away from a law practice for ten years, to be turned out of office after having served well simply because an incumbent Governor has another political agenda. After only ten years, the judge will have only a partially funded pension (10/16 of 2/3 of current salary) and likely will be too young to proceed immediately to collect any of it in any event, and, after a lapse of ten years, may have substantial difficulty in reestablishing a law practice.

Under the present system, the Chief Judge of the District Court appoints the Chief Clerk of the Court and a chief administrative clerk for each of the administrative districts. No evidence was presented to the Commission that this system has caused any problems and no suggestion was made by anyone to change it. The Commission therefore recommends no change.

Recommendation 13: To assist the public in the second round of retention elections for appellate and Circuit Court judges (i.e., following the expiration of their initial 10 or 14-year terms), to assist the State Senate in determining whether to confirm a District Court judge for an additional 10-year term following the expiration of his or her initial term, and to apprise judges of their strengths and weaknesses, as perceived by those who come before them, a system of periodic judicial evaluations should be developed and implemented. Judges should be evaluated, rationally and efficiently, as to their judicial temperament and abilities by those person who have in fact, had judicial contact with them. The results should be shared with the individual judge and, if significant problems are indicated, with the Chief Judge of the judges' court. At the appropriate time, and in an appropriate manner, a summary of the evaluation, but not the raw data, should be made available to a Governor, the State Senate, and the public, to the extent they have a role to play in the judge's retention. The evaluations of Circuit Court judges should not be made public unless and until Recommendation 11 is fully implemented.

The Commission strongly believes that both the performance of judges and public confidence would be substantially strengthened by a process of objective performance appraisals based on periodic evaluations.

The performance ratings could be compiled from questionnaires completed by those who have had professional contact with the judge including lawyers appearing before a judge at specified intervals during the judge's terms. Appropriate forms of such questionnaires have been developed in both Maryland and elsewhere.

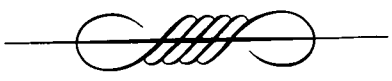
Recommendation 14: The current system of electing clerks of the Circuit Court should be changed. The clerks should be appointed based on merit by the County Administrative Judge, subject to the approval of the Chief Judge of the Circuit Court.

The Clerk of the Circuit Court has the singular function of managing a clerical operation. The clerk does not set public policy and has very little discretion in carrying out his or her duties. Except for one appointment, discipline, promotion and dismissal of personnel, the clerk's duties are essentially ministerial. The clerk does need to be thoroughly and intimately knowledgeable about the judicial process, however, and to be competent to manage a busy office and interact with judges, lawyers, litigants, other court personnel and the public. Under these circumstances, the Commission believes that the selection of the clerk should be made on a merit basis and that the County Administrative Judge, with the approval of the Chief Judge of the Circuit Court, is in a uniquely qualified position to insure merit selection. Indeed, the efficient and effective administration of the court depends in some very real way upon the selection of the most qualified person to be the clerk.

Recommendation 15: The current system of electing registers of wills should be changed. The Register of Wills should be appointed based on merit by the County Administrative Judge, subject to the approval of the Chief Judge of the Circuit Court, and should be part of the Office of the Clerk of the Circuit Court.

As stated in Recommendation 5 above, the Commission has proposed the abolition of the current Orphans' Court. Consistent with that recommendation, we propose that the 24 registers of wills in Maryland be appointed by each respective County Administrative Judge, subject to approval of the Chief Judge of the Circuit Court, rather than be elected. The appointed register would head the probate division within the Office of the Clerk of the Circuit Court and continue to oversee its operation. Many of our reasons for recommending the appointment of Circuit Court clerks are relevant as well in the appointment of registers.

We hasten to point out that, in our public hearings on this issue, the public expressed real appreciation for the good service and assistance given to the bar generally by the registers and their staff. We join in commending them for their conscientiousness and compassion in serving the public, particularly in times of distress. In proposing a more efficient and workable organization for the handling the clerical and routine aspects of probate matters, we see no reason why these same courteous and helpful people could not be retained as appointed officials.



Criminal, Juvenile, and Family Matters

Recommendation 16: Non-incarcerable traffic offenses should be decriminalized and made civil infractions. As soon as practicable the trial of those infractions, where the charge is contested, should be removed from the District Court and handled administratively.

As we look toward the 21st century we must ensure that scarce judicial resources are wisely expended on the most important matters. We also must examine whether rules or procedures or expenditures that once made sense still do so, and are likely to continue to do so in the ensuing decades.

With those principles in mind, the Commission concluded that non-incarcerable traffic offenses—those involving rules of the road and parking—no longer warrant a criminal sanction. The Commission believes that such non-incarcerable offenses do not appear to present the kind or degree of threat or danger to the community ordinarily deemed necessary to warrant criminal sanctions. The Commission therefore recommends making non-incarcerable traffic violations civil offenses, with due process protection, equivalent to those afforded criminal defendants.

A motivation for, and important consequence of, this change is to free judicial resources to handle more serious matters. Given the explosion in the caseload and the corresponding demands on judicial resources, the Commission believes that the fact-finding issues in non-incarcerable traffic offenses do

not need to be made by a District Court judge. The Commission recommends, therefore, that non-incarcerable traffic offenses not also involving a criminal offense be handled in an administrative forum, such as the Office of Administrative Hearings, rather than in the District Court. District Court judges thereby will not be encumbered by lengthy traffic dockets, and instead can devote time to more serious matters. This would relieve the District Court docket of approximately 900,000 cases each year. Non-incarcerable traffic violations that arise from an incident also involving a criminal offense should be tried in District Court or Circuit Court in conjunction with that offense.

Recommendation 17: Experienced prosecutors should realistically and aggressively screen criminal cases as soon as practicable after arrest to insure proper charging, explore alternatives to detention, determine the availability and appropriateness of alternative dispute resolution mechanisms, and evaluate dispositional and treatment alternatives.

Early and realistic prosecutorial decision making would help prevent gridlock in the criminal courts and ensure fairer and more deliberative plea negotiations and trials. Early action by a knowledgeable attorney for the State should promote successful prosecutions by requiring additional investigation, if necessary, and ensuring proper charging, appropriate victim and witness interviews, and completion of other actions necessary for trial. The State's early assessment of the severity of a case and its likely outcome also will further the early abandonment of weak cases and inappropriate charges.

This early review system should mature to the extent that all charges are reviewed by a State's Attorney before filing. The State's Attorney's role should include effective advocacy for a broad array of alternative dispute resolution mechanisms and confinement/treatment alternatives consistent with public safety. Even though the primary responsibilities of the State and defense differ, this recommendation foresees increasing reliance on joint problem-solving.

Recommendation 18: There should be earlier involvement in criminal cases by defense counsel and improved pretrial communication between prosecutors and defense counsel regarding discovery, other procedural issues, possible diversion, and plea negotiations.

Representation of the defendant soon after arrest is necessary for the prompt resolution of criminal cases. The development of factual and legal defenses as well as advocacy for treatment, detention, and dispute resolution alternatives is facilitated by the early establishment of client rapport and the beginning of defense case preparation. Every effort to improve communication between State and defense counsel should be sought. At present, trial continuances are frequently caused by the late entry of counsel's appearance. The District Court should initiate a hearing procedure for early advice of the right to counsel and the entry of defense counsel's appearance. Whether characterized as an arraignment, an expedited bail review hearing, or merely as a status conference, this judicial mechanism also

should provide settlement, diversion and other early resolution opportunities.

Lack of complete discovery frustrates the early resolution of cases. Plea agreements are fostered when the defense is able to assess with confidence the strengths and weaknesses of the State's case. Defense disclosure of pertinent information within the limits of privilege and confidentially likewise allows the State to better evaluate its case and sentencing options.

The State, defense, and detention centers also should be encouraged to collaborate to develop methods to facilitate attorney/client contacts, early status conferences and convenient access to treatment evaluators and providers. Emerging communication technologies should assist in this area. Special attention and accommodations should be made by the courts, prosecution and detention facilities to increase early participation by the defense bar.

Recommendation 19: The District and Circuit Courts should develop and implement a system of differentiated case management for criminal cases. Status conferences, mandated discovery schedules, arraignments, and specialized litigation tracks should be designed and used where appropriate.

Opportunities for settlement, exchange of discovery, case preparation, and alternative disposition need to continue as cases proceed through the District and Circuit Courts. The continued development of drug dockets and other specialized dockets require unique scheduling and status conference opportunities. Different cases have different needs as they work through the system. By anticipating the likely needs of different kinds of cases, the speed with which these cases are resolved may increase. Status conferences and agreements between counsel have been shown to be effective tools ensuring that cases are more efficiently resolved. Mandatory discovery requirements often foster early resolution of cases. Differentiated case management should maximize opportunities for settlement and exploration of dispositional alternatives. Fairer and less harried trials on dates certain should result for those remaining cases.

Recommendation 20: In those Circuit Courts in which a significant portion of the criminal docket consists of non-violent drug or drug-driven offenses, a special drug-treatment docket, similar in operation to the "drug courts" currently operating in the District and Circuit Courts in Baltimore City, should be established. Cases in which the defendant might benefit more from intensive treatment than from traditional criminal disposition should be placed on that docket.

Non-violent drug or drug-driven offenses should be handled separately from the regular criminal docket in those Circuit Courts in which a significant portion of the criminal docket consists of such offenses. Rigid criteria should be set for such cases to consider recidivism and to exclude such offenses as those associated with violence and substantial narcotics trafficking. Jurisdictions that have established drug-treatment dockets have reduced courtroom time for law enforcement officers and freed prosecutors to deal with more violent and anti-social offenses. Certainly, drug-treatment dockets free jail space for more violent offenders. In

those cases where the offender traditionally would not be incarcerated, drug-treatment dockets substantially increase the levels of supervision to which the offender is subject.

Offenders in drug-treatment courts receive intensive supervision, counseling, and treatment through a court-monitored coalition of service providers, court personnel and State social service agencies. While always reserving the option of reinstating the traditional sanction for an offense, the drug-treatment docket approach appears to decrease drug use and reduce recidivism. Regardless of the method of calculation used, intensive treatment is a cheaper and more productive use of limited judicial system resources than incarceration.

The Baltimore City District Court Drug Program is an excellent model, but the Commission recognizes as valuable any court-supervised program that successfully combines treatment and services with extensive supervision and immediate intervention.

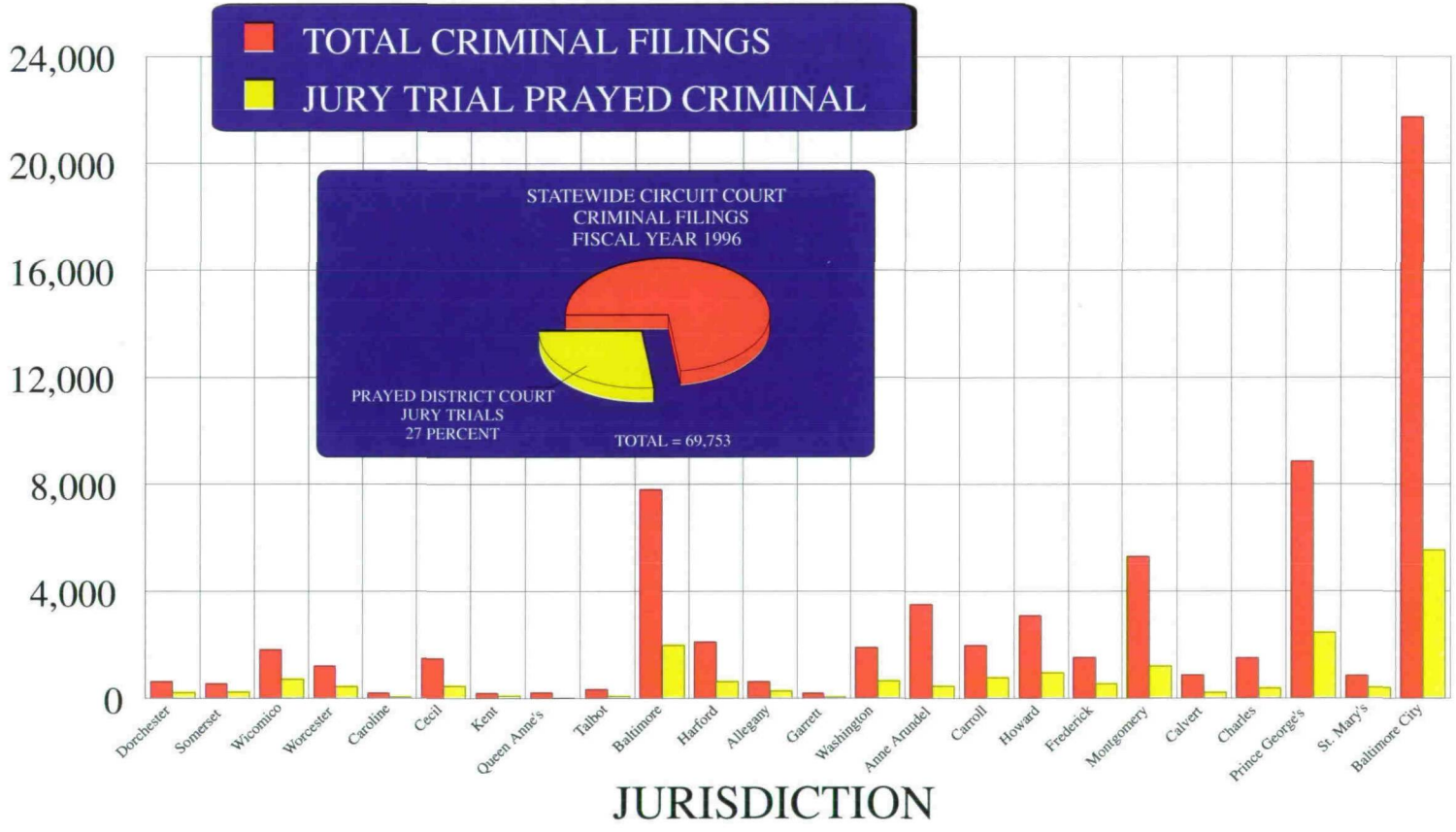
Recommendation 21: Appeals in criminal cases from the District Court should be tried in Circuit Courts on the record made in the District Court de novo.

