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**COMMEMORATION OF THE TWO HUNDREDTH
ANNIVERSARY OF THE MARYLAND
COURT OF APPEALS:*
A SHORT HISTORY**

HONORABLE HALL HAMMOND**

In 1928 the Court of Appeals formally recognized December 12, 1778 as the original court's day of birth by celebrating its one hundred fiftieth anniversary.¹ Although judges of the present court say (or boast) that the court is considerably less rigid than its predecessors in its adherence to *stare decisis*, they nevertheless celebrated the two hundredth anniversary of the court on December 12, 1978. Like the disappointed lawyer of a losing litigant, a critic might reasonably claim that the anniversary celebration on this date was a perpetration of error. As was pointed out by the late Chief Judge Bond, although the precise age of the court is uncertain:

[E]xcept for an interruption of a few years during the Revolutionary War, there has been a tribunal of last resort in Maryland known as the Court of Appeals since the seventeenth century; but what was the beginning point in that century, and how far there has been a continuation of one and the same court through changes in the subsequent centuries — those are debatable questions.²

The origins of a Court of Appeals in Maryland may be perceived by examining the judicial institutions of this province in the mid-seventeenth century. By 1638 the provincial governor of Maryland and the members of his council who were authorized to sit as a chief justice and associate justices, respectively, held a general court at St. Mary's. This local version of the King's Bench in England was originally termed the County Court but by 1642 came to be called the

* The history of the Court of Appeals has been thoroughly and authoritatively dealt with in the late Chief Judge Bond's book, *The Court of Appeals of Maryland, A History*. The Bond book serves as the primary source for this brief Article. Citations to Bond are omitted except when direct citation would provide special assistance to the reader. It may be assumed that the historical material of this Article originates from Bond's history of the court (except when other sources have been cited or when the author's personal views are expressed).

** A.B. 1923, Johns Hopkins University; LL.B. 1925, University of Maryland. Chief Judge, Court of Appeals of Maryland, 1966-1972; Associate Judge, 1952-1966.

1. See Ceremonies in Commemoration of the One Hundred and Fiftieth Anniversary of the Establishment of the Court of Appeals of Maryland, 157 Md. xxix, xxx (1929).

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

Provincial Court. During this time the Maryland legislative assembly functioned as an additional law court forum for freemen, but in 1649 this assembly was split into an Upper House, composed of the governor and council, and a Lower House. After the division, the Lower House had its judicial activities restricted to relatively unimportant disputes; the Upper House, in contrast, developed an appellate jurisdiction. In 1664 a writ of error became available for a review in the Upper House of the Assembly of a Provincial Court judgment. When functioning as a review court of a Provincial Court judgment, the Upper House was generally referred to as the Court of Appeals.

From today's perspective two features of this review procedure appear unusual. First, both the Provincial Court and Upper House proceedings were presided over by the governor and council. Surprisingly, this arrangement did not adversely affect the reversal rate of lower court decisions. A second peculiar characteristic of this system, which remained unaltered until the American Revolution, was the blending of legislative, judicial, and executive functions. This arrangement, however, was consistent with prevailing English notions that all government — legislative, judicial, and executive — was derived from the king.

Upon recognition by the Upper House in 1681 that no laws existed that directed the manner in which writs of error were to be brought before the assembly, the Upper House directed that no such writs be issued until appropriate legislation was enacted. Legislation was not passed until 1694 after the royal governor, Francis Nicholson, had arrived in the province with instructions to develop appellate practice. Among his other powers, the governor had full control over the various judges' tenure, but although judges held their offices at the pleasure of the governor, by the mid-eighteenth century the practice evolved to continue judges in their offices indefinitely. The present Court of Appeals has among its records a docket of all appeals and writs of error from 1695 to 1790. During this period rapid disposal of cases on the court's docket apparently was not a major priority — even for a significant length of time after the Revolution, some cases remained on the docket for ten years. Abatement by death was not uncommon. Mainly because so few appeals were before the court, the disposal pace did not produce a large backlog of cases. In a representative five-year period beginning in 1695 only twenty-two appeals were docketed. In a strict sense, such appeals brought before the Court of Appeals did not exhaust an aggrieved citizen's opportunity to obtain review, as judgments rendered by the Court of Appeals were subject to review by the King

and Council in England ("appeals home"), provided the dispute involved more than three hundred pounds.³

