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A DISCUSSION OF THE PROPOSED INTERMEDIATE APPELLATE COURT FOR MARYLAND

By JOHN T. JOSEPH* and HENRY R. LORD**

To these tedious hours of daily session [of the Court of Appeals] must succeed afternoons and nights of devoted exertion of mind and continued confinement of body to investigate and compare authorities, confer upon arguments and form satisfactory conclusions.¹

These words, describing the work of the Court of Appeals of Maryland of over a century ago, were enunciated during the Maryland Constitutional Convention of 1851 by Judge Chambers, who has been characterized by Chief Judge Bond as a "strong" Judge of the Court of Appeals during the years 1834 to 1851.² In July last, strikingly similar words were uttered by Judge C. Ferdinand Sybert, who, at the time he resigned from the Court of Appeals said that, "his four and one-half years on the bench have seen 'a continuing and substantial increase in the court's business'"; and he cautioned that, "steps must be taken immediately to reduce the burden now being shouldered by the members of the court'.³

Of course, appellate practice during the Nineteenth Century was vastly dissimilar to what it is today. Before 1850, oral arguments in one case sometimes continued for four or five days,⁴ and in 1867, "a single case could and commonly did consume more than one day of a session."⁵ Judge Bond has recorded that in 1824 William Wirt said of William Pinkney, both leading lawyers of their time:⁶

On a great occasion in Annapolis I heard him speak for three days. On the first day, two or three hours were in his best manner; the rest of that day, and the whole of the following two, were filled up with interminable prolixity of petty commentary upon one or two hundred cases. The Court, bar and everyone were tired to death.

Notwithstanding these great procedural differences, the Judges of the Court of Appeals today find themselves in much the same situation as the Judges of the court in the mid-Nineteenth Century.⁷ The work-

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1. BOND, *THE COURT OF APPEALS OF MARYLAND*, A HISTORY 143 (1928).

2. *Ibid.*

3. *The Sun* (Baltimore), July 15, 1965, p. 48, col. 5.

4. BOND, *op. cit. supra* note 1.

5. *Id.* at 185.

6. *Id.* at 137.

7. The Constitution of 1864 added a fifth judge to the then four-man Court in an attempt to speed up the disposition of pending cases. Bond, *An Introductory Description of the Court of Appeals of Maryland*, 4 Md. L. Rev. 333, 334-35 (1940).

load has reached intolerable proportions.⁸ In an effort to alleviate the problems now facing the court, the Maryland State Bar Association has urged the creation of an intermediate appellate court in Maryland.⁹

The recommendation was conceived and formulated over the past year by the Committee on Judicial Administration of the Maryland State Bar Association, whose Chairman is Richard W. Case of the Baltimore Bar.¹⁰ The Committee had been created in July, 1964, and charged with the sweeping task of keeping "under constant observation and study the operation of the judicial system and the administration of justice, both civil and criminal, throughout the State."¹¹ Shortly after its organization, the Committee decided that the most pressing problem existing in the Maryland judiciary was the mounting caseload in the Court of Appeals. The Committee devised what it regarded as an appropriate solution and its report, including a proposal to establish an intermediate appellate court in Maryland, was presented to the members of the Association in July, 1965 at the 70th Annual Meeting of the Association. The plan was adopted by the Association without a dissenting vote, prompting Judge DeWeese Carter, President of the Association, to remark that, "the unanimous vote in favor of the Committee's recommendation I believe is unique insofar as major proposals before this Association are concerned."¹² The Association authorized the Committee on Judicial Administration: (1) to present to the Maryland Legislative Council "for subsequent enactment by the Maryland Legislature . . . [a] proposed amendment to the Maryland Constitution, establishing a Court of Special Appeals"; and (2) "to prepare appropriate statutes, implementing the proposed amendment . . . and present such statutes to the Bar Association for approval at its Mid-Winter Meeting in 1966."¹³