In criminal cases, de novo appeals from the District Court to the Circuit Court are simply an extravagant anachronism. It should be noted that defendants in the District Court proceeding are accorded a full due process hearing before an experienced judge. They waste limited judicial resources, as valuable judge, prosecutor, defense attorney, court personnel, and witness time expended at the District Court level is replicated at the Circuit Court level. Moreover, duplicated proceedings are burdensome on witnesses and victims. They must appear at least twice and often many more times, and they bear the attendant expenses including lost work. Finally, the public and taxpayers question why the defendant is allowed two bites at the apple.

Recommendation 22: To the extent practicable, jury trial prayers in the District Court should be required to be filed prior to the scheduled date of trial.

In District Court civil appeals, the parties must file a written demand for jury trial in advance of the time set for trial. The failure of a party to file this demand in a timely fashion constitutes a waiver of a trial-by-jury for all purposes. In District Court criminal cases, no such rule applies, and the defendant may pray a jury trial up until the actual time his or her case is called in that court. It does not matter if the victims, witnesses, officers and parties are present and ready to proceed. It does not matter that these same parties have been in court one, two, or three times before ready to proceed. The defendant can still exercise the right to demand a jury trial then. The Commission recommends that such jury trial prayers be made or filed reasonably in advance of the scheduled trial date. The Commission recommendation for a pre-trial deadline for filing jury prayers should serve several purposes. First, victims, witnesses, and attorneys for both sides will know with increased reliability when and where a case will be tried before the trial date and, therefore, will be in a much better position to prepare for the trial and to adjust their personal schedules. Second, victims and State witnesses no longer will be inconvenienced on the day of trial by a jury prayer.

CHART 8
CIRCUIT COURT CRIMINAL FILINGS AND PRAYED DISTRICT COURT JURY TRIALS FISCAL YEAR 1996



NOTE: Numbers are taken from the *Annual Report of the Maryland Judiciary*.

The Commission believes that the total number of jury prayers will be substantially reduced. It has become apparent that defendants often request jury trials for reasons other than the desire to be tried by a jury. The Commission believes that requiring defendants to file prayers in advance is likely to eliminate many of the reasons for which jury prayers are now made.

In District Court criminal cases, the Commission recognizes the need to protect a defendant's constitutional rights in electing or waiving a jury trial. Appropriate new District Court rules and procedures can accomplish this without prejudicing any defendant. As may be seen on Chart 8, when a jury trial is prayed in the District Court, cases account for approximately 27 percent of the total criminal filings in the Circuit Courts.

Recommendation 23: In those counties in which a substantial number of judges exist to make it feasible, a Family Division should be established within the Circuit Court to handle, in a coordinated and efficient fashion, family-related and juvenile cases. **The District Court should retain concurrent** ***jurisdiction over emergency proceedings for domestic violence ex parte orders.***

Family and juvenile cases make up the majority of the Circuit Court civil dockets and are often the only experience members of the public have with the judicial system. Because the numbers of family matters before the courts are expected to increase as we move into the 21st century, we must make the best use of limited resources and provide the highest quality of service to the families involved in the court system. Because family cases do not always receive the prompt and thorough attention they warrant, a Family Division in those Circuit Courts in which enough judges exist to make it feasible is necessary.

In those Circuit Courts establishing a Family Division, the Division should handle all family-related matters—guardianship, adoption, divorce, annulment, custody, child support, civil domestic violence, delinquency, truancy, CINA (Child In Need of Assistance), CINS (Child In Need of Support), and other domestic matters. The current separate juvenile jurisdiction impedes holistic and coordinated resolutions, permits competing orders, and creates unnecessary duplication. Unification of related matters into a Family Division should eliminate duplicative services that families may receive now from different courts and court agencies.

The Commission does not recommend a separate family court. The Commission believes such a separate court to be unnecessary, unduly expensive, and administratively burdensome. A new and separate family court would require new buildings (or other new courtroom space), new judges, and new administrative and support personnel. The cost of these steps would be substantial yet would not appear to produce any practical benefit over a Family Division within the Circuit Court.

Shared administrative resource in a Family Division within the Circuit Court will require less funding and will allow funding to be targeted for services and treatments for families. In addition, with a separate division rather than court, Family Division judges who finish a day's docket can easily hear other matters. That flexibility is important in times of decreasing resources and increasing

dockets. Finally, as an important symbolic matter, a separate family court could appear to relegate family adjudication to secondary importance.

The Commission recognizes that a number of the most dedicated and able judges who regularly sit in family law courtrooms desire periodic rotation away from the stress of family litigation. While continuity is of great importance in the adjudication of related domestic and juvenile issues, flexibility of judicial assignments is necessary to prevent judicial "burn-out."

The ABA recommends that judges rotate out of specialized courts every four years. The Commission recommends that trained and interested judges be assigned to the Family Division for extended terms as determined by the Circuit Administrative Judge, and that judges be permitted to rotate out of the division earlier than the term. Because all Family Division judges would retain their ability to adjudicate any matter within the Circuit Court's jurisdiction burn-out may be lessened. However, no judge should be assigned to hear any family matter who does not have the proper temperament, training and interest.

In sum, a separate Family Division within the Circuit Court should provide substantially the benefits of a new and separate family court without causing the substantial financial and administrative strain attendant to a new and separate court.

After receiving considerable information and testimony concerning domestic violence cases, we recommend that the District Court and Circuit Court have concurrent jurisdiction in domestic violence *ex parte* cases. Victims must have easy access to the courts for *ex parte* orders and therefore should be permitted to go to the most accessible courthouse. All other domestic violence matters will be handled by the Family Division within the Circuit Court, which will have District Court *ex parte* orders sent to it by computer.

There should be a wide array of fair dispute resolution mechanisms for controversies within the family and to provide relief when the State intervenes. At appropriate stages of a family matter, the court should have the authority to refer the matter to appropriate alternative dispute resolution (ADR).

The Family Divisions should be supported by an up-to-date computerized information system, including networking capabilities with other judicial and non-judicial government entities. As an efficient facilitating measure, the Commission recommends that officials at appropriate levels consider construction of a statewide government computer networking system with provision for the necessary compatibility between existing individual computer systems.

Cases often proceed in the absence of specific information about litigants and relevant past litigation because that information, while available, is not accessible. Creation of a State government network, including at a minimum, judicial and executive agencies, is essential to making important information available to the courts and, particularly, to the Family Divisions.

Information to be compiled includes prior litigation in other courts (e.g., custody and support actions, domestic violence and CINA cases), vital statistics, and records of prior social service interventions. The recommendation for creation of a case manager position to perform this information

compilation function complements the present proposal.

The Commission is sensitive to the need for proper handling and confidentiality of information. We recommend as an ancillary measure that a protocol be developed to deal with issues of confidentiality, privilege, accuracy, and relevancy in the exchange of information between sources which may be functioning under various legal and ethical constraints.

Recommendation 24: Whether as part of a Family Division or otherwise, the Circuit Courts should have experienced case managers to implement a differentiated case management system for family and juvenile cases and see to the coordinated and efficient handling of those cases, including referral to appropriate and available parent awareness seminars, other alternative dispute resolution services, and indicated social, medical, or other psychological services.

The case manager should be a court-employed specialist whose functions will include some of those presently performed by other court personnel and social service personnel. Each case would be assigned to a case manager who would retain overall responsibility for handling that particular case. The case manager would collect relevant and appropriate information about litigants such as prior or other pending litigation, including records of criminal and domestic violence matters.

Using a computerized database with advanced capacity to retrieve information from a variety of sources including government agencies, the case manager will be able to assemble a picture of the litigants to assist the courts. A Circuit Court judge, to take one example, should be assured of entering an order that takes account of previous orders entered by the District Court or elsewhere by a Circuit Court.

Recommendation 25: Contested juvenile cases should be tried by judges rather than masters.

Important liberty interests are at stake in juvenile matters. Children at risk of being removed from their parents or from a public facility or foster home deserve adjudication by a judge. The Commission was struck by the observation of one witness, Circuit Court Judge Daniel Moylan, "a parking ticket gets a judge, but whether a child lives with his family or not, or is incarcerated, is heard by a master." By requiring contested juvenile matters to be heard by judges, Maryland demonstrates that it values juveniles. In addition, this approach would eliminate the wasteful exceptions process.

Routine and uncontested matters, such as a stipulation that a child is in need of assistance and should be placed in foster care, can be heard by masters, thereby preserving limited judicial resources to contested matters. Through increased used of mediation and other alternative dispute resolution techniques, many juvenile matters should be resolved by agreement and not by contested adjudications.

Recommendation 26: Greater resources should be devoted to dealing with younger juveniles, to attempt to divert them from criminal and other anti-social behavior before they become too deeply enmeshed in it.

The Family Division of the Circuit Court will need sufficient tools to target juvenile delinquency effectively. The expert witnesses who appeared before the Commission stressed the need for adequate services to address family dysfunction and juvenile delinquency. A recent Rand report showed that prevention programs like home visitation for teenage parents, parent training, anti-truancy initiatives, substance abuse treatment, and graduation incentives were effective programs for those juveniles who can still be diverted from crimes.

Funding

Recommendation 27: The courts of Maryland are State courts. They are created by State law for the purpose of interpreting and applying State law. Their operations should be State funded. At least for the foreseeable future, the counties should be required to continue to provide courthouse facilities for the Circuit Court, but the State, as part of its funding of the court's operations, should assume the cost of maintaining those parts of the courthouse actually used for court, rather than local government, purposes.

All four levels of Maryland courts—the two appellate courts, the Circuit Courts, and the District Court—are State courts. As noted in earlier sections of this Report, the appellate and District Courts are unified courts whose operations are fully State funded. Alone among the four levels, the Circuit Courts are thoroughly decentralized and are funded in part by the State and in part by the counties. The Commission is recommending that the Circuit Courts also be unified, and it recommends that the operations of the unified court be fully State funded.

The Commission, of course, is recommending a number of other measures, apart from Circuit Court unification, that may have a fiscal impact. Some of these measures, if adopted, may increase State expenditures.

Funding a Unified Circuit Court

The most significant fiscal impact, for both the counties and the State, would accrue from the unification of the Circuit Courts and the absorption by the State of the full operational cost of the unified court. The major part of this impact will be the State assumption of the costs currently being funded by the counties—$45,255,145 in FY 1996. It is unclear whether there would be any additional net cost accruing directly from the unification itself. Some additional expenditures will be required to create and maintain the position of Chief Judge of the Circuit Courts, but the Commission believes that any relatively small cost for that position will be more than offset by operational efficiencies accruing from the unification.

In estimating the fiscal impact of full State funding for a unified Circuit Court, it is important to keep clear that the Commission is recommending a shift in only the operational costs of the Circuit Courts—the cost of jurors, court reporters or recording equipment, law clerks and bailiffs, security, secretaries, other support personnel, and utilities. The Commission does not recommend a State absorption of the capital cost of constructing, renovating, or maintaining the Circuit Court courthouses or the operational costs associated with local functions and services conducted in the courthouses. Costs emanating from county government or local licensing activities in the courthouses should continue to be paid by the counties, and the counties should continue, for the foreseeable future, to provide and maintain the physical facilities for the Circuit Court, as they have always done. In estimating the fiscal impact on the State, it will be important to exclude these local costs.