After the 1776 Revolution a few significant changes were made in Maryland's judicial institutions. One of the most noteworthy proposals of Maryland's 1776 constitutional convention was to separate legislative, executive, and judicial powers of government. This proposal was not only rooted in eighteenth century philosophical considerations; it was also motivated by a desire to attract men of legal training to the bench. Although the pre-Revolutionary bench was composed almost exclusively of men who lacked special legal training, such lack of training did not seriously detract from the court's performance. According to Judge Bond,

[this] court cannot be distinguished from a full-fledged court of justice. It was a tribunal holding special sessions exclusively for judicial business, its procedure was in accordance with judicial forms elaborated in England; and the cases were argued by professional lawyers, and decided by the judges upon established principles of law.⁴

Another convention proposal incorporated into the Maryland constitution, which served to insulate the judiciary from unwarranted executive interference, was the provision that judges hold their offices during good behavior. The constitution, of course, expressly provided for continuation of a Court of Appeals, but it failed to provide for the selection of a specific number of judges. Not until December 12, 1778, after balloting by the House and Senate, were the five original judges appointed.

Despite the importance of appellate review, active lawyers were not attracted to positions on the highest court. The difficulties in securing proper judges were various. Prior to the Revolution, the work of the court had occupied only a limited amount of the time of its judges, and no reason existed to anticipate that greater demands would be placed on the court after 1776. In addition to the arguably part-time nature of the appointments, other courts were perhaps considered more important. Judges sitting on courts subject to review by the Court of Appeals received substantially greater

3. *Id.* at 42. To a contemporary critic who regards the mantle of the United States Constitution to have been stretched significantly over the years, the "appeals home" today may be seen to lie in the Supreme Court in Washington, D.C.

4. *Id.* at 43.

salaries than the \$533.33⁵ received by Court of Appeals justices. Because the five original judges were men of ability and success who earned their livings farming large tidewater plantations, however, none of them needed the income.

Judges Mackall and Murray became the first to sit on the bench when they took the oath of office in May of 1779, and a year later a quorum was established when Chief Judge Rumsey joined his colleagues. This newly constituted court employed the docket kept by the governor and council, reentered pending cases as was customary for a new term of court, and added new cases in a manner that preserved continuity between the old and new courts. After the 1780 October term, the court entered a dormant period in which each term was called but promptly adjourned. This delay in beginning the work of the court lasted until May 1783 when the first post-Revolution case was heard, and may be partially explained as a consequence of the population's general preoccupation with the war. Only a small number of appeals were filed prior to 1785; an increase in case load, however, soon followed. The number of entries on the court's docket from 1791 to 1798 was greater than all of the cases filed in the century preceding 1790. Because many cases were dismissed for lack of prosecution, however, the number of cases argued before the court did not increase proportionately. The multiplication of cases filed was due mainly to legislation that allowed the awarding of costs to litigants who obtained reversals on the merits. In large part, this increase in litigation was not handled by a fully manned court, as the five original positions on the Court of Appeals were occupied for only a brief period. Judge Murray did not sit after November 1783, and Judge Wright died in 1792. These vacancies were not filled until 1801, and legislation thereafter provided that vacancies should remain unfilled until the number of judges was reduced to three.