A detailed presentation of the Committee's recommendation will not be made here. Such an account has been set forth in a pamphlet distributed previously to all members of the Maryland State Bar Association. In essence, the plan prescribes the creation of an intermediate appellate court, to be known as the Court of Special Appeals,¹⁴ designed to handle the adjudication of appeals in almost all criminal cases tried in Maryland.¹⁵ A litigant, whether the defendant or the state, affected adversely by a decision of this court would be afforded the right to seek further review by filing a petition for a writ of certiorari in the Court of Appeals.¹⁶ The new court would sit in Balti-

8. MARYLAND STATE BAR ASSOC., REPORT OF THE COMMITTEE ON JUDICIAL ADMINISTRATION 1-4, June 24, 1965 [hereinafter cited as REPORT].

9. *Id.* at 4.

10. The other members of the Committee are William H. Adkins II, Robert S. Bourbon, Howard C. Bregel, Randall C. Coleman, Oliver R. Guyther, Ralph G. Hoffman, James C. Morton, Jr., William A. Linthicum, Jr., Robert B. Mathias, Charles U. Price, Harrison M. Robertson, Jr., Lawrence F. Rodowsky, Carroll W. Royston and T. Hammond Welsh, Jr. The authors are members of a task force appointed by the Committee to assist it in discharging its responsibilities.

11. MARYLAND STATE BAR ASSOC. CONST. art. XIV-A.

12. *Transcript of Proceedings* (Draft), 70th Annual Meeting of the Maryland State Bar Assoc., July 15, 1965, p. 91.

13. *Id.* at 90-91.

14. REPORT, *op. cit.* *supra* note 8, at 4.

15. *Ibid.*

16. *Ibid.*

more, and would be staffed by five judges selected from as many special appellate judicial circuits of Maryland.¹⁷

A brief review of the history of appellate bodies in Maryland discloses:

[B]y the year 1638 the Governor, as chief justice, and members of his Council, as associate justices, had begun to hold at St. Mary's a general court of the province, called at first the County Court, but after 1642 termed the Provincial Court. It became the chief court of the province, regarded as the local equivalent of the Court of King's Bench.¹⁸

In addition to trial jurisdiction, the Provincial Court heard appeals in cases decided in the various county courts, and the latter aspect of its work came to be very important.¹⁹ After 1692, the Judges of the Provincial Court were appointed without regard to whether or not they were members of the Council.²⁰

Beginning in 1664, appeals were taken from decisions of the Provincial Court to the Upper House of the Assembly, presided over by the Governor and Council.²¹ When convened to hear appeals, the Upper House was sometimes described as sitting as a "Court of Appeals," but at that time the title was descriptive only, the word "court" meaning "any meeting or assemblage."²² Thus began the prototype of Maryland's present Court of Appeals. Thereafter, in 1694 an act of the Assembly provided for the taking of appeals from decisions of the Court of Chancery to the Governor and Council, and from decisions of the Governor and Council to the King and Council in England in cases involving three hundred pounds or more.²³

From the time of the American Revolution to 1806, the Court of Appeals was composed of five judges whose decisions were "final and conclusive, in all cases of appeal, from the General Court [formerly the Provincial Court], Court of Chancery, and Court of Admiralty."²⁴ These judges had appellate duties only.²⁵ Between 1806 and the present time, the membership of the court has varied, the number of judges and their duties having been as follows:²⁶

17. *Ibid.*

18. BOND, *op. cit. supra* note 1, at 3-4.

19. *Id.* at 4.

20. *Ibid.*

21. *Id.* at 5-6. Thus there existed the incongruous situation of appeals being taken from the Provincial Court over which the Governor and Council presided to the Upper House composed of the same Governor and Council.

22. *Id.* at 7.

23. *Id.* at 24-25.

24. *Id.* at 59.