The Administrative Office of the Courts reports that total local expenditures for the Circuit Courts for FY 1996 amounted, in aggregate, to $45,255,145. Table 5 shows the total local expenditure for Baltimore City and each county. To estimate the portion of the cost that would be shifted to the State, an analysis would have to be made for each subdivision of what local functions will remain in the courthouse and how much of the reported expenditures constitute maintenance or other capital costs that would not be shifted. The Commission urges that the Department of Fiscal Services promptly undertake a study and report to the Governor and the General Assembly its estimate of the actual level of cost that would be shifted to the State under the Commission's recommendation.

The Department of Fiscal Services has prepared a report on the fiscal effect of just the Circuit Court unification, a copy of which is attached as Appendix 6. The estimates in that report may need to be reviewed in light of the above discussion. Essentially, the Department estimates that a unified Circuit Court would require 45.5 fewer positions statewide, with an annual savings of $1,900,000. That savings would be offset, however, by an additional expenditure of $139,900 for the salary and incidental expenses of the Chief Judge.

The Department also estimates that a unified court would likely accelerate efforts to bring the staffing levels in the court to a minimum standard, and that the cost of achieving that goal would require an additional 36.5 positions at a cost of $1,700,000. That is a cost of improvement in the court's operations, not a direct cost of unification.

Funding Expanded Services

A number of the Commission's other recommendations—shortening jury terms to one trial/one day, instituting systemic court-annexed ADR programs, providing case managers and other services in family law cases, assuring full compliance with the Americans with Disabilities Act, conducting periodic judicial evaluations, removing traffic cases from the District Court—will also have a fiscal impact. The precise impact of these recommendations cannot presently be estimated. Some of them will require additional expenditures; others, such as reducing juries in misdemeanor cases to six persons, will result in less cost. The Commission recommends that, as the precise details of these recommendations are worked out in the actual drafting of the legislation and rules, the Department of Fiscal Services assist in developing realistic estimates of fiscal impact for the Governor, the General Assembly, and the Court of Appeals to consider.

Absorbing the Cost

The Commission understands the practical difficulty of the State assuming any significant additional expenditures all at once. Several alternatives exist to ameliorate that difficulty, all of which involve political decisions best left to the Governor and the General Assembly. The Commission merely proposes them for consideration.

One alternative is to phase in the additional responsibility, particularly the assumption of local expenditures of the Circuit Courts. A proposal for achieving that is discussed later in this Report. A second alternative, also having particular relevance to the assumption of local expenditures, is to make that assumption fiscally neutral by eliminating or curtailing other existing programs of State aid to Baltimore City and the counties. The Department of Fiscal Services can identify the various programs of State assistance that can be examined for this purpose.

A third alternative is to fund any or all net additional costs by increasing the current level of filing fees.

The Commission has reviewed the civil filing fees in all fifty states, as of July 1, 1995, according to the information compiled by the National Center for State Courts. This data, which is set forth below, demonstrates that the present civil filing fees in the Court of Appeals, Court of Special Appeals, and District Court are less than the mean filing fees across the country.

The Commission believes that a filing fee increase is a logical and proper source for funding Commission recommendations. The fees can be increased significantly and still be in line with those nationally. By increasing filing fees, those persons who are using the courts are funding its operation. Of course, filing fee waivers for indigent persons would continue to be granted, so an increase in the filing fees should not deny access to the courts to those who cannot afford it.

The Commission proposes increasing filing fees to pay a portion of the increased costs of the system which would result from our reform proposals. The filing fees for District Court, exclusive of small claims, is ten dollars, versus a national average of 44 dollars and small claims filing fees are five dollars compared to a 21 dollar average. For 1995, District Court civil case filings, including small claims and landlord-tenant claims, amounted to 810,000 cases. A 15 dollar filing fee increase across the board

would yield $12,000,000 per year in increased fees, assuming that there were no increase in case volume. Similarly, civil case filings in 1995 in the Circuit Courts were approximately 148,000; thus a 20 dollar increase would yield $2,960,000 per year in increased fees, again, assuming no increase in case volume. Thus, increasing civil docket filing fees in the District and Circuit Courts to an amount significantly below the national average, would produce $15,000,000 per year in revenues to fund justice system improvements.

COURT	MARYLAND FEE	MEAN NATIONAL FEE
Court of Last Resort	$50.00[1]	$123.05
Intermediate Appellate Court	$50.00[2]	$128.52
General Jurisdiction	$90.00	$87.39
Limited Jurisdiction	$10.00	$44.00
Small Claim	$5.00	$21.78

[1] A $50.00 filing fee must accompany any Petition for Writ of Certiorari. If the Petition is granted, no additional filing fee is paid.

[2] A filing fee in the Court of Special Appeals is $50.00, but the filing of a Notice of Appeal in the Circuit Court requires an additional payment of $60.00 to the Circuit Court for the court's preparation of the record.

IMPLEMENTATION PLAN

IMPLEMENTATION PLAN

This Report proposes a major change in the structure and funding of Maryland Circuit Courts and significant alterations in the ways of handling cases in the District Court and administrative agencies.

The likelihood that citizens of the Free State will see dramatic, overnight change in the operation of the courts is remote. In formulating its recommendations, the Commission consistently chose those options that would lead to long-term structural improvements, rather than settle for cosmetic quick fixes. When faced with the dilemma of making a sound recommendation that would result in significant progress, but at the same time alienate special interest groups, the Commission opted for those choices that would be beneficial to the majority of citizens, rather than seek a way to appease the narrow objectives of a select few. Our job has been to chart the route to the future of the State justice system, rather than to offer facial panaceas that provide little real promise for long term improvements in the courts. In order for our citizens to obtain the maximum benefit from the Commission's recommendations, it is critical that the change occur in a coordinated fashion, using the most appropriate methods of implementation. The Commission is the product of an alliance between the Executive, Legislative and Judicial branches of government, and will not accomplish its mission unless the partnership endures. All three should have a role in the implementation of the Commission's recommendations.

Constitutional amendments, court rules, legislation, and administrative procedures may be employed to enact these recommendations into public policy. Although a formidable task, it is not as difficult as the process of modifying the attitudes of those who are comfortable with our court operations presently. With time and careful examination of the merits of our proposals, the members of the Commission hope that even the most strident foes of some of our specific directives will accept these changes in the public interest. Indeed, for these recommendations to have the intended benefits, it is critical that judges, lawyers, court officials and members of the public who use, participate in and pay for the justice system of the twenty-first century become enthusiastic advocates for these modifications.

To gain some appreciation for the scope of this task, implementation of these Commission recommendations will follow any one or more of the following methods:

Constitutional Amendment

The central change in the structure of the courts—unification of the Circuit Courts—must be accomplished by amending Article IV, Part III of the Constitution of Maryland. Modifications in the selection and confirmation process for the terms of Circuit Court judges also will require constitutional amendments to Article IV, Part I. The changes in the Circuit Court clerks' offices and the Orphans' Courts would require constitutional amendments to Article IV, Parts I, III, and IV.

In order for the Constitution of Maryland to be amended, a bill must be approved by three-fifths of the members of each of the two houses of the Maryland General Assembly, and be passed by a majority of those voting on the issue in the next statewide general election.

As there will not be a statewide general election until November 1998, the Commission urges the members of the General Assembly to delay introducing any of these constitutional amendments until the 1998 Session. Furthermore, some of the proposed constitutional changes affect current office holders and those who will be elected to their positions in the 1998 general election. In order to minimize the disruption caused by the transition to a merit system in the clerks of the courts offices and the Orphans' Courts, strong consideration should be given to delaying the effective date of these recommendations until after the year 2002 when all of the clerks of the courts, registers of wills and Orphans' Court judges elected in 1998 will have had the opportunity to serve their full terms in office.

Court Rules

Although the creation of Family Divisions within Circuit Courts may be accomplished either by legislation or court rules, the Commission recommends the latter approach.

The Court of Appeals is responsible for making the rules that govern the practice and procedure of law and judicial administration in Maryland, and is assisted in this process by the Standing Committee on Rules of Practice and Procedure (Rules Committee). The Rules Committee consists of lawyers, judges and others who are competent and experienced in judicial administration. Included in the membership of the Rules Committee are the chairpersons or the designees of the Senate Judicial Proceedings and House Judiciary Committees as ex officio members.

Creating Family Divisions in the Circuit Courts through the use of the court rules process is the most appropriate because it fits squarely within the policy-making responsibilities of the Court of Appeals which has authority over judicial administration. The court rule-making process is unfettered by the ninety-day constitutional limit imposed on the General Assembly, thereby allowing this recommendation to be put into effect expeditiously, and modified on a timely basis. Furthermore, the drafting of court rules places greater emphasis on administrative wisdom rather than political considerations which are a central part of the legislative process. For these reasons, the Commission recommends that the Family Divisions be established by court rule rather than by legislative statute. Full implementation of a Family Division can only be achieved under a unified Circuit Court system.

The other recommendations that may be put in place through the use of court rule are some of the alternative dispute resolution (ADR) methods and changes in the jury trial system.

Legislation

Changing the structure of the courts and the method of selecting the individuals who will serve within the courts cannot have the desired results unless adequate financial resources are provided to implement these recommendations.

The Governor who presents and executes the State budget, the Administrative Office of the Courts which prepares and monitors most of the judiciary budget, and the General Assembly which must enact and supervise the implementation of the State budget, all share in the responsibility for properly funding the necessary programs of the future justice system. The budget process

involves elected and appointed officials who must make tough choices about paying for those programs that best serve the public. The Commission firmly believes that a properly funded justice system is so vital to the functioning of a democratic society that it should receive priority treatment when these difficult budget decisions are made.

The timing of many of these budgetary decisions is contingent upon the approval of Constitutional amendments by the voters in the 1998 election. While the Commission believes that the FY 2001 State budget should be the goal for full implementation of Circuit Court unification, there are some local expenditures that may be assumed by the State government independent of the unification process. For example, the cost of jurors could be included in the FY 1998 budget, the expense of court reporters reflected in the FY 1999 budget, and the payment for courthouse maintenance built into the FY 2000 budget. State assumption of the cost of secretaries, law clerks and other administrative personnel could be a part of the FY 2001 budget, thus completing the unification process.

By phasing in the Circuit Court unification on an incremental basis, lawmakers will have the opportunity to develop more accurate revenue and expenditure estimates. Local governments too, will be allowed to make more deliberative adjustments in their budgets as a way of avoiding unnecessary disruption in programs affected by the reallocation of fiscal responsibility.

In addition to the budget, other Commission recommendations which require General Assembly approval include elimination of de novo appeals, decriminalization of non-incarcerable traffic offenses, increases in court filing fees, and the use of alternate dispute resolution in certain cases. Bills to implement certain of these recommendations could be filed in the 1997 General Assembly and enacted into law following the session. With the creation of a family division, legislation to transfer Montgomery County juvenile jurisdiction from its District Court would be needed.

Administrative Procedures

Some of the Commission recommendations do not require changes in the law. Modern court administrative techniques that have proven successful in other states, or pilot projects that have worked well in Maryland courts may be implemented through application or expansion of these programs. Some ADR methods and diversified case management programs fit into this category. The use of technological advances to provide greater efficiency and public access to the courts also may be done through the use of administrative directives, but the broad application of these tools is largely dependent upon the willingness of the Executive and Legislative branches to provide sufficient funds to pay for these innovations.

This Report has proposed a significant restructuring of the Maryland court system, the manner in which judicial officials are selected and retained, and the responsibility for funding the Circuit Courts. New or expanded programs—of ADR, of technology, of dealing with family, juvenile, and criminal cases—are recommended. Many of the Commission's recommendations will prove controversial; some will require a significant shift or increase in funding responsibility. All of them are the product of many hours—hundreds of hours of committee deliberations are included—of research and discussion.

The major recommendations, such as the unification of the Circuit Courts, establishing new procedures for the selection and retention of Circuit Court judges, abolition of the Orphans' Courts, doing away with the election of Circuit Court Clerks and Registers of Wills, will require constitutional amendments to implement. Other recommendations will require carefully drafted statutes or court rules. The Commission has not had the opportunity, and probably does not have the expertise, to draft the necessary amendments, legislation, or rules.

In compliance with the law creating the Commission, this Report is being filed and published on December 15, 1996, less than a month before the opening of the 1997 Session of the General Assembly. With the attention of that body necessarily devoted to the 2,500 or more bills that will come before it in the ninety-day session, the Commission believes that it would be difficult for the Legislature to act upon all aspects of the Commission report in the 1997 session. For one thing, complex legislation, requiring a great deal of care, will have to be drafted, and that cannot be done properly in a hurry. Even if such legislation could be drafted, there will not be adequate time during the session to give fair consideration to it. The constitutional amendments, of course, cannot go on the ballot until November 1998 in any event, so there is no need to have them considered in the 1997 session.