During this period the court's procedures resembled the practices followed in the preceding centuries. The length of oral arguments was unrestricted and a single argument (or oration) would frequently last for days. For most purposes, judges were not expected to prepare for the argument and decision of cases by reading. Until the mid-nineteenth century, speech was the primary means of presenting legal argument. All authority that the court was requested to consider was presented and thoroughly thrashed out in the

5. By 1799 this salary increased to \$1,000 a year. C. BOND, *supra* note 2, at 77. One hundred and fifty-three years later when I went on the bench it had risen to but \$16,000.

courtroom during argument, and the court rendered its decision immediately following this exercise. Although prior to the Revolution it was customary to give oral opinions, the court nevertheless filed written opinions in a few instances throughout the twenty-five years between 1781 and 1806.

In 1790 the county courts were grouped into five districts and strengthened by the appointment of a law-trained chief judge and two associate judges. Additional changes in the judicial system were proposed in a 1796 plan to abolish the General Court.⁶ This plan was implemented in 1805 after passage of a constitutional amendment that vested all original jurisdiction above the magistrate level in the county courts. Six judicial districts were created out of the county courts and each district was to be presided over by a chief judge and two associates who were also required to be lawyers. The chief judges of the six districts also constituted the Court of Appeals, which was vested with all of the appellate jurisdiction of its predecessor and of the former General Court.

An additional provision furnishes some insight into the peculiar conditions of this period. The Court of Appeals, prior to the 1805 amendment, sat solely in Annapolis. This centralized arrangement required attorneys to travel over water and by undeveloped roadways. Recognition of these transportation difficulties resulted in a provision that the court hold sessions on both the western and eastern shores.

The Court of Appeals, after being reconstructed pursuant to the 1805 alterations, came to be regarded as the most important court in Maryland. For a half century following the amendment, the court had its own bar in the sense that only a select group made a practice of arguing cases before it. During this period the lawyers of the various trial districts generally did not follow their cases to the Court of Appeals. Those who did usually stayed for the entire term because the problems of travel made it infeasible for attorneys to be ready when requested except by constant presence. As late as 1832, the journey between Annapolis and Baltimore required about a day of travel. It was not until several decades later that transportation improved sufficiently to alter the custom of lawyers attending entire sessions of the court.

From 1805 to 1851 the Court of Appeals remained behind in its business. At the opening of the June Term in 1806, and for about

6. The General Court was a statewide court of original and appellate jurisdiction. See E. BYRD, *THE JUDICIAL PROCESS IN MARYLAND* 4 (1961).

fifty years thereafter, approximately 300 cases were on the docket. In 1831 the legislature responded to this backlog by directing that certain cases be heard at the first term after they had been filed, and by 1850 all appeals had to be treated in this manner. In some instances the legislators directed the court to reinstate certain dismissed cases. In 1806, an innovative requirement that counsel furnish a brief of the facts and a statement of questions of law, or "points," was adopted to assist the court in its work, but it was not until 1848 that counsel were required to provide the court with notes of argument on the points raised. Briefs at this time were short (sometimes only a sentence long), concise statements of arguments on the points.

Another indication of the court's increased reliance on the written word, and decreased dependence on oral presentation, was a court rule adopted in 1826 that limited oral argument to six hours on the Western Shore and five hours on the Eastern Shore. The court's practice of deciding cases without providing written opinions in explanation of its decisions continued for a substantial period after 1806. Some judges of the era doubted the value of filing opinions. In the 1806 case of *Beatty v. Chapline*,⁷ Judge Nicholson stated that

[i]t was improper for the Court in the last resort, to assign their reasons for the final judgment. In the inferior Court it was proper that they should give the reasons of their decision, because it afforded counsel an opportunity, when they came before the Court of Appeals, to show the fallacy of the reasoning of the Court below, if it was fallacious But here there was no necessity of that kind, because the decision of the Court of Appeals became the law of the land, whether that or their reasoning was or was not correct; and where the reasoning was bad, it was too often blended with the decision of the Court, and considered likewise as the law.⁸

Even without the burden of delivering written opinions, the court decided fewer than eighty cases per year immediately prior to 1851.