25. BYRD, *THE JUDICIAL PROCESS IN MARYLAND* 53 (1961).

26. *Ibid.* See also Bond, *supra* note 7, at 334-35. On January 1, 1945, what was generally known as the "Bond Plan" came into being, reducing the number of judges of the Court of Appeals from eight to five and vesting the judges with appellate duties only. A number of articles and editorials concerning this plan appeared in the *Maryland Law Review*, and those are listed in Editorial, *Victory For Court of Appeals Reorganization*, 8 MD. L. REV. 226, 236 (1944).

<i>Years</i>	<i>Number of Judges</i>	<i>Duties</i>
1806-1851	6	chief judges of 6 groups of county trial courts
1851-1864	4	appellate judges only
1864-1867	5	appellate judges only
1867-1945	8	chief judges of 7 groups of county trial courts and a judge from Baltimore City
1945-1960	5	appellate judges only
1960-present	7	appellate judges only

A severe backlog of cases existed on the docket of the Court of Appeals from before the Revolution until the 1870's.²⁷ At that time, "popular criticism, some new provisions in the Constitution of 1867 [the size of the court was increased to eight judges], and a willing spirit on the part of the judges solved the problem."²⁸ For approximately ninety years the court was able to keep its docket current. However, in 1958 a special committee of the Maryland State Bar Association appointed to study the caseload of the Court of Appeals warned, in its report to the Association, that the workload carried by the Judges of the court during the 1957 term was substantially in excess of what they reasonably should be expected to carry. The report urged, "[S]omething must be done to lessen the existing burden on the judges of the Court of Appeals and to prevent any further increase in that burden."²⁹ The final report of the Committee to Study the Caseload of the Court of Appeals advocated that an intermediate appellate court be organized to hear initial appeals in four different types of cases.³⁰ Rejecting that recommendation, the Association endorsed a plan whereby the number of judges on the Court of Appeals would be increased from five to seven, with five judges sitting in each case.³¹ The General Assembly and the voters of Maryland in 1960 approved the Association's proposal.³² But adding personnel did little to relieve the court's congested docket, and by 1963 the workload had increased to a point where the court was unable to dispose of all of the cases on its docket.³³

27. Dixon, *Judicial Administration in Maryland — The Administrative Office of the Courts*, 16 MD. L. REV. 185, 193 (1956); see also Brune and Strahorn, *The Court of Appeals of Maryland: A Five-Year Case Study*, 4 MD. L. REV. 343, 369 (1940).

28. Dixon, *supra* note 27, at 193.

29. 64 TRANSACTIONS, MARYLAND STATE BAR ASSOC. 393, 396 (1959).

30. Personal injury and negligence cases, workmen's compensation cases, domestic relations cases and criminal cases, *id.* at 410-11. The first interim report of the Committee appears in 63 TRANSACTIONS, MARYLAND STATE BAR ASSOC. 301 (1958), and the second interim report appears in the same volume at 118. A fourth report is published in 64 TRANSACTIONS, MARYLAND STATE BAR ASSOC. 193 (1959).

31. 65 TRANSACTIONS, MARYLAND STATE BAR ASSOC. 6 (1960).

32. MD. LAWS ch. 11, ratified November 8, 1960, amending MD. CONST. art. IV, § 14 (1957).

33. REPORT, *op. cit. supra* note 8, at 1. The Court of Appeals carried over seventeen cases from its 1963 to its 1964 term docket, and in June 1965, it was estimated that sixty-five cases would be carried over from the 1964 to the 1965 docket. Also, the

It became clear to the members of the Committee on Judicial Administration that the precipitous rise in the docket of the Court of Appeals resulted, in substantial measure, from a severe increase in the criminal caseload. "There were 478 per cent more criminal cases docketed in 1964 than were docketed in 1957. . . . Furthermore, the number of criminal cases on the docket for the 1964 term exceeds the total docket of the Court a decade ago."³⁴ The Committee felt that it would not unduly complicate the jurisdictional structure of the Maryland judiciary to recommend the removal of such a clearly definable class of cases from the Court of Appeal's docket.³⁵ Thus, the most efficient and responsive solution to the problem of the crowded docket of the court also has the advantage of being simple to administer.