The Commission urges that the General Assembly receive the Report, allow the Chair of the Commission to brief it on the Report, and then to refer the Report for detailed consideration by the appropriate legislative committee during the interim between the 1997 and 1998 sessions. The Commission recommends that its Executive Committee remain in existence until the end of the 1998 session, that immediately after the end of the 1997 session, that committee work with the Governor's office, the legislative staff agencies, and the appropriate legislative committees to prepare appropriate implementing constitutional amendments and legislation for introduction into the 1998 session. This will afford the Legislature and the public the opportunity to examine the actual details of the Commission's proposals and allow ample time for public input and fair consideration of those proposals. The constitutional amendments and legislation can provide a reasonable timetable for actually implementing the recommendations.

In closing, one final point must be emphasized. The most eloquently crafted constitutional amendments, court rules, legislation and regulations will be ineffective without competent personnel who exercise sound judgement and practice proven management techniques. All of the Commission recommendations are in some part dependent upon the proper implementation by judges, administrators, court employees and other citizens who serve the courts. They are the ones who can breathe life into structures and statutes, enabling them to achieve the intended results. Every effort should be made by those who enact these recommendations into law to monitor the performance of those who will apply these laws so that they may share in these improvements.

APPENDIX 1

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APPENDIX 2

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APPENDIX 3

PRIOR STUDIES

The Commission on the Future of Maryland Courts was established by the 1995 General Assembly to chart a course for the State justice system in the years ahead. It is the latest in a series of endeavors to modernize the courts in the face of rapid societal and technological change. Many of the recommendations of previous commissions have led to significant improvements in the operation of the courts, while other suggested changes have failed to generate enough support among policy makers to be accepted. Included among these studies are:

The Commission on the Judiciary Article of the Constitution of Maryland (The Bond Commission, 1941-42) – Led to the restructuring of the Court of Appeals, the adoption of statewide rules of practice and procedure, and the basis for statewide judicial administration.

The Commission to Study the Judiciary of Maryland (The Burke Commission, 1953) – Recommended studies that resulted in the creation of a State Court Administrator and the integration of courts of limited jurisdiction into a general system of State courts.

The Constitutional Convention Commission (The Eney Commission, 1965-67) – Recommended a complete revision of the Maryland Constitution. The Commission recommended four tiers of courts, all fully State-funded and consolidated at each level, merit selection and retention of all judges, and the abolition of the Orphans' Courts. Although voters rejected the proposed Constitution in 1968, some of its proposals were later achieved: the Judicial Nominating Commission (1970), the establishment of the District Court with judges who face no election (1973), the elimination of contested judicial elections for appellate judges (1976), and Supreme Bench consolidation (1983).

The Commission on Judicial Reform (The Russell Commission, 1974) – Examined the pressures on the Circuit Courts and recommended the consolidation of those courts into a unified, State-funded trial court to be headed by a Chief Judge.

The Task Force to Study State-Local Fiscal Relationships (The Scanlan Task Force, 1981) – Noted that the lack of circuit coordination has led to an inefficient use of resources and the dependence on local funding has resulted in uneven administration of justice. Recommended that the State assume the cost of operating the Circuit Courts in return for the elimination of the property tax grant. This recommendation was not approved.

Commission to Study the Judicial Branch of Government (The Fisher Commission, 1982) – After considerable debate, the Commission concluded that it was neither politically nor functionally feasible to adopt the State funding/consolidation approach. Proponents saw Circuit Court consolidation as a logical step for the State to take since it already fully funded the Court of Appeals, the Court of Special Appeals and the District Court. The proponents also considered the State a more reliable source of funding than the subdivisions. Opponents suggested that such a change would not produce a better judicial system in a reasonably cost-effective fashion. In their opinion, centralization would tend to stifle local initiatives and expand the State bureaucracy.

The Clerks of the Court Task Force (1984) – Found significant disparity in functions among clerks. The system of funding clerks provided neither adequate support to some clerks nor adequate budgetary oversight. In 1986, the Constitution was amended to make funding of the Circuit Court clerks' offices a direct State responsibility. In a 1990 constitutional amendment, these cuts were transferred from the Comptroller's Office to the judicial budget and operation of these offices made subject to the rules of the Court of Appeals. Other technical aspects of clerks funding were revised as well.

The Commission to Study State Assumption of the Circuit Courts (The Maloney Commission, 1995) – Did not recommend that the State assume full responsibility for the Circuit Courts, citing the approximately $66 million price tag for such a change. Instead, the body supported State funding for rental of court facilities, juror compensation, interpreter services, court security costs, a statewide court master system, and technological advances in the Administrative Office of the Courts.

APPENDIX 4

ORAL TESTIMONY - HEARINGS

GROUPS

Administrative Office of the Courts

Baltimore Bar Library

Children of Separation and Divorce Center

Children Rights Council

Circuit Court Judges Association

Consulting Engineers Council of Maryland

Foster Care Grant Committee

Foster Care Review Board

Health Claims Arbitration Office

Hispanic Bar Association

House of Ruth

Law Librarians of Maryland

League of Women Voters

Library Company of the Baltimore Bar

Lockheed Martin
Child Support Enforcement Program

Maryland Association of Counties

Maryland Association of Defense Trial Counsel

Maryland Chamber of Commerce

Maryland Circuit Court Clerks Association

Maryland Coalition for Civil Justice

Maryland Criminal Defense Attorney's Association

Maryland Hispanic Bar Association

Maryland Judicial Conference

Maryland Register of Wills Association

Maryland State Bar Association
Section of Estate and Trust Law

Maryland State Bar Association
Section of Family and Juvenile Law

Maryland State Law Library

Maryland Trial Lawyers Association

Montgomery County Bar Association
Administration Committee

Motor Vehicle Administration
Driver Records Section

National Center for State Courts

Orphans' Court Judges

United Seniors of Maryland

ORAL TESTIMONY - HEARINGS

INDIVIDUALS

Don Allensworth

Judge George Ames
Dorchester County Orphans' Court

Judge Edward Angeletti

Barbara Babb

Chief Judge Norma Lee Barkley
Wicomico County Orphans' Court

Louise Beauregard

Judge Frederick Bower
District Court

Judge Melissa Pollitt Bright
Wicomico County Orphans' Court

Henry Brown
Washington County Health Department

Patricia Brown, M.D.

Leslie Ann Brownrigg

Melvin Caldwell, Jr., Esq.

Justice Dale R. Cathell
Court of Special Appeals

Daniel Clements, Esq.

Mary Conaway
Baltimore City Register of Wills

Earnest Cornbrooks, Esq.

L. R. Cregger

Harold Curry

Russell Dashiell, Esq.

Judge John Fader
Baltimore County Circuit Court

Dorothy Fait

Jay Fifer, Esq.

Virginia Fifer
Frederick County Register of Wills

J. T. Fishback

Lawrence Ford

Marsden Furlow

Mark Gelwicks
Frederick County Register of Wills

Carl Gorden, Esq.

Judge Frank Kratovil
Chief Administrative Judge
Prince George's County District Court

Karen Lemon
Wicomico County Register of Wills

Doris Lewis
Dorchester County Register of Wills

Judge Jim May
Frederick County Orphans' Court

Judge Daniel Moylan
Washington County Circuit Court

Joanne O'Brien
Prince George's County Register of Wills

Herbert O'Conner, Esq.

Margaret H. Phillips
Calvert County Register of Wills

Paul Phillips, Esq.

Judge Steven I. Platt for Judge Missouri
Prince George's County Circuit Court Administrative Judge

Velvet Riser

Thomas K. Sawyer

Ann Shaw, Esq.

Judge Dorsey Shipley
Frederick County Orphans' Court

WRITTEN TESTIMONY AND SUBMISSIONS

GROUPS

Bar Association of Montgomery County, Maryland

Consulting Engineers Council of Maryland

Department of Health and Human Services, Montgomery County

Lockheed Martin
Government Relations and Family Services

Maryland Circuit Court Clerks Association

Maryland Circuit Court Judges Association

Maryland State Bar Association
Estates and Trusts Section

Maryland State Law Library

Maryland Sheriffs' Association

Montgomery County Commission for Women

Montgomery County Criminal Justice Coordinating Commission

Montgomery County Juvenile Court Committee

National Federation of the Blind of Maryland

National Organization for Women (NOW), Montgomery County Chapter

Wicomico County Bar Association

WRITTEN TESTIMONY AND SUBMISSIONS

INDIVIDUALS

James V. Aluisi, Sheriff
Prince George's County

Barbara A. Babb

David B. Baker

Carolyn Becker, Esq.

Leslie Berenczy

Barbara Y. Blue

Glenn C. Boerrigter

Felicia T. Boston

Leslie Brownrigg

David L. Cahn, Esq.

Rosanne Cangialosi

Philip T. Caroom
Master in Chancery, Anne Arundel County

Mary W. Conaway
Register of Wills, Baltimore City

Anthony J. Covacevich, Esq.

Martha S. Cukor, Esq.

Ellen W. Curry

Jay D. Dackman, Esq.

D. Warren Donohue
Judge, Circuit Court for Montgomery County

Alfred Ellis

John F. Fader II
Judge, Circuit Court for Baltimore County

Brian E. Frosh
State Senator

Thomas W. Furlow, Jr., M.D.

Alan Garfinkel, Esq.

Faye Gaskin
Judicial Staff Specialist

Shawn R. Harby

H. Michael Hickson, Esq.

Richard L. Hillman

Barbara Hoffman

David Hogben, Ph.D.

Joan Hough-Schelling

Lenna D. Kennedy

Jerry T. Lambdin, Esq.

Frank G. Lidinsky, Esq.

Gerald McAllen

Ellicott McConnell, Ph.D.

Anthony R. Mignini, Esq.

Charles J. Muskin, Esq.

P. Douglas Niblett
Mayor of Delmar, Maryland

Herbert R. O'Conor, III

Bryan H. Potts, Esq.

Frederick A. Rabb, Esq.

Maryan Ramey, Esq.

Robert N. Ray

E. Dean W. Richardson

Milton Rifkin
USA Ret.

Velvet Rizer

Stuart Jay Robinson, Esq.

Stephen R. Rourke, Esq.

Edward B. Rybczynski, Esq.

John Sica, Esq.

Robert N. Sayler

Marvin H. Smith

Frank W. Soltis

Norman R. Stone, III, Esq.

James R. Trader

Glen H. Tschirgi, Esq.

Tony Vaughn

Nomiki B. Weitzel, Esq.

APPENDIX 5

TABLE 1
DESCRIPTIVE DATA FOR LOCAL FUNDS BUDGETED FOR THE CIRCUIT COURTS AND THE TOTAL LOCAL BUDGET
FISCAL YEAR 1995 - FISCAL YEAR 1996

	Total Local Budget FY 1995	Local Funds Budgeted for Circuit Courts FY 1995	Percent of Local Funds Budgeted for Circuit Courts FY 1995	Percent Difference Between Local Funds FY 1995-FY 1996	Total Local Budget FY 1996	Local Funds Budgeted for Circuit Courts FY 1996	Percent of Local Funds Budgeted for Circuit Courts FY 1996
Dorchester	28,034,095.00	232,175.00	0.83	0.95	30,161,710.00	234,370.00	0.78
Somerset	12,818,001.00	145,721.00	1.14	5.05	13,611,749.00	153,077.00	1.12
Wicomico	66,783,173.00	481,325.00	0.72	-0.23	65,014,035.00	480,226.00	0.74
Worcester	63,496,146.00	298,615.00	0.47	2.61	62,511,712.00	306,400.00	0.49
FIRST CIRCUIT TOTAL	171,131,415.00	1,157,836.00	0.68	1.40	171,299,206.00	1,174,073.00	0.69
Caroline	21,805,893.00	140,863.00	0.65	0.00	22,023,360.00	140,863.00	0.64
Cecil	82,477,796.00	499,289.00	0.61	16.82	89,748,899.00	583,275.00	0.65
Kent	20,367,748.00	140,063.00	0.69	0.85	21,137,822.00	141,253.00	0.67
Queen Anne's	43,525,626.00	148,227.00	0.34	0.00	44,615,270.00	148,227.00	0.33
Talbot	31,126,828.00	161,282.00	0.52	-1.62	32,428,000.00	158,665.00	0.49
SECOND CIRCUIT TOTAL	199,303,891.00	1,089,724.00	0.55	7.58	209,953,351.00	1,172,283.00	0.56
Baltimore	1,285,590,294.00	6,009,129.00	0.47	4.25	1,318,393,189.00	6,264,647.00	0.48
Harford	222,397,938.00	1,598,669.00	0.72	4.69	232,139,796.00	1,673,710.00	0.72
THIRD CIRCUIT TOTAL	1,507,988,232.00	7,607,798.00	0.50	4.35	1,550,532,985.00	7,938,357.00	0.51
Allegany	66,535,896.00	344,219.00	0.52	0.91	73,115,054.00	347,356.00	0.48
Garrett	30,486,760.00	179,652.00	0.59	5.19	27,497,850.00	188,979.00	0.69
Washington	84,533,709.00	572,080.00	0.68	-2.43	87,534,051.00	558,152.00	0.64
FOURTH CIRCUIT TOTAL	181,556,365.00	1,095,951.00	0.60	-0.13	188,146,955.00	1,094,487.00	0.58
Anne Arundel	869,191,882.00	5,455,178.00	0.63	4.41	895,849,217.00	5,695,949.00	0.64
Carroll	144,064,330.00	1,296,292.00	0.90	8.14	155,548,980.00	1,401,802.00	0.90
Howard	391,344,579.00	1,517,797.00	0.39	7.28	445,967,410.00	1,628,341.00	0.37
FIFTH CIRCUIT TOTAL	1,404,600,791.00	8,269,267.00	0.59	5.52	1,497,365,607.00	8,726,092.00	0.58
Frederick	202,348,519.00	530,781.00	0.26	-0.29	213,048,485.00	529,257.00	0.25
Montgomery	1,811,958,046.00	5,467,600.00	0.30	3.09	1,905,899,307.00	5,636,740.00	0.30
SIXTH CIRCUIT TOTAL	2,014,306,565.00	5,998,381.00	0.30	2.79	2,118,947,792.00	6,165,997.00	0.29
Calvert	94,399,037.00	545,682.00	0.58	3.33	99,268,719.00	563,831.00	0.57
Charles	160,491,974.00	915,910.00	0.57	7.20	157,986,344.00	981,860.00	0.62
Prince George's	1,765,865,194.00	9,711,808.00	0.55	-7.32	1,783,388,060.00	9,000,505.00	0.50
St. Mary's	75,588,218.00	658,388.00	0.87	8.55	79,410,783.00	714,681.00	0.90
SEVENTH CIRCUIT TOTAL	2,096,344,423.00	11,831,788.00	0.56	-4.83	2,120,053,906.00	11,260,877.00	0.53
Baltimore City	1,803,437,476.00	7,702,274.00	0.43	0.27	1,844,603,852.00	7,723,029.00	0.42
EIGHTH CIRCUIT TOTAL	1,803,437,476.00	7,702,274.00	0.43	0.27	1,844,603,852.00	7,723,029.00	0.42
TOTAL	$9,378,669,158.00	$44,753,019.00	0.48	1.12	$9,700,903,654.00	$45,255,195.00	0.47