The next fundamental changes in the structure of the Court of Appeals followed the constitutional convention of 1851. Conspicuous among these changes was the provision that the Court of Appeals sit on one shore only, in Annapolis, and that the court would no longer be composed of the chief judges of the trial courts. The system of appointment and life tenure was rejected in favor of a system

7. 2 H. & J. (Md. 1806).

8. *Id.* at 26, quoted in C. BOND, *supra* note 2, at 139-40.

whereby judges would be elected for ten-year terms. Four justices from as many districts of the state were to be elected by the people in their respective districts, and the trial courts were reorganized into eight circuits. Other innovations included the requirements that a written opinion be filed for each case decided and that such opinions be regularly published in reports. The reorganized Court of Appeals retained all of the appellate jurisdiction of the previous court. None of the justices on the former Court of Appeals, however, became candidates to sit on the court under the new constitution.

A court-adopted rule in 1852 gave further evidence of the shift in reliance from the oral to the written word. This rule further reduced the maximum length of arguments to two and one-half hours. In addition, counsel were required to provide full statements of facts and points and authorities relied upon. During this period, however, the court was still backlogged with cases — at the 1864 June term, 240 cases were on the docket, some dating back more than a decade.

In the early 1860's the Court of Appeals was, of course, affected by the Civil War. In 1861 a federal regiment took possession of Annapolis. Judge Bartol, whose ten-year term began in 1857, was arrested by federal troops in Baltimore and imprisoned for several days at Fort McHenry. Although no reason for his arrest was ever conveyed to him, it was thought that Judge Bartol's arrest resulted from his criticism of the treatment of Judge Carmichael, a circuit court judge whose remarks to a grand jury had provoked the federals to arrest him and to drag him off the bench at Easton.

The tensions of the Civil War brought about the constitutional convention of 1864, and more changes in the structure of Maryland's judiciary followed. Agreement was reached at the convention to provide for an additional Court of Appeals justice as a means of reducing the caseload backlog. The court was to be composed of a chief judge and four associate judges, each judge to be elected from one of five judicial districts. Court of Appeals judges were not permitted to sit as trial judges and the trial court system was restructured to include thirteen judicial circuits, with one judge for each circuit.

The development of transportation facilities in the state throughout the 1850's and 1860's produced further change as members of the bar began to follow their cases to the Court of Appeals. This in turn resulted in the demise of what had developed as a special Court of Appeals bar.

Because the constitution of 1864 had been ratified in the face of the disenfranchisement of a large portion of Maryland citizens, it was not expected to endure after the Civil War had ended. The

judiciary, as reorganized under the 1867 constitution, was divided into eight judicial circuits with a chief judge and two associate judges for each circuit. The chief judge of each circuit court together with a judge from Baltimore City, the eighth circuit, comprised the Court of Appeals. Because it was thought that the case load in the city precluded combining trial and appellate work, the judge from Baltimore was specially elected and constitutionally restricted to appellate work. Four judges were deemed sufficient to create a quorum.

The original 1867 bench has long been regarded as one of interesting personalities and strong professional abilities. Later benches have not fared quite as well. The Court of Appeals that began in 1867 served Maryland with effectiveness and satisfaction of the bar and citizenry and was often graced with men of great professional skill and judicial temperament and strength. Chief Judge Alvey, for instance, would likely have achieved national eminence on the United States Supreme Court but for the rancor of a United States senator, disappointed over the results of an important case. Judge Alvey was, nevertheless, appointed Chief Judge of the Court of Appeals of the District of Columbia.

The reconstructed Court of Appeals, which first assembled in November of 1867, once again inherited a substantial backlog of cases, but the reforms of 1867 — which expanded the court to eight members who sat for ten months of the year — were effective. By the mid-1890's the court's docket became more manageable, and a further reliance on the written word was evident, as records and briefs played an increasingly important role in the work of the court during the final three decades of the nineteenth century. This trend was accelerated in the 1890's when typewriters and stenographers came into general use.