But these are only the practical aspects of the Committee's proposal. Perhaps even more important is the shape and direction that a court devoting its undivided attention to criminal matters may impart to the law of this state. It is widely recognized that criminal law and procedure is a highly specialized and technical area, more often than not foreign to even the ablest lawyer having a general practice. This was recognized by H. Vernon Eney in his Presidential Address to the Maryland State Bar Association at the Summer Meeting in 1964:

Indeed, I make bold to suggest that it would be highly desirable for the Judicial Conference to inaugurate a school for judges, keeping in mind that we are constantly adding new judges who have had no previous training or experience in [the criminal law] field. I do not see why they must be expected to learn by experience when that experience all too often will result in the freeing or retrial of one who has been tried and convicted.³⁶

To complicate matters, criminal law and procedure in this country is in a considerable state of flux. Changes are coming about more rapidly than in any other area of the law. The fountainhead of this change is, of course, the Supreme Court of the United States, whose recent decisions have affected most directly state (rather than federal) criminal procedure. The states are held, by the mandate of the Constitution of the United States, to a set of standards in the investigation and trial of criminal cases, the rigor and scope of which was non-existent five years ago.

Most familiar to lawyers are the right to counsel³⁷ and search and seizure³⁸ cases which held the relevant aspects of the Sixth and Fourth Amendments applicable to state court proceedings. Less well known perhaps are other Supreme Court decisions which have been equally

Committee on Judicial Administration noted, *id.* at 16, that in 1960 the total docket of the Court was 344 cases; by 1963, the number had increased to 445, and by 1964, to 482.

34. *Id.* at 6.

35. *Id.* at 6-7.

36. H. Vernon Eney, "Changing Concepts of Criminal Justice," *The Daily Record*, July 11, 1964, p. 3, col. 5.

37. *Escobedo v. Illinois*, 378 U.S. 478 (1964); *Gideon v. Wainwright*, 372 U.S. 335 (1963); *White v. Maryland*, 373 U.S. 59 (1963).

38. *Beck v. Ohio*, 85 S.Ct. 223 (1965); *Linkletter v. Walker*, 85 S.Ct. 1731 (1965); *Mapp v. Ohio*, 367 U.S. 643 (1961).

revolutionary in the criminal law. In 1964, the prohibition against self-incrimination contained in the Fifth Amendment was made applicable to the states for the first time.³⁹ Similarly, this year the right of an accused to confront the witnesses against him, guaranteed by the Eighth Amendment, was made binding on state court proceedings.⁴⁰

Suggesting that the Supreme Court is the only source of the ground-swell of reform in the criminal law simply perpetuates popular misconception, however. Such changes, and the re-evaluation of previously accepted principles, are taking place at all levels and in all branches of government in this country. This can best be demonstrated through several illustrations.

In New York County, an experimental operation known as the Manhattan Bail Project has been in effect for the past several years. Disturbed by the inequities of the existing bail system for the indigent accused,⁴¹ it proceeded upon the premise that, for most offenses, the meaningful deterrent to flight from justice was family and community ties rather than the financial commitment to a bondsman. The apparent result of this project is that more accuseds have been granted their freedom pending trial without a concomitant increase in the danger to society.⁴²

There has also been considerable agitation for rules affording discovery rights in the criminal area commensurate with those available to a party in civil litigation.⁴³ A recent decision of the Maryland Court of Appeals held that by rules of court a criminal defendant was entitled to discovery only in narrowly defined instances and that a trial judge had no inherent authority to expand this area.⁴⁴ By inference, however, it indicated that the "modern trend" in this country was to the contrary.⁴⁵

Many changes in the criminal law may come from the legislative rather than the judicial branch of State governments. At its last session, a joint resolution of the Maryland House of Delegates recited the urgent need for a new criminal code for Maryland and requested that the Governor:

appoint a Commission to make a comprehensive review of the criminal laws and criminal procedures and the administration of criminal justice in the State of Maryland, and the Commission is requested to make its report with its recommendations to the

39. *Griffin v. California*, 85 S.Ct. 1229 (1965); *Malloy v. Hogan*, 378 U.S. 1 (1964).