NOTE: Local budget figures were taken from the Maryland Association of Counties' report entitled, "Budgets, Tax Rates & Selected Statistics, Fiscal Year 1996."
Local funds budgeted for the circuit courts were taken from the "Circuit Court Personnel and Budget Information - Fiscal Years 1994, 1995, and 1996."

TABLE 2
DESCRIPTIVE DATA FOR LOCAL FUNDS BUDGETED FOR THE CIRCUIT COURTS AND THE TOTAL LOCAL BUDGET
FISCAL YEAR 1993 - FISCAL YEAR 1994

	Total Local Budget FY 1993	Local Funds Budgeted for Circuit Courts FY 1993	Percent of Local Funds Budgeted for Circuit Courts FY 1993	Percent Difference Between Local Funds FY 1993-FY 1994	Total Local Budget FY 1994	Local Funds Budgeted for Circuit Courts FY 1994	Percent of Local Funds Budgeted for Circuit Courts FY 1994
Dorchester	23,107,274.00	219,817.00	0.95	3.58	27,888,134.00	227,695.00	0.82
Somerset	10,159,255.00	83,765.00	0.82	19.44	12,743,003.00	100,050.00	0.79
Wicomico	59,320,514.00	375,343.00	0.63	5.93	59,131,337.00	397,589.00	0.67
Worcester	51,009,960.00	291,505.00	0.57	5.51	58,633,468.00	307,569.00	0.52
FIRST CIRCUIT TOTAL	143,597,003.00	970,430.00	0.68	6.44	158,395,942.00	1,032,903.00	0.65
Caroline	18,184,421.00	114,143.00	0.63	41.25	19,804,238.00	161,225.00	0.81
Cecil	53,547,622.00	455,359.00	0.85	1.12	58,999,168.00	460,452.00	0.78
Kent	16,032,317.00	117,523.00	0.73	8.98	17,804,243.00	128,071.00	0.72
Queen Anne's	38,614,289.00	164,241.00	0.43	-4.85	60,969,021.00	156,268.00	0.26
Talbot	23,737,009.00	149,545.00	0.63	-4.59	28,108,537.00	142,678.00	0.51
SECOND CIRCUIT TOTAL	150,115,658.00	1,000,811.00	0.67	4.78	185,685,207.00	1,048,694.00	0.56
Baltimore	1,149,963,224.00	6,175,131.00	0.54	-9.15	1,196,472,952.00	5,610,256.00	0.47
Harford	191,165,282.00	1,349,040.00	0.71	5.92	221,937,293.00	1,428,867.00	0.64
THIRD CIRCUIT TOTAL	1,341,128,506.00	7,524,171.00	0.56	-6.45	1,418,410,245.00	7,039,123.00	0.50
Allegany	66,203,119.00	249,558.00	0.38	30.41	69,192,580.00	325,445.00	0.47
Garrett	22,434,894.00	144,855.00	0.65	4.92	26,067,600.00	151,989.00	0.58
Washington	83,848,082.00	509,035.00	0.61	5.40	78,910,841.00	536,499.00	0.68
FOURTH CIRCUIT TOTAL	172,486,095.00	903,448.00	0.52	12.23	174,171,021.00	1,013,933.00	0.58
Anne Arundel	767,094,913.00	4,673,744.00	0.61	6.51	806,467,642.00	4,977,893.00	0.62
Carroll	122,357,526.00	1,149,885.00	0.94	4.52	130,246,305.00	1,201,910.00	0.92
Howard	346,893,430.00	1,268,059.00	0.37	4.70	362,423,495.00	1,327,610.00	0.37
FIFTH CIRCUIT TOTAL	1,236,345,869.00	7,091,688.00	0.57	5.86	1,299,137,442.00	7,507,413.00	0.58
Frederick	166,721,663.00	418,352.00	0.25	2.24	183,218,454.00	427,711.00	0.23
Montgomery	1,604,705,857.00	4,553,210.00	0.28	3.55	1,715,170,425.00	4,715,070.00	0.27
SIXTH CIRCUIT TOTAL	1,771,427,520.00	4,971,562.00	0.28	3.44	1,898,388,879.00	5,142,781.00	0.27
Calvert	82,476,800.00	348,809.00	0.42	13.88	88,349,597.00	397,228.00	0.45
Charles	118,708,099.00	531,627.00	0.45	14.64	133,571,752.00	609,435.00	0.46
Prince George's	1,231,880,098.00	7,635,919.00	0.62	15.47	1,608,844,636.00	8,816,921.00	0.55
St. Mary's	68,895,270.00	587,984.00	0.85	7.67	66,166,747.00	633,069.00	0.96
SEVENTH CIRCUIT TOTAL	1,501,960,267.00	9,104,339.00	0.61	14.85	1,896,932,732.00	10,456,653.00	0.55
Baltimore City	1,653,182,358.00	7,563,846.00	0.46	-1.72	1,746,591,219.00	7,433,569.00	0.43
EIGHTH CIRCUIT TOTAL	1,653,182,358.00	7,563,846.00	0.46	-1.72	1,746,591,219.00	7,433,569.00	0.43
TOTAL	$7,970,243,276.00	$39,130,295.00	0.49	3.95	$8,777,712,687.00	$40,675,069.00	0.46

NOTE: Local budget figures were taken from the Maryland Association of Counties' report entitled, "Budgets, Tax Rates & Selected Statistics, Fiscal Year 1996."
Local funds budgeted for the circuit courts were taken from the "Circuit Court Personnel and Budget Information - Fiscal Years 1994, 1995, and 1996."

TABLE 3
RATIO OF TOTAL LOCAL FUNDS BUDGETED FOR THE CIRCUIT COURTS TO THE TOTAL NUMBER OF ORIGINAL FILINGS

	Fiscal Year 1994	Percent Diference Between FY 1994 and FY 1995	Fiscal Year 1995	Percent Diference Between FY 1995 and FY 1996	Fiscal Year 1996
Dorchester	198.69	4.24	207.11	-6.01	194.66
Somerset	78.29	53.71	120.33	0.96	121.49
Wicomico	130.61	23.83	161.74	-11.18	143.65
Worcester	130.49	-1.02	129.16	0.22	129.45
FIRST CIRCUIT TOTAL	132.00	15.11	151.95	-5.47	143.64
Caroline	232.65	-18.18	190.36	-3.01	184.62
Cecil	174.81	-3.21	169.19	11.28	188.27
Kent	223.90	11.51	249.67	8.59	271.12
Queen Anne's	176.97	-5.04	168.06	-11.80	148.23
Talbot	156.79	-0.42	156.13	14.96	179.49
SECOND CIRCUIT TOTAL	184.24	-4.09	176.70	5.88	187.09
Baltimore	266.44	5.47	281.02	1.32	284.73
Harford	273.47	10.15	301.24	4.89	315.97
THIRD CIRCUIT TOTAL	267.84	6.42	285.04	2.02	290.79
Allegany	141.68	12.48	159.36	-7.52	147.37
Garrett	184.01	26.63	233.01	-0.37	232.16
Washington	129.00	5.54	136.14	-5.58	128.55
FOURTH CIRCUIT TOTAL	139.24	10.35	153.65	-5.18	145.68
Anne Arundel	402.06	9.66	440.89	3.36	455.71
Carroll	285.56	11.54	318.50	11.12	353.90
Howard	262.17	9.54	287.19	4.21	299.27
FIFTH CIRCUIT TOTAL	346.70	9.77	380.58	4.69	398.43
Frederick	97.30	17.32	114.15	-3.52	110.12
Montgomery	177.49	60.69	285.22	-6.57	266.49
SIXTH CIRCUIT TOTAL	166.11	51.60	251.82	-5.77	237.29
Calvert	208.52	27.59	266.06	13.51	302.00
Charles	178.72	28.96	230.48	8.29	249.58
Prince George's	328.56	7.78	354.11	-12.62	309.41
St. Mary's	235.34	1.40	238.63	25.62	299.78
SEVENTH CIRCUIT TOTAL	300.13	8.87	326.75	-7.54	302.11
Baltimore City	156.47	15.14	180.16	-13.93	155.07
EIGHTH CIRCUIT TOTAL	156.47	15.14	180.16	-13.93	155.07
TOTAL	$177.19	17.54	$208.28	17.97	$245.70

TABLE 4
RATIO OF THE TOTAL LOCAL FUNDS BUDGETED FOR THE CIRCUIT COURTS
TO THE TOTAL NUMBER OF CIRCUIT COURT JUDGES

	Fiscal Year 1994	Percent Difference Between FY 1994 and 1995	Fiscal Year 1995	Percent Difference Between FY 1995 and 1996	Fiscal Year 1996
Dorchester	151,796.67	1.97	154,783.33	34.00	207,407.08
Somerset	100,050.00	45.65	145,721.00	5.05	153,077.00
Wicomico	159,035.60	21.06	192,530.00	-13.09	167,326.13
Worcester	153,784.50	-2.91	149,307.50	2.61	153,200.00
FIRST CIRCUIT TOTAL	147,557.57	12.10	165,405.14	1.40	167,724.71
Caroline	161,225.00	-12.63	140,863.00	0.00	140,863.00
Cecil	230,226.00	-27.71	166,429.67	16.82	194,425.00
Kent	128,071.00	9.36	140,063.00	0.85	141,253.00
Queen Anne's	156,268.00	-5.15	148,227.00	0.00	148,227.00
Talbot	142,678.00	13.04	161,282.00	-1.62	158,665.00
SECOND CIRCUIT TOTAL	174,782.33	-10.93	155,674.86	7.58	167,469.00
Baltimore	374,017.07	7.11	400,608.60	4.25	417,643.13
Harford	357,216.75	-10.49	319,733.80	4.69	334,742.00
THIRD CIRCUIT TOTAL	370,480.16	2.67	380,389.90	4.35	396,917.85
Allegany	162,722.50	5.77	172,109.50	0.91	173,678.00
Garrett	151,989.00	18.20	179,652.00	5.19	188,979.00
Washington	134,124.75	6.63	143,020.00	-2.43	139,538.00
FOURTH CIRCUIT TOTAL	144,847.57	8.09	156,564.43	-0.13	156,355.29
Anne Arundel	553,099.22	9.59	606,130.89	4.41	632,883.22
Carroll	400,636.67	7.85	432,097.33	8.14	467,267.33
Howard	331,902.50	-8.54	303,559.40	7.28	325,668.20
FIFTH CIRCUIT TOTAL	469,213.31	3.67	486,427.47	5.52	513,299.53
Frederick	142,570.33	-6.93	132,695.25	-0.29	132,314.25
Montgomery	314,338.00	15.96	364,506.67	-3.35	352,296.25
SIXTH CIRCUIT TOTAL	285,710.06	10.50	315,704.26	-2.35	308,299.85
Calvert	198,614.00	37.37	272,841.00	3.33	281,915.50
Charles	203,145.00	12.72	228,977.50	7.20	245,465.00
Prince George's	464,048.47	4.64	485,590.40	-7.32	450,025.25
St. Mary's	316,534.50	4.00	329,194.00	8.55	357,340.50
SEVENTH CIRCUIT TOTAL	402,178.96	5.07	422,563.86	-4.83	402,174.18
Baltimore City	285,906.50	3.61	296,241.31	0.27	297,039.58
EIGHTH CIRCUIT TOTAL	285,906.50	3.61	296,241.31	0.27	297,039.58
TOTAL	$325,400.55	4.99	$341,626.10	0.36	$342,842.39