The fluctuation of the court's caseload has been interesting and, at times, surprising. Relatively speaking, the court was not burdened with a heavy caseload from 1867 to 1945. Beginning in 1915 the number of cases on the docket increased to about 225 cases per year. A study of cases actually decided reveals that the number of cases disposed of during a sample five-year period beginning in 1935 ranged from a low of 115 in 1939 to a high of 172 in 1938.⁹ During

9. Brune & Strahorn, *The Court of Appeals of Maryland — A Five-Year Case Study*, 4 MD. L. REV. 343, 359 (1940).

this five-year span, the number of opinions per judge averaged about eighteen per year.¹⁰

Beginning in the early twentieth century the call for reform of the Court of Appeals was sounded once again. Two major criticisms were directed at the structure of the court as provided for in the 1867 constitution. First, it was argued that the trial duties of the Court of Appeals justices deprived the state of full-time judges on the court of last resort.¹¹ Second, the manner in which judges were selected to sit on the court was criticized.¹² This second criticism was based on the fact that although the people of the entire state were affected by the decisions of a particular judge, they were nevertheless restricted in their choice to fill a vacancy by a system in which each judicial circuit, regardless of population, elected one judge. In 1908 a committee of the State Bar Association presented a report recommending that the judges of the Court of Appeals be limited to appellate work, that the court be reduced to five full-time judges, and that the judges be elected on a statewide basis.¹³ Further pleas for reform were made in a 1921 report of the Baltimore City Bar Association,¹⁴ which asserted that the state was behind in the administration of justice, and that appellate decisions had lost their uniformity and certainty. In response to these problems the report recommended that a commission be appointed to study the entire judicial system of the state. In 1922 the legislature passed a joint resolution calling for implementation of this recommendation, and the governor appointed a fourteen-member group to examine the problems of the state's judicial system.¹⁵ Its report adopted the suggestions of the 1908 bar association report and, in addition, recommended that the Chief Judge of the Court of Appeals be able to assign his associate judges to do trial work if necessary. No action followed until 1941 when William C. Walsh, then Attorney General of Maryland, revived interest in the reform of the judicial system by presenting a paper to the State Bar Association.¹⁶

In November 1941, Governor O'Connor appointed what has come to be known as the Bond Commission, named after its chairman, Chief Judge Carroll T. Bond. The commission proposed various

10. *Id.* at 363.

11. See Soper, *Reorganization of the Court of Appeals of Maryland*, 8 MD. L. REV. 91, 93 (1944).

12. See *id.* at 93-94.

13. *Id.* at 96.

14. *Id.*

15. *Id.* at 97.

16. *Id.* at 98.

changes with respect to the trial courts and orphans' courts, but its suggestions as to the Court of Appeals were basically those contained in the report of the previous study. The innovations recommended by the Bond Commission included a provision, which was later incorporated into proposed constitutional amendments, for vesting power in the Chief Judge of the Court of Appeals to designate any circuit court judge for appellate service. The Bond Commission also recommended that the chief judge be made the administrative head of the state judicial system.¹⁷ The voters ratified the proposed amendment and the court of five judges came into being and lasted, most successfully, until 1960.

It is interesting to note Judge Morris Soper's article written in 1944, in which he concluded that five judges doing solely appellate work would have no difficulty in disposing of all appeals taken to the court. He wrote that the number of cases on the docket of the pre-1944 court was much less than 150 per year and that "there is no reasonable probability that it will exceed 125 per year in the future."¹⁸ From 166 cases in 1946 (ninety-one of which were criminal) the number rose to 344 in 1960 (of which ninety-eight were criminal), and the increase continued until 1966.¹⁹ By 1966, 714 cases were on the court's docket, 340 of which were criminal.²⁰ In 1967, the year in which the Court of Special Appeals began work, there were but twenty-seven criminal cases and 408 civil cases.²¹