40. *Pointer v. Texas*, 85 S.Ct. 1065 (1965).

41. For example, it found that 75% of all accuseds for whom bail was set in Baltimore City were unable to raise the requisite funds. Botein, *The Manhattan Bail Project: Its Impact on Criminology and the Criminal Law Processes*, 43 TEXAS L. REV. 319, 324 (1965).

42. Botein, *supra* note 41; Comment, *The Manhattan Bail Project*, 38 N.Y.U.L. REV. 67 (1963).

43. Everett, *Discovery in Criminal Cases — In Search of a Standard*, 1964 DUKE L.J. 477; Fontana, *Discovery in Criminal Cases*, 25 MD. L. REV. 212 (1965); Moran, *Federal Criminal Rules Changes: Aid or Illusion for the Indigent Defendant*, 51 A.B.A.J. 64 (1965); Note, *Pre-Trial Disclosure in Criminal Cases*, 60 YALE L.J. 626 (1951).

44. *Kardy v. Shook*, 237 Md. 524, 207 A.2d 83 (1965).

45. *Id.* at 536, 207 A.2d at 90. See, e.g., *State v. Mahoney*, 122 Vt. 456, 176 A.2d 747 (1961).

Governor and the Legislative Council for submission to the General Assembly. . . .⁴⁶

The Governor complied promptly with this request and appointed the Honorable Frederick W. Brune, retired Chief Judge of the Court of Appeals of Maryland, as Chairman of the Commission. The need for such reform has been pointed out cogently in recent years.⁴⁷

Re-evaluation of criminal law is extant, too, in the field of criminal appeals. A number of jurisdictions have provided for appellate review of sentences in criminal cases⁴⁸ in order to insure uniformity in the application of penal sanctions to convicted individuals.⁴⁹ A wealth of law review comment supports such a procedure,⁵⁰ as do the remarks of several distinguished members of the Maryland State Bar Association at the Association's recent summer meeting.⁵¹ The report of a special committee of the Maryland State Bar Association, approved at that meeting, does propose a system of review which approaches this, but which provides instead for its administration by a panel of trial judges from the judicial circuit in which the case arose.⁵²

Thus, it should be apparent that nowhere in criminal procedure, from arrest through trial, are there immutable principles which can persist unchanged. A constant process of re-examination in the light of new knowledge and constitutional mandates has been set into motion in this country, in Maryland no less than elsewhere. The Committee's proposal of an intermediate appellate court with criminal jurisdiction exclusively was born, then, not simply out of necessity but also out of a responsiveness to the trends of the criminal law in this country. It provides Maryland with the opportunity to recognize that the criminal law presents specialized problems handled best by a court composed of judges well versed in the field and able to devote full time to its further study. Such a court, if established, would be unique in the United States, because all other states now operating with intermediate appel-

46. Laws of Maryland, 1965, Joint Resolution #22 at pp. 1628-30.

47. STATE OF MARYLAND, FOURTH AND FINAL REPORT OF MARYLAND SELF-SURVEY COMMISSION, RELATING TO PROPOSED CRIMINAL CODE (1960); Brumbaugh, *A New Criminal Code for Maryland?*, 23 MD. L. REV. 1 (1963). See generally MODEL PENAL CODE (Proposed Official Draft, 1962).