TABLE 5
TOTAL LOCAL FUNDS BUDGETED FOR THE CIRCUIT COURTS TO THE TOTAL NUMBER OF JUDICIAL OFFICERS

	Fiscal Year 1994	Percent Difference Between FY 1994 and FY 1995	Fiscal Year 1995	Percent Difference Between FY 1995 and FY 1996	Fiscal Year 1996
Dorchester	151,796.67	-4.41	145,109.38	42.93	207,407.08
Somerset	100,050.00	45.65	145,721.00	5.05	153,077.00
Wicomico	159,035.60	21.06	192,530.00	-13.09	167,326.13
Worcester	153,784.50	-2.91	149,307.50	2.61	153,200.00
FIRST CIRCUIT TOTAL	147,557.57	10.52	163,075.49	2.85	167,724.71
Caroline	161,225.00	-12.63	140,863.00	0.00	140,863.00
Cecil	230,226.00	-27.71	166,429.67	16.82	194,425.00
Kent	128,071.00	9.36	140,063.00	0.85	141,253.00
Queen Anne's	156,268.00	-5.15	148,227.00	0.00	148,227.00
Talbot	142,678.00	13.04	161,282.00	-1.62	158,665.00
SECOND CIRCUIT TOTAL	174,782.33	-10.93	155,674.86	7.58	167,469.00
Baltimore	330,015.06	4.65	345,352.24	4.25	360,037.18
Harford	324,742.50	-8.84	296,049.81	4.69	309,946.30
THIRD CIRCUIT TOTAL	328,930.98	1.44	333,675.35	4.35	348,173.55
Allegany	135,602.08	5.77	143,424.58	0.91	144,731.67
Garrett	116,914.62	18.20	138,193.85	-8.83	125,986.00
Washington	134,124.75	6.63	143,020.00	-2.43	139,538.00
FOURTH CIRCUIT TOTAL	131,679.61	8.09	142,331.30	-2.66	138,542.66
Anne Arundel	414,824.42	9.59	454,598.17	4.41	474,662.42
Carroll	286,169.05	7.85	308,640.95	8.14	333,762.38
Howard	221,268.33	-7.30	205,107.70	7.28	220,046.08
FIFTH CIRCUIT TOTAL	338,171.76	3.61	350,392.67	5.52	369,749.66
Frederick	142,570.33	-6.93	132,695.25	-0.29	132,314.25
Montgomery	248,161.58	15.96	287,768.42	-2.06	281,837.00
SIXTH CIRCUIT TOTAL	233,762.77	11.57	260,799.17	-1.49	256,916.54
Calvert	141,867.14	37.37	194,886.43	3.33	201,368.21
Charles	152,358.75	20.23	183,182.00	7.20	196,372.00
Prince George's	352,676.84	5.91	373,531.08	-7.32	346,173.27
St. Mary's	243,488.08	-9.87	219,462.67	8.55	238,227.00
SEVENTH CIRCUIT TOTAL	303,972.47	5.77	321,515.98	-4.83	306,002.09
Baltimore City	200,907.27	-1.70	197,494.21	0.79	199,047.14
EIGHTH CIRCUIT TOTAL	200,907.27	-1.70	197,494.21	0.79	199,047.14
TOTAL	$257,926.88	3.90	$267,982.15	0.58	$269,536.60

APPENDIX 6

DEPARTMENT OF FISCAL SERVICES
MARYLAND GENERAL ASSEMBLY

William S. Ratchford, II
Director

Barbara A. Klein
Deputy Director

July 10, 1996

The Honorable Alan M. Wilner
Chief Judge
Court of Special Appeals of Maryland
Room M-13
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

Dear Judge Wilner:

You asked the Department of Fiscal Services to undertake a fiscal analysis of creating a consolidated Circuit Court, structured in a manner similar to the District Court with a chief judge and a chief clerk.

This report estimates the additional cost of creating such a court, taking into account the resources currently devoted to the circuit courts by the State, Baltimore City, and the counties. It also addresses the judiciary's stated need for additional circuit court judges above the currently authorized number. This is a key to providing an equal level of service across the State, one of the primary reasons for having a consolidated court. The analysis is consistent with Recommendation No. 3 of the June 6 report of the Committee on Structure and Governance, except that recommendation does not provide for a Chief Clerk. This provision is also in conflict with Recommendation No. 3 of the Committees on Operations and Management.

I would like to recognize the work of Robert C. Bates and Benjamin J. Birge who were primarily responsible for this analysis.

Sincerely,

William S. Ratchford, II
Director

WSR/RCB

Enclosure

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Executive Summary

The circuit courts in Maryland are operated by the counties and Baltimore City. As local offices, each of the courts evolved in different ways to meet the needs of the local conditions. As a result, the 24 circuit courts, unlike the three other courts in Maryland, vary in the level and types of services that are provided.

The circuit courts are currently funded jointly by the State and the subdivisions. The State pays the judges, operates the clerk's offices, and subsidizes automation and interpreters. The counties and Baltimore City pay all other expenses and set the overall budget for the circuit courts.

In 1994 Governor William Donald Schaefer appointed a Commission to Study State Assumption of the Circuit Courts. That commission developed a model to evaluate the relative level of service provided by each circuit court. This model has been modified and refined in this analysis to estimate the operating cost of a unified Circuit Court.

The model predicts that the consolidated Circuit Court would require 45.5 fewer support positions statewide at an annual savings of $1.9 million. This is a net figure as the circuit courts in some counties have more personnel than the model indicates and the circuit courts in other counties have fewer personnel than the model indicates. However, it is unlikely that existing positions would be transferred from one circuit court to another and that positions in the larger jurisdictions would be transferred from one activity to another except through attrition. As a result, a consolidated Circuit Court would intensify efforts to provide additional personnel in counties with lower staffing ratios. This same situation also occurs in proposals for full State funding of the circuit courts and has been referred as providing parity or an "even up" process. Staffing all circuit courts to the minimum provided in the model would require 34.5 positions with an estimated cost of $1.5 million. A chief clerk and chief judge add two positions and $244,000.

This estimate does not include new central staff that may be required, as an indeterminate number would likely be transferred from the Administrative Office of the Courts or the existing circuit courts.

Like the circuit courts, the counties and Baltimore City operate orphans' courts which hear probate cases. In two counties, Harford and Montgomery, the orphans' courts have been combined with the circuit courts. This could be done in other jurisdictions, but the effect on the circuit courts is indeterminate.

This analysis does not make a recommendation as to funding of a consolidated circuit court system, but outlines three possible alternatives: State funding, mandated local funding, or joint funding. In any case, additional State funding will be necessary.

Overall, a consolidated Circuit Court would require at least two positions with a cost of $244,000, central staff support some of which would be transferred from the Administrative Office of the Courts, and accelerate the effort to bring the personnel staffing in all circuit courts to some minimum standard. Based on the model, this could require 36.5 additional positions at a cost of $1.7 million, reduced to the extent that existing positions in excess of minimum staffing ratios were used for this purpose.

Fiscal Effect of Circuit Court Consolidation

The Commission on the Future of the Maryland Courts Committee on Structure and Governance requested that the Department of Fiscal Services provide an estimate of the cost of consolidating the 24 circuit courts into a single unified Circuit Court, using the District Court as a model. The analysis presented below describes the existing state of the circuit courts, the model that the Department of Fiscal Services used to estimate the cost of a consolidated court, and provides an estimate of the cost of a unified court. While this analysis does not make a recommendation as to funding of a consolidated court, broad options are outlined.

Circuit Court Practices Vary Between Jurisdictions

Circuit courts are not a single court such as the District Court. The circuit courts were created at the county level and are a reflection of the jurisdiction they serve. County governments contribute funds and the courthouse buildings. The people who work in the circuit courts, the court reporters, judges, secretaries, and law clerks are employed by the county and are accustomed to the local practices. The clerks of the court are elected and must be sensitive to the demands of the public. The Governor appoints judges from a pool of eligible attorneys practicing locally or District Court judges who then stand for election (or are elected directly) in that jurisdiction.

The General Assembly contributes to the independence of the circuit courts. Each year, the legislature enacts laws that are specific to an individual county, enhancing the distinctions. Often the local bar or other association contacts the county delegation to sponsor a bill affecting the county circuit court.

Although practices may differ between circuits and between counties, the courts provide the same judicial services and generally hear the same types of cases. How they hear those cases, who hears them, and the administrative processes used to arrive at that point are where the differences lie. This section cites a few examples of how practices vary.

Jurisdiction

Jurisdiction of the circuit court is consistent, except with respect to juvenile cases and orphans' courts. Juvenile cases are heard in the county circuit courts throughout the State except in one county. Montgomery County tries juvenile cases in the District Court. Also, eight counties have masters presiding over juvenile

hearings while 16 do not. The larger counties (except Montgomery) generally have masters presiding over juvenile court and smaller counties (except St. Mary's) do not. The circuit court hears orphans' court cases in only two counties: Harford and Montgomery. Elsewhere the orphans' courts operate as independent entities.

Juries

The terms of service on a jury vary between jurisdictions. In most cases, the courts notify potential jurors of the days in which the court may call them into service. This period may be as short as two weeks (Anne Arundel County), as long as seven months (Caroline and Queen Anne's) or be a one day/one trial service. During this time the court instructs the potential juror to call the court the night before to find out if they will require their services the following day. Some courts require a phone call each night (if the period is short) or on certain days (if the period is longer). The one day/one trial format is practiced in Baltimore and Montgomery counties and Baltimore City. It provides that a potential juror will sit through only one day of waiting to be called for a trial or be dismissed.

Anne Arundel and Baltimore counties and Baltimore City have provisions for instant jury trials. These result from requests by defendants in the District Court to have their case heard by a jury. Instant jury trials expedite the justice process and reduce the number of trials in those circuit courts where it is practiced. However, courts can only conduct instant jury trials in jurisdictions where sufficient resources are available such as court rooms with jury boxes and a large enough pool of potential jurors.

Mediation

Courts administer mediation differently in each jurisdiction. In some smaller jurisdictions the judge will require mediation before it holds a civil trial. Retired judges conduct these mediation attempts. Some jurisdictions refer mediation to other State agencies. In larger jurisdictions, the effort is delegated to civil masters.

Court Administration

In some counties the clerks of the circuit courts have responsibility for administrative activities in support of the court that in other counties are the responsibility of individuals reporting to the administrative judge of the court. Examples include assignments, jury selection and administration.

Data Processing

To create a Circuit Court based on the District Court model, it would be essential to have an automation system which is uniform in all 24 jurisdictions. The ability of the District Court to function as a single State agency is based, in large part, on the standardization of charging defendants and other court rules. The District Court's automation system is a single, centrally administered system. All District Courtrooms are equipped with this system as a general component of operations making the charging process, docketing, and other record keeping more efficient. With the volume of cases entering the District Court each year, it is unlikely that the court could operate within existing resources without a central automation system.

The circuit courts have attempted to implement a uniform automation system over the last six years. Automation first entered the circuit courts in 1990 when Prince George's and Montgomery counties developed systems independently. The judiciary implemented the first State-funded automation system in the Baltimore City Circuit Court. With these jurisdictions utilizing separate systems, the judiciary then set about to bring the other 21 circuit courts onto a single system. The judiciary contracted to implement the Computer-supported Operating Recording and Tracking Systems (CORTS) in Anne Arundel and Howard counties on a pilot basis at a cost of $7 million. However, the system proved ineffective and was plagued by a variety of programming problems, including an inability to interface with the District Court. Initial implementation, maintenance, and repair costs were approximately $1.7 million through fiscal 1995. Since then, maintenance costs have been absorbed in the judiciary's budget. The system has not expanded beyond those two counties.

