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THE MOVEMENT TO REORGANIZE THE COURT OF APPEALS OF MARYLAND

By William C. Walsh*

The Constitution of 1867 established the present Maryland Court of Appeals, and as so established three-quarters of a century ago, it has continued without change.

The Court is composed of the seven Chief Judges of the seven Judicial Circuits into which the State outside of Baltimore City is divided, and of an eighth Judge especially elected to the Court by the voters of Baltimore City, which comprises the Eighth Circuit. In addition to their appellate duties, the County members preside at trials, sit in equity cases, and perform all other customary nisi prius judicial functions in their respective circuits. The Baltimore City member performs appellate work only, except in those rare instances where he is called upon to sit in a habeas corpus case.

Prior to 1867, the organization of the Court varied. From 1778 to 1806, there were five Judges appointed from the State at large, and they acted only as appellate judges. From 1806 to 1851, the six Chief Judges of the six Judicial Districts into which the State was then divided made up the Court. The Constitution of 1851 provided for four Judges to be elected from four judicial divisions of the State, and these Judges exercised only appellate jurisdiction. The Constitution of 1864 increased the number of Judges to five, and divided the State into five districts, and the Constitution of 1867 gave us the Court as we have it today.

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The Constitution of 1867 has been amended forty-four times since its adoption by the people of Maryland, and seven additional amendments are to be voted on this year, but the provisions for the Court of Appeals remain untouched, except for a change in the method of selecting its Clerk, adopted in 1940. So far as the Constitution is concerned, the Court itself is the same today as it was seventy-five years ago.

However, during the past thirty-five years, three separate efforts have been made to change the organization of the Court, and signs are not wanting that both the need and desire for a reorganization are constantly increasing.

The first of these efforts occurred in 1907, when the State Bar Association Committee on Laws undertook to study the matter. The late Judge Conway W. Sams of Baltimore City, a former President of the Association, was Chairman of this Committee, and the other members included the late Judge John R. Pattison of Dorchester County, the late Judge James H. Covington of Talbot County, the late Judge Alfred S. Niles of Baltimore City, father of the present Judge Niles, Ridgely P. Melvin of Anne Arundel County, who is now Associate Judge in that Circuit, the late William Grason of Baltimore County, an uncle of the present Judge Grason, Senator Blair Lee of Montgomery County, the late William C. Devecmon of Allegany County, and the late Charles H. Stanley of Prince George's County.¹

The report of this Committee, which was made at the 1908 Annual Meeting,² recommended, among other things, that the Judges of the Court of Appeals be limited to appellate work, that they be elected on a state-wide basis, and that the membership of the Court be reduced to five.

Under date of December 3, 1921, a special committee of the Bar Association of Baltimore City, composed of the late George Weems Williams, the late Charles F. Harley, and Mr. Samuel K. Dennis, now Chief Judge of the Supreme

¹ Transactions, Maryland State Bar Association, 1907.
² Transactions, Maryland State Bar Association, 1908, page 62, et seq.
Bench of Baltimore City, after making recommendations applicable solely to Baltimore City, reported as follows:

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

This report, which was signed by all three members of the special committee, resulted in the passage of Joint Resolution No. 8 by the General Assembly of 1922, "Providing for the appointment by the Governor of Maryland, of a commission to study carefully our whole judicial system and methods for its improvement, and report to the next General Assembly." In pursuance of this Resolution, Governor Ritchie appointed a committee of fourteen members, with Mr. Charles McHenry Howard as Chairman, and the other members were Chief Judge Samuel K. Dennis, Judge J. Craig McLanahan, former Attorney General Alexander Armstrong, former Attorney General Thomas H. Robinson, former Judge F. Neal Parke, the late Charles F. Harley, the late John B. Gray, Sr., and Messrs. Sylvan Hayes Lauchheimer, Jacob Rohrback, John M. Requardt, Vernon Cook, Philip B. Perlman, and Walter H. Buck.

From this Committee, a sub-committee was selected to give special study to the subject, and to report to the Gen-

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Page 3 of Report of Judiciary Commission, made to Governor Ritchie under date of January 7, 1924.
eral Committee, and this special committee consisted of the Chairman, Mr. Howard, Judge Parke, Mr. Perlman, Mr. Buck and Mr. Harley. The sub-committee report was agreed upon by all of its members except Judge Parke, who stated that he was unable to concur in all of the recommendations, and in a letter accompanying its report and signed by Messrs. Howard, Buck, Perlman and Harley, the sub-committee recommended that the Court of Appeals be composed of five Judges chosen from any part of the State and not by circuits, and that the appellate Judges should not do regular circuit court work. It also recommended, however, that, "The Chief Judge of the Court of Appeals should have the right to assign any of the Judges of the Court of Appeals to do trial work where such a course seems expedient." The report which was published in January, 1924, was approved by eight and disapproved by six of the members of the full committee, and contains the following statement regarding the views of the minority:

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

It thus appears that thirteen of the fourteen members of the Committee favored making some changes in the organization of the Court, and the great majority agreed

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that these changes should include reducing the number of Judges, and limiting them almost entirely to appellate work.

Both in 1908 and in 1923 the adoption of these changes, on which there was practical agreement by both committees, would have affected a number of Judges then on the Court. This situation made it embarrassing to the Bar to press the proposed changes and they were never presented to the Legislature. However, the action of these committees of outstanding Judges and lawyers shows that a reorganization of the Court has been under consideration for more than thirty years. It also shows that the great majority of the distinguished members of the legal profession who studied the matter believed that such reorganization should include a reduction in the number of Judges on the Court, an increase of Baltimore City's representation on the Court, and, for all practical purposes, the performance of appellate work only by the members of the Court.

At the midwinter meeting of the Maryland State Bar Association, held on January 11, 1941, the writer of this article read a paper suggesting substantially similar changes. A resolution approving such a reorganization of the Court and providing for the appointment of a committee to prepare the necessary bills for presentation to the 1941 Legislature was then passed by the Association.

Thus in 1941, the Bar resumed the effort begun in 1907, and renewed by legislative mandate in 1922, and during all these years, leading members of the Bench and Bar have recognized the need for reorganization and there has been general agreement that such reorganization should include the three changes above mentioned.

In pursuance of the Resolution passed at the 1941 midwinter Meeting, Mr. Walter C. Capper, President of the Association, appointed Mr. F. W. C. Webb of Salisbury as Chairman; and Mr. R. Bennett Darnall of Anne Arundel County, for many years Treasurer of the State Bar Association; the late Walter L. Clark of Baltimore City, former President of both the State and Baltimore City Bar Associations; former Judge John A. Robinson of Bel Air; and
the writer, as members of the Committee. The Committee thus appointed made a study of the matter, received the benefit of many suggestions from other members of the Bar, and after careful consideration, it prepared and submitted its unanimous report to the President of the Association under date of February 26, 1941. As this report outlines the proposals recommended, marshals the reasons for them, and discusses the objections to some of the suggestions not approved by the Committee, it is believed that the following extracts will prove of interest:

"Since the reorganization of the Court of