48. Eleven jurisdictions have so provided by statute or case law. ARIZ. REV. STAT. ANN. § 13-1717(B) (1956); *Brown v. State*, 34 Ark. 232 (1879); CONN. GEN. STAT. ANN. § 51-194 (1958); HAWAII REV. LAWS § 212-14 (1955); *State v. Ramirez*, 34 Idaho 623, 203 Pac. 279 (1921); IOWA CODE ANN. § 793-18 (1950); MASS. ANN. LAWS ch. 278, §§ 28A & B (1956); NEB. REV. STAT. § 29-2308 (1956); N.Y. CODE CRIM. PROC. § 543 (1960); *Hooper v. State*, 7 Okla. Crim. 43, 121 Pac. 1087 (1912); PA. STAT. ANN. tit. 17, § 441 (1962).

49. Indeed, there has even been the suggestion by three justices of the Supreme Court of the United States that infliction of the death penalty for a rape conviction may constitute cruel and unusual punishment, prohibited by the Eighth Amendment to the Constitution of the United States. See *Rudolph v. Alabama*, 375 U.S. 889 (1963) (dissent in memorandum opinion).

50. E.g., Hall, *Reduction of Criminal Sentences on Appeal*, 37 COLUM. L. REV. 521, 762 (1937); Sobeloff, *The Sentence of the Court: Should There Be Appellate Review?*, 41 A.B.A.J. 13 (1955); Note, *Appellate Review of Sentencing Procedure*, 74 YALE L.J. 379 (1964).

51. See the remarks of George C. Doub, William L. Marbury and the Honorable Simon E. Sobeloff, *Transcript of Proceedings* (Draft), 70th Annual Meeting of the Maryland State Bar Association, July 15, 1965, pp. 80, 85, 87-88.

52. MARYLAND STATE BAR ASSOC., INTERIM REPORT, SPECIAL COMMITTEE TO STUDY THE REVIEW OF SENTENCES IN CRIMINAL CASES, July 14, 1965.

late courts have not restricted them to criminal jurisdiction.⁵³ While this may appear to be a novel proposal, it can "hardly be called radical,"⁵⁴ in that such a court has been in existence in Great Britain since 1907. The Court of Criminal Appeal is the most famous court of its kind in the world and has been described as having "exercised a wise and liberal course in controlling procedure and evidence in criminal trials."⁵⁵ Yet it is properly categorized as an intermediate court, since further appeal lies upon leave of court to the House of Lords.⁵⁶

The Court of Criminal Appeal combines the advantages of expertise in the criminal law with the prompt and effective administration of justice.⁵⁷ It numbers among its jurisdictional powers the right to hear evidence, if such evidence was not available at the time of the trial; to hear appeals "out of time," if an error fatal to the trial is discovered after the statutory time for appeal has expired; and to review the *propriety* as well as the *legality* of the sentence imposed.⁵⁸ In short, the court's jurisdiction has been moulded to enable it to afford immediate redress for trial court errors without resort to a series of collateral proceedings.

It would be consonant with Maryland's posture in the past to follow the example of the Court of Criminal Appeal and establish a similar appellate court. This state has been praised recently for its forward-looking and responsive approach in the enactment and administration of the Uniform Post Conviction Procedure Act. This year, Mr. Justice Clark, concurring in a unanimous decision of the Supreme Court, stated: "I hope that the various states will follow the lead of Illinois, Nebraska, Maryland, North Carolina, Maine and Oregon in providing this modern procedure for testing federal claims in the state courts and thus relieve the federal courts of this ever-increasing burden."⁵⁹ He discussed the "rising conflict" between the federal and state courts and commended the five states that have attempted legislatively to accommodate their criminal procedures to the federal standard. Further, the administration of the Uniform Post Conviction Procedure Act by the Court of Appeals of Maryland received favorable comment from Chief Judge Sobeloff of the Fourth Circuit Court of Appeals:

[The recent] holdings evince a disposition to give new vitality to the explicit provisions of the Maryland Post Conviction Procedure Act for the vindication of all constitutional claims. They reflect an inclination on the part of the Court of Appeals to insist upon evidentiary hearings for the adequate resolution of issues of

53. Texas and Oklahoma each have a Court of Criminal Appeals, which are, however, actually coordinate courts of last resort with final jurisdiction in all criminal cases. VERNON'S ANN. TEX. CONST. art. 5, § 5 (1955 rev.); *State v. Briggs*, 171 Tex. Crim. Rep. 479, 351 S.W.2d 892 (1961); 20 OKLA. ST. ANN. § 40 (1962 rev.); *State ex rel. Ikard v. Russell*, 33 Okla. 141, 124 Pac. 1092 (1912).