The judiciary is currently working to automate all circuit courts on the same system. The system would include case management functions, jury management, scheduling, accounting, and record maintenance. The Baltimore County Circuit Court, the largest jurisdiction without a significant level of automation, was chosen as the pilot location for the new system. Expansion into the other circuit courts would involve converting the State-operated Baltimore City system, dissolution of the CORTS system, and either modifying or replacing the systems independently operated in Prince George's and Montgomery counties. The cost of implementation should be less in the counties with automation since much of the hardware and operating personnel already exist. When the judiciary initially made plans to implement the system, the cost was estimated at $7.3 million. The plan has recently been expanded to include changes such as the ability to interface with the State's Attorneys' offices. At the time this report was prepared, the Administrative Office of the Courts did not have a revised cost estimate. The new cost will not include hardware purchases, only additional programming.

Documents and Fees

Like any government function, involvement with judicial proceedings often requires the processing of forms that provide needed information to the court. In most cases, the court designs information forms including information the administrative judge or clerk of the jurisdiction deems necessary. Though most of the information requested in the documents is the same, attempts to create uniform forms have only begun recently. The Administrative Office of the Courts has developed forms for statewide use in the circuit courts. Some jurisdictions modify these forms before using them.

Traditionally, each circuit court had its own fee structure independently set for certain judicial actions. Recently, however, fees have become more uniform statewide. The State court administrator is authorized to set fees subject to approval of the Board of Public Works. In 1994, the General Assembly enacted Chapter 642 that made uniform many of the fees levied by the circuit courts. One fee not included in this legislation is a plat copy fee, a major source of revenues. These are still set locally.

The Model Circuit Court

In 1994 the Governor's Commission to Study State Assumption of the Circuit Courts developed a model of a consolidated Circuit Court. That model used proxies to measure demand for services (caseload) and level of services provided (staffing). The model estimated that to bring all jurisdictions to the service (staff) level provided in the five largest jurisdictions would require 113 additional positions statewide at an estimated cost of $3.1 million annually.

Although fundamental problems exist with estimating demand and service through these proxies, these are the best available data for making comparisons across jurisdictions. A few calculations in both the Governor's Commission report and the analysis below are based on the number of judges, but the caseload affects the number of judges in a given jurisdiction.

While personnel costs do not capture the full cost of a court's operation they do represent the major portion of a court's budget. In the District Court, personnel costs, including benefits, account for 73% of the total appropriation. Operating expenditures are determined more by the caseload and number of judges, than by the size of staff. As the model does not anticipate significant change in the jurisdiction of a consolidated Circuit Court, no dramatic change in caseload is expected. With no

significant change in caseload, operating costs should not increase significantly beyond the increase in personnel.

Current Analysis Differs from the Governor's Commission Model

The Department of Fiscal Services has refined the Governor's Commission's estimates and used more recent caseload and employment data. The analysis presented below differs from the Governor's Commission estimate in several important ways:

- The Governor's Commission chose as its standard the average number of positions per case filing in the five largest jurisdictions (Anne Arundel, Baltimore, Montgomery, and Prince George's counties and Baltimore City). The analysis presented below uses a statewide average, resulting in significantly lower costs.

- The Governor's Commission used total caseload statistics for estimating demand. The estimate below is based on different components of the caseload. For example, the jury commissioner and staff calculations are based on the number of jury trials, not on the total caseload.

- The Governor's Commission estimated salaries based on an average salary for each jurisdiction, while the analysis below estimates salaries based on the job category.

- The Governor's Commission did not account for known discrepancies in the data among the counties. For example, the District Court hears Montgomery County juvenile cases, not the circuit court. The analysis below accounts for known discrepancies in the data.

Additional Central Staff

The District Court has 54 central staff positions with a total payroll of $2.2 million annually. While it is assumed that a unified Circuit Court would also require a central staff, some of these positions would come from the existing Administrative Office of the Courts, some would come from the existing category of "other" staff, and some new staff would be hired. In order to avoid double counting of existing positions, these positions have not been included in the total, but some additional staff may be necessary.

Cost Estimate for Consolidation of the Circuit Courts

The single most important advantage to consolidation of the circuit courts is the ability to provide a uniform level of service to participants in the judicial system. This is the core idea of equal protection of the law, which the courts are expected to enforce and maintain.

The biggest fiscal factor in unification of the circuit courts is the difference between the resources each jurisdiction provides for its circuit court and the demands placed on that court by the caseload. These differences are difficult to quantify, as cost accounting varies among the jurisdictions. For example, some jurisdictions attribute housekeeping service costs to operating units such as the court, and others do not make these allocations. In addition, court functions performed by the clerks in some jurisdictions are done by local staff in others. Nevertheless, it is apparent from the data that some jurisdictions, such as Carroll County, devote more resources to the circuit court than others, such as Frederick County. For analytical purposes, service is considered a function of staffing levels in relation to the demands placed on the circuit courts by caseload.

Model Estimates Need for 45.5 Fewer Circuit Court Employees, But More Staff May be Required

The analysis performed by the Department of Fiscal Services shows that unification of the circuit courts could save $1.4 million annually in salaries for 45.5 fewer net positions statewide. Assuming a fringe benefit rate of 33%, the total savings rises to $1.9 million. This estimate assumes the court would redeploy existing staff among jurisdictions to balance work loads, and eliminate 61 positions in categories that have a statewide surplus.

The model shows a surplus of 61 employees in four categories: judges' secretaries, masters and staff, assignment offices, and "other." The first three categories have a total surplus of 16 positions. Assuming that these positions would be eliminated through attrition, and thus would not become immediately vacant, costs of $763,000 for those positions would continue for an indeterminate amount of time.

The remaining 45 positions to be eliminated are in a miscellaneous category of employees. Eight jurisdictions would lose a total of 54.5 positions. This reduction is offset by a need for 9.5 positions in the remaining jurisdictions. The five largest jurisdictions (Anne Arundel, Baltimore, Montgomery, and Prince George's counties and Baltimore City) would lose 46.5 positions. Due to the high case volume in these

jurisdictions, it is unlikely that these positions could be eliminated without a significant detrimental effect on the courts. To avoid this effect on these jurisdictions, avoid layoffs of eight people in three other jurisdictions, and provide the 9.5 additional positions statewide would require 64 positions more than the model shows. With fringe benefits, the annual cost would be $2.6 million. As discussed below, however, some of these positions would likely be transferred to the central administration of the unified Circuit Court.

Salaries for the Chief Judge and Chief Clerk of the Circuit Court

The Chief Judge of the District Court's salary is set at the same level as an associate judge of the Court of Special Appeals, currently $97,300. As the head of a larger and more diverse court, the chief judge of a unified Circuit Court would presumably receive a higher salary. It is assumed the Chief Judge of the Circuit Court would receive the same salary as an associate judge of the Court of Appeals, or $104,100. With fringe benefits this position would require $139,900.

The Chief Clerk of the District Court receives a salary roughly 82% of the Chief Judge. Assuming this ratio for a unified Circuit Court, the Chief Clerk would receive an annual salary of $85,400. This is roughly a grade 8 on the executive pay plan. With fringe benefits, the total expenditure for this position would be $104,100.

With fringe benefits, these positions would add $244,000 to the total cost of the unified Circuit Court.

Adjusted Model Shows Need for 36.5 New Positions

The model's predicted reduction of 45.5 positions is thus adjusted, resulting in a need for 36.5 positions statewide. This adjustment includes an assumption that existing personnel will not be terminated (24 positions), no reduction in the number of "other" staff in large jurisdictions and hiring of similar staff where needed (64 positions), and new administrative positions (Chief Judge and Chief Clerk). The 24 positions included to avoid layoffs could be phased out through attrition, resulting in a net increase of 17.5 permanent positions statewide. It is noted that a consolidated Circuit Court may result in some economies of scale, whether in personnel or in operating costs. These types of savings cannot be quantified and generally are achieved over a period of time.

Judiciary Has Stated Need for Additional Circuit Court Judges

The judiciary has certified a need for an additional 12.4 judges statewide. This would require an additional $3.9 million annually. During the 1996 General Assembly session, four additional judgeships were created in Baltimore City, reducing the total statewide need to 8.4. Each judge requires four support positions: a secretary, law clerk, courtroom clerk, and court reporter. As part-time judges are not appointed, the number of new judges required has been rounded down to eight. Including the judges, this would require 40 positions at an annual cost of $2.5 million. These judges and staff were not included in the total, as there is a current need for the positions, regardless of whether the circuit courts are consolidated.

Facilities Costs

The Governor's Commission to Study State Assumption of the Circuit Courts considered the cost of State assumption of existing circuit court facilities, including the transfer of some buildings used exclusively for court purposes, renting space in buildings that serve multiple functions, and capital improvement needs of existing circuit courthouses. The Commission found that the age, size, and conditions of the existing court facilities varied widely. In addition, the local jurisdictions had plans for $200 million in capital improvements to court facilities over the next five years. This total is approximately 20% of the budget for state-owned capital improvement over the same period. In addition, the Commission estimated annual operating costs for the facilities would exceed $19 million annually. Because of this significant cost, the Commission did not recommend State assumption of the capital and maintenance costs of circuit court facilities.

Expanding staff and services would presumably increase the amount of space required by the Circuit Court. Addition of 8.4 additional judges would likely require construction of additional courtrooms. This expenditure would depend on the existing facilities and the location of any new judgeships.

It is noted that the need for circuit court facilities will occur whether there is a consolidated court or the courts continue in the current structure. The space needs for the central staff would be minimal.

Orphans' Courts

Twenty-two jurisdictions have orphans' courts, with elected judges. In two jurisdictions, Harford and Montgomery counties, the circuit court sits as an orphans' court. The costs of the orphans' courts are paid by the 21 counties and Baltimore City. The total amount budgeted for orphans' courts in fiscal 1996 was $1.0 million. The orphans' courts generally are not full-time courts. Consolidating the workload of these courts with the circuit courts would affect the circuit courts, particularly the four large jurisdictions that have orphans' courts. It may be necessary to adjust the number of judges in some jurisdictions to accommodate the additional workload or to use masters for this work. The Registers of Wills provide administrative support to the orphans' courts, process estates, and collect inheritance taxes and probate fees. If the functions of the orphans' courts were incorporated in a consolidated Circuit Court, the work of the Registers of Wills would have to be coordinated with the work of the court.

Funding Options

This analysis does not make a recommendation as to whether circuit court funding would continue to come from both local and State governments or funded wholly by the State. The source of funding, however, will affect the operational efficiency and cost of a unified Circuit Court. This analysis assumes the consolidated court could transfer staff performing the same function between jurisdictions, depending on the relative needs of each. For example, while the analysis suggests the State overall needs one more court reporter, five jurisdictions need at least one additional half-time reporter, while seven jurisdictions show a surplus of at least one half-time reporter. It is unlikely that Carroll County, with a surplus of two court reporters, would be willing to fund the positions if the court transferred them to Frederick County, which has a deficit of four court reporters. Permitting a jurisdiction to fund positions beyond the relative need could defeat the purpose of court unification.

There are several ways that funding of a unified Circuit Court could be accomplished. The easiest method to administer would be State assumption of all funding for the new court. This option would require a substantial additional appropriation from the General Assembly at a time when demands on the State's general fund exceed the revenue increase in a period of slow economic growth. The other extreme would be for the State to mandate a level of service that each subdivision must provide, requiring each subdivision to appropriate sufficient resources. This plan would face significant opposition from the 17 subdivisions that would be required to increase appropriations, and could even face opposition from the other seven who would continue to be required to fund court operations but may not be permitted to

provide a level of service the local government feels is required. Funding could also be provided through gradual assumption of certain functions by the State, by grants to the locals, or by some other cooperative means. This is being done under the current structure of the circuit courts as the State reimburses subdivisions for some interpreter costs and provides funds for masters. This also requires additional appropriations from the State, but phases in only selected functions gradually.

Regardless of how overall funding will be provided, additional support will be required from the State for the Chief Judge, Chief Clerk, and any other central office personnel. The additional funds required for these positions could be offset to the extent of reassignment of existing personnel from the Administrative Office of the Courts.

Status of Clerks of the Courts

Creation of a consolidated Circuit Court with a Chief Clerk would raise the issue as to the elective status of the existing clerks of the circuit courts. It would be difficult to implement the potential savings from a consolidated court with the assignment and allocation of personnel based on workload unless the Chief Clerk had this ability. Although the judiciary has increased the degree of uniformity with respect to the clerks' offices, more would be required under a consolidated court. Although there would be a clerk in each county, the continuation of the elective status may impede implementation of the consolidated court. This issue needs to be addressed if a consolidated Circuit Court was created.

Conclusion

The costs of the circuit courts will increase whether there is a consolidated court or the courts continue in the current structure. Additional costs which may be expected include $1.2 million for additional judges authorized in 1996, $2.5 million for eight additional judgeships currently required, and $7.3 million in planned one-time automation costs. These costs would be incurred regardless of whether or not consolidation is implemented.