Over the past 200 years the court has occupied various buildings in Annapolis. Following the Revolutionary War it met in the State House and continued there until 1903 when it moved to that most impressive, even beautiful, paneled courtroom built for it in the new Court of Appeals building, located across from the State House on State Circle. Sixty-nine years later the court again changed its location. When the court moved to the new courts building off Rowe Boulevard in 1972, the old courtroom was, at the court's insistence, moved board by board and reassembled in the new quarters.²²

17. *Id.* at 103.

18. *Id.* at 112.

19. MARYLAND STATE BAR ASSOCIATION COMM. TO STUDY THE CASELOAD OF THE COURT OF APPEALS, REPORT 24 (1958).

20. ADMINISTRATIVE OFFICE OF THE COURTS, ANNUAL REPORT, 1966-1967, at 20.

21. ADMINISTRATIVE OFFICE OF THE COURTS, ANNUAL REPORT, 1967-1968, at 20.

22. Unfortunately, the excellent acoustics of the old courtroom refused to move with the rest of the room. Much effort has increased but not perfected the hearing and understanding of the judges of what is said below them. So well did sound travel in the original courtroom that judges had to observe appropriate precautions. One day a

I went on the court in 1952 from the District of Baltimore, Harford, Anne Arundel, and the southern Maryland counties. In the election of 1954 I was challenged by Judge Charles Marbury of Prince George's County. The major argument urged by and for Judge Marbury seemed to be that if he did not win, there would never again be a judge from southern Maryland because of the preponderance of votes at that time in the northern counties. I won both the Democratic and Republican primaries, but the sentiment that the South must rise again continued to be strong, and in 1960 it prevailed — a constitutional amendment adding two judges to the court was adopted, and one of the two had to be from southern Maryland.

In the ensuing years of extraordinarily heavy dockets, the seven judges of the court drove themselves unstintingly, and (almost uncomplainingly) wrote about thirty-five opinions per month for years in an effort to stem the tide. There was no shirking. Fortunately, the court had excellent help in the form of good law clerks. The legislature traditionally had been slow to provide this "new-fangled" help — in my first year as a judge in 1952, for example, it provided three law clerks for five judges. Despite the heavy case load, the strong efforts of seven judges were sufficient to keep the number of cases carried over each year relatively small. The largest number of such cases was 106 in 1965.²³ During each of the following two years approximately eighty cases were carried over, and by 1968 the number was reduced to twenty-nine.²⁴ Thereafter the court was current.

The Court of Special Appeals was created in 1967 to take the ever-increasing number of criminal cases from the Court of Appeals, but it was also empowered to handle such civil cases as the legislature in its wisdom directed it to hear. In 1970, the lawmakers, with my full approval, indeed with my strong urging, transferred to that court categories of cases that were consistently likely to be without new points of law, including workmen's compensation and juvenile cases. One category that the Court of Appeals was delighted to be rid of was the motion picture obscenity cases. In the first place, it was difficult to be agile enough to keep up with the Supreme Court's changes of mind and attitude on the subject. In the second,

lawyer who was arguing the extent of the court's power stated: "The court cannot do that." Judge Sloan thereupon whispered to a colleague at his side — and to the entire courtroom — "The hell we can't."

23. ADMINISTRATIVE OFFICE OF THE COURTS, ANNUAL REPORT, 1965-1966, at 23.

24. ADMINISTRATIVE OFFICE OF THE COURTS, ANNUAL REPORT, 1969-1970, at 17.

the pictures that we were mandated to review by personal observation (as well as by oral and written argument) were almost always tawdry and boring in the extreme. I can still see in my mind's eye the band of seven solemn souls grudgingly trudging to an Annapolis movie theater at ten in the morning to become the only spectators at the special showings arranged by the clerk. In 1972 almost all other categories, save zoning, were transferred. Zoning cases were retained because we felt that we had stabilized the law on that extensive subject in Maryland and wished to keep it that way. Finally, the weak flesh prevailed over the willing spirit, and in 1973 zoning cases went the way of the rest, leaving the Court of Appeals in (actual and almost full) essence a certiorari court.