54. Remarks of William L. Marbury, *Transcript of Proceedings* (Draft), 70th Annual Meeting of the Maryland State Bar Association, July 15, 1965, p. 86.

55. JACKSON, *THE MACHINERY OF JUSTICE IN ENGLAND* 116 (4th ed. 1964).

56. Administration of Justice Act (1960) § 1, cited in Jackson, *op. cit. supra* note 55, at 117.

57. Karlen, *The Court of Criminal Appeal*, 48 A.B.A.J. 1128, 1130 (1962).

58. *Id.* at 1130-32.

59. *Case v. Nebraska*, 85 S.Ct. 1486, 1489 (1965) (concurring).

fact, and to meet on the merits many questions previously avoided on procedural grounds. When fully implemented by lower state courts, it is hoped that the teachings of these opinions of the Court of Appeals of Maryland will alleviate much of the wasteful proliferation that presently burdens both the state and federal courts.⁶⁰

By establishing the Court of Special Appeals, Maryland will continue in the forefront of the states in this country in its awareness of and adaptation to changes in the criminal law. Maintaining this position has the added advantage of eliminating involvement by the federal courts, through the vehicle of federal habeas corpus, in state proceedings. Federal judges have made it abundantly clear that they will scrutinize carefully criminal proceedings and that "refusal by state courts to correct obvious abuses forces federal courts to perform their own duty."⁶¹ As Mr. Justice Brennan has recently stated:

If the states shoulder this burden, and undertake to make the responsibility for the vindication of our most cherished rights their own in this most difficult area of criminal justice, the frictions and irritants that presently exist in some measure between the state and federal courts will rapidly disappear. Of this I am confident. Let me emphasize once more, however, that the possibilities for a healthy state-federal relationship in the criminal field now repose very largely in the states themselves; the Court has probably made its contribution. The future depends upon the states' acceptance of the opportunity offered in the recent federal decisions.⁶²

The prospective benefits that the proposed intermediate appellate court may render to the administration of justice in Maryland are manifold. First, it would reduce appreciably the caseload of the Court of Appeals without complicating the jurisdictional structure. Second, it would provide the state a court with expertise in the complicated and ever-changing problems of criminal law and procedure. Such a court would be able to superintend closely the many facets of its jurisdiction. And finally, it would provide another vehicle for full and careful consideration of all criminal cases appealed, thereby hopefully minimizing intrusion by the federal courts through collateral proceedings into the criminal procedure of this state.

After keeping its docket current for almost a century, the Court of Appeals of Maryland is faced with a rapidly mounting backlog of cases, the primary cause of which has been the recent sharp rise in the number of criminal appeals. The need for prompt remedial action is crystal-clear, and to meet the problem, the Committee on Judicial

60. *Hunt v. Warden*, 335 F.2d 936, 942 (4th Cir. 1964).

61. Sobeloff, "Federalism and Individual Liberties — Can We Have Both?", Tyrrell Williams Lecture, Washington University School of Law, St. Louis, Missouri, March 10, 1965, p. 22.

62. Brennan, "Some Aspects of Federalism," Address to the Conference of Chief Justices, New York, N.Y., August 7, 1965, p. 21.

Administration has proffered a carefully conceived and sensible plan calling for the establishment of an intermediate appellate court to hear criminal cases. The recommendation has been approved unanimously by the Maryland State Bar Association and is now awaiting action by the Maryland legislature. It is hoped that the plan receives favorable consideration by that body, and that Maryland's Court of Special Appeals ultimately assumes many of the praiseworthy characteristics of the English Court of Criminal Appeal.