A consolidated Circuit Court would require at least two positions with a cost of $244,000 and central staff support, some of which would be transferred from the Administrative Office of the Courts. It would accelerate the effort to bring the personnel staffing in all circuit courts to some minimum standard. Based on the model this could require 34.5 additional positions at a cost of $1.5 million. This could be reduced to the extent that existing positions in excess of minimum staffing ratios were

utilized for this purpose. The analysis assumes a consolidated Circuit Court would have the authority to transfer positions between circuit courts, that no major changes in jurisdiction would impact the caseload of the court, there would be no major expansion of programs or services, and no existing employees would be terminated.

Appendix A: Assumptions Used in Model

Court Reporters

The model assumes that Baltimore City and Montgomery County, which have video or audio recording equipment in the courtrooms would not need additional court reporting staff. The average number of court reporters in the State, excluding those jurisdictions, is 1.1 reporters for each judge.

Law Clerks

One law clerk position is assigned with each judge position.

Judges' Secretaries

One secretary position is assigned with each judge position.

Masters and Staff

Masters, where they are used, perform a variety of tasks. Most of the masters are used in juvenile and domestic relations cases, so the analysis estimates the number of masters based on the number of these cases within each jurisdiction. Because the Montgomery County Circuit Court does not hear juvenile cases, the analysis excludes juvenile cases from the calculation in Montgomery County.

Jury Commissioner and Staff

In the 13 jurisdictions where the clerk performs this function exclusively, the analysis assumes no additional staff. In the remaining 11 jurisdictions, one position is estimated for every 76 jury trials.

Administrative Staff

In the seven jurisdictions where a State agency or the clerk performs court administration duties, the analysis assumes no additional staff. In the remaining 17 jurisdictions, one administrative position is assumed for every 7,600 cases.

Assignment Office

In the nine jurisdictions where assignments are made by the clerk's office or responsibility for assignments are split between the clerk and a local office, existing staff is assumed to be adequate. In the other 15 jurisdictions, one position is assumed for every 4,000 cases.

Other Staff

This category is a mixture of various positions. Existing positions include secretaries not assigned to a particular function or judge, settlement office staff, custody and mediation staff, differentiated case management staff, grand jury reporters, community service coordinators, programmers, docket officers, bailiff supervisor, family law employees (in addition to domestic relations staff) trust clerks, investigators, bail bond regulators, and alcohol assessment unit employees. Most of the existing positions in this category (66 of 76) are in the five largest jurisdictions. One position is allocated for every 2,700 cases filed.

Appendix B: Fiscal 1995 Caseload Data

	# of Judges	Domestic Relations	Juvenile Causes	Jury Trials	Total Caseload
Allegany	2	989	265	53	2,680
Anne Arundel	9	8,755	4,015	320	24,053
Baltimore	15	7,892	4,628	333	26,810
Baltimore City	26	9,549	12,398	610	59,476
Calvert	2	1,521	592	69	3,752
Caroline	1	945	156	20	1,541
Carroll	3	1,996	789	88	6,143
Cecil	4	1,877	678	74	4,718
Charles	3	3,496	816	84	6,785
Dorchester	1	802	263	46	1,901
Frederick	4	2,137	911	64	5,356
Garrett	1	653	140	10	1,152
Harford	5	2,679	1,023	76	7,300
Howard	5	2,328	1,287	116	8,080
Kent	1	832	92	16	1,324
Montgomery	16	8,451	7,614	543	33,771
Prince George's	20	20,065	7,478	389	44,664
Queen Anne's	1	567	227	23	1,357
Somerset	1	1,074	220	25	2,051
St. Mary's	2	1,977	495	50	4,097
Talbot	1	807	300	44	1,810
Washington	4	2,562	778	68	6,374
Wicomico	3	1,531	332	101	3,924
Worcester	2	1,008	369	52	3,203
Total	**132**	**84,493**	**45,866**	**3,274**	**262,322**

Prepared by: Department of Fiscal Services, June 1996
Source: Annual Report of the Maryland Judiciary 1994-1995

Appendix C: Personnel Data & Estimated Need

	Court Reporters			Law Clerks			Judges' Secretaries			Masters & Staff			Jury Commissioner & S			Administrative Staff			Assignment			Other			Personnel
	Have	Need	Diff	Have	Need	Diff	Have	Need	Diff	Have	Need	Diff	Have	Need	Diff	Have	Need	Diff	Have	Need	Diff	Have	Need	Diff	Difference
Allegany	1	2.0	1	1	2	1	2	2	0	2	0.5	-1.5	0	0	0	0	0	0	1	0.5	-0.5	0	0.5	0.5	-1
Anne Arundel	8	9.5	1.5	9	9	0	9	9.5	0.5	6	7.5	1.5	3	4	1	2	3	1	3	6	3	5	3.5	-1.5	11
Baltimore	17	16.0	-1	15	15	0	15	15.5	0.5	2	7.5	5.5	5	4.5	-0.5	2	3.5	2	4	4	0	11	3	-8	10
Baltimore City	21	21.0	0	28	26	-2	28	27	-1	29	13	-16	0	0	0	8	8	0	0	0	0	23	3.5	-19.5	-18.5
Calvert	2	2.0	0	2	2	0	2	2	0	1.8	1	-1	0	0	0	0	0.5	1	0.6	1	0.5	0	0.5	0.5	2
Caroline	1.6	1.0	-0.5	0	1	1	1	1	0	0	0.5	0.5	0	0	0	0	0	0	0	0.5	0.5	0	0.5	0.5	2
Carroll	5	3.0	-2	3	3	0	3	3	0	2	1.5	-0.5	1	1	0	1	1	0	2	1.5	-0.5	3	0.5	-2.5	-17
Cecil	4	4.0	0	1	4	3	3	4	1	0	1.5	1.5	1	1	0	0	0.5	1	0	1	1	2	0.5	-1.5	8
Charles	4	3.0	-1	4	3	-1	4	3	-1	2.7	2.5	0	0	0	0	0	1	1	1.5	1.5	0	0	1.5	1.5	-2
Dorchester	1.5	1.0	-0.5	1	1	0	1	1	0	0	0.5	0.5	0.8	0.5	-0.5	0	0	0	0	0	0	0	0.5	0.5	0.5
Frederick	0	4.0	4	2	4	2	3.4	4	0.5	0	2	2	0	0	0	0	0.5	1	4.7	4.7	0	0	1	1	13.5
Garrett	1	1.0	0	0	1	1	1	1	0	0.4	0.5	0	0	0	0	0	0	0	1	0.5	-0.5	0	0	0	0.5
Harford	5	5.5	0.5	6	5	-1	6	5	-1	3.5	2	-1.5	2	1	-1	0	1	1	0	0	0	4.9	1	-4	-5
Howard	7	5.5	-1.5	5	5	0	6	5	-1	2	2	0	1.5	0	-1.5	2	1	-1	0	0	0	0	1	1	0
Kent	1	1.0	0	1	1	0	1	1	0	0	0.5	0.5	0	0	0	0	0	0	0	0	0	0	0.5	0.5	1
Montgomery	6	6.0	0	15	16	1	15	17	2	4	9.5	5.5	4.3	7	2.5	7	4.5	-3	11	8.5	-2.5	13.4	3	-10.5	7
Prince George's	19.5	21.0	1.5	20	20	0	24	21	-3	27	16	-11	0	0	0	8	6	-2	16	11	-5	14.5	7.5	-7	-32.5
Queen Anne's	1	1.0	0	1	1	0	1	1	0	0	0.5	0.5	0	0	0	0	0	0	0	0	0	0	0	0	1.5
Somerset	1	1.0	0	1	1	0	1	1	0	0	1	1	0	0	0	0	0.5	1	0	0.5	0.5	0	0.5	0.5	3.5
St. Mary's	2	2.0	0	2	2	0	2	2	0	3	1.5	-1.5	0	0	0	0	0	0	2	1	-1	0	0.5	0.5	-3.5
Talbot	1	1.0	0	1	1	0	1.6	1	-0.5	0	0.5	0.5	0	0	0	0	0	0	0	0.5	0.5	0	0.5	0.5	0
Washington	5	4.0	-1	2	4	2	4	4	0	0	2	2	0	1	1	0	1	1	1	1.5	0.5	0	1	1	5.5
Wicomico	3	3.0	0	2	3	1	3	3	0	0	1	1	2	1.5	-0.5	0	0.5	1	1	1	0	0	0.5	0.5	4.5
Worcester	2	2.0	0	1	2	1	2	2	0	0	1	1	0	0	0	0	0	0	0	0	0	0	0.5	0.5	3.5
Need			1			9			-3			-9.5			0.5			5			-3.5	76.8	32	-45	-45.5
Avg Salary			32,838			25,812			29,872			39,409			29,872			50,148			30,935			30,172	
Total			32,838			232,307			(89,617)			(374,384)			14,936			250,738			(108,273)			(1,357,719)	(1,399,173)
With fringes			43,674			308,969			(119,191)			(497,931)			19,865			333,482			(144,003)			(1,805,766)	(1,860,900)

Source: Department of Fiscal Service, June 1996
Base Data: Administrative Office of the Courts, April 1996

APPENDIX 7

The following proposal was offered to the Commission by Chief Judge Robert F. Sweeney at the voting session held on September 12, 1996. Because it had not been previously presented or reviewed by either the Committee on Structure and Governance or the Commission, his proposal was tabled. This proposal does not reflect any dissent to our report by Judge Sweeney. At Judge Sweeney's request, we have included his proposal as an Appendix to the Report.

Proposal by District Court Chief Judge Sweeney

to

The Committee on Structure and Governance

of the

Commission on the Future of Maryland Courts

The name of the Administrative Office of the Courts (AOC) should be changed to the Judicial Services Agency (JSA) and its mission limited and redefined.

EXPLANATION

The name of the AOC should be changed to the Judicial Services Agency (JSA), and the role of that entity should be redefined to ensure that it continues to provide necessary services to the appellate and trial courts of Maryland, without encroaching into the administration of those courts.

It is the specific purpose of this recommendation that the services of the JSA not include those activities which are essential to the administration of a trial court, such as the management of personnel, devising case processing procedures, the collection of revenues, or the auditing functions that are so vital to the Chief Judge in every aspect of trial court operations.

More than 40 years ago the Legislature created, by statute, the entity known as the AOC. The obvious purpose of that legislation was to assist the Chief Judge of the Court of Appeals as he then oversaw the smaller judicial system that existed at that time in the State's history. Although the Judicial Branch of government has grown six-fold in that forty-year period from a complement of 43 judges to a complement of 250 judges, the AOC has grown 35 fold from an initial staff of 5 to a present staff of 175.

At no time in the first thirty-five years of the existence of the AOC was that entity actively involved in the administration of any court in this state, and it was not until the Constitutional Amendment of 1990, placing the Circuit Court clerks offices within the ambit of the Chief Judge of the Courts of Appeals, that oversight of those 24 separate offices was placed, almost by default, in the hands of the AOC.

In 1971, when the District Court was created, it was provided by Constitution and statute that it be virtually an autonomous unit within the Judicial Branch, administered, directed and managed by the Chief Judge of that Court, with full accountability to the Chief Judge of the Court of Appeals. Throughout its history the District Court (together with Executive agencies) has been responsible

for the construction of its own facilities and the management of those facilities, the development of case processing techniques, the recruitment, hiring, training and management of its personnel, and the collection of all revenues. The Chief Judge, on the recommendation of the administrative judges, has formulated policies for all court operations, which policies are carried out under the supervision of the Court's Chief Clerk and its 12 administrative clerks. The Chief Judge has had available to him, virtually throughout the history of the court, an audit staff which performs the dual function of assuring that the Court's standardized policies are adhered to as well as assuring the integrity of the collection of $65,000,000 a year in revenues and the expenditure of $70,000,000 a year of budgeted funds.

Consistent with the recommendation of this subcommittee for a consolidated Circuit Court, patterned after the District Court, we believe that the Chief Judge of that court should be given the same authority, responsibility and staffing to administer all operations of that court, including the management and control of the present offices of the Clerks of the Circuit Courts, which should become an integral part of the consolidated Circuit Court.

This proposed division of responsibilities would free up all necessary resources to permit the JSA to provide to all courts certain fundamental services necessary for the operation of those courts. Those services would include, but not necessarily be limited to:

- Producing and maintaining all data processing functions;
- Collecting and analyzing all statistics;
- Training and education of judges;
- Monitoring and staffing the committees of the Maryland Judicial Conference;
- Supervision of interpreter testing, and maintaining lists of qualified interpreters;
- Monitoring and staffing the Judicial Nominating Commissions;
- Monitoring and formulating legislation, together with the Chief Judges of the respective courts;
- Consolidation and submission of the budget for the Judiciary, as prepared by the Chief Judges of the respective trial courts, and approved by the Chief Judge of the Court of Appeals;
- Maintaining all warehouse facilities; and,
- Operating print shop, mail room, and courier services.

Acknowledgments

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Prepared by The Commission on the Future of Maryland Courts
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