The number of cases that the court must hear now depends, with minimal exceptions, on the number that it decides to hear. There is no statutory or expressed internal guidance as to why it should or should not hear a case. The greatest number of cases it has taken in any of the last three years is about 175. Generally about three-fifths of the cases are taken through grants of petitions for certiorari and approximately two-fifths are "jumped" cases taken before hearing by the Court of Special Appeals.²⁵ The rationale of bypassing that court is apparently (and ironically) to ease the intermediate court's heavy burden, for the growth of its docket has been enormous.²⁶ What then is the future of the court? Will the winds of change that blew with overwhelming force on its predecessors topple it too? I think those winds have started to blow. I fan the winds of change reluctantly and with embarrassment because, to a large extent, I have been responsible for the efforts to give the full time and talents of the judges to the public or institutional cases that are particularly meaningful and worthy of decision by a court of last resort. I think these efforts have failed because the highest court of a state the size and make-up of Maryland, in stark contrast to the Supreme Court of the United States, simply does not have a sufficient annual pool of such cases from which to choose.

I have known the court intimately for almost six decades. As a private lawyer for three decades, and as Deputy Attorney General

25. See generally ADMINISTRATIVE OFFICE OF THE COURTS, ANNUAL REPORT OF THE MARYLAND JUDICIARY, 1977-1978; ADMINISTRATIVE OFFICE OF THE COURTS, ANNUAL REPORT OF THE MARYLAND JUDICIARY, 1976-1977; ADMINISTRATIVE OFFICE OF THE COURTS, ANNUAL REPORT, 1975-1976.

26. See Reynolds, *The Court of Appeals of Maryland: Roles, Work and Performance* — Part II: Craftsmanship and Decision-Making, 37 MD. L. REV. 1, 19-24 (1977). Professor Reynolds discusses the shortcomings and undersirability of "jumping" cases and impliedly, at least, the troubles of the court that worry me.

and Attorney General for the last of those three as well, I argued and supervised the argument of almost innumerable cases. I was an associate judge for fourteen years and chief judge for six, and I have kept in close touch since I retired. I share Judge Bond's views that the members of the court "have worked to the general satisfaction and content of [the people of their community] and left them respecting the men and the institution; and in that they have met the greater test of success in the administration of justice."²⁷ I not only share Judge Bond's views as to the highly satisfactory service the court has given the people, the bar, and the state for at least twenty decades, I also have tremendous pride in the court and the utmost goodwill toward it.

After long reflection, the solution to its current problems is, to me, obvious. The judges of the Court of Special Appeals and those of the Court of Appeals should be joined as judges of the Court of Appeals. There should be a court within a court composed of a cadre of seven judges who would sit as a "High Court of Appeals" which would do most of the things that the Court of Appeals does now, except that it would hear only the few cases worthy of a court of last resort. (I think from fifteen to twenty-five a year — others knowledgeable think about forty). Criteria for the selection of cases to be heard by such a High Court should also be established. Each judge of the present Court of Appeals could sit regularly as one of a panel of perhaps five judges — I have found five to be an ideal number for an appellate court. For practical reasons, human nature being as it is, the present Court of Appeals would constitute the High Court of Appeals and the chief judge would continue to be chief judge. Vacancies would be filled, without residency restrictions, by the governor through a blue-ribbon commission with a chairman selected not by the governor (which, to me, is a most unfortunate feature of the commission system), but by the chief judge or perhaps by the commission itself.

I think this solution would continue the great traditions of the Court of Appeals. May it be so!

27. C. BOND, *supra* note 2, at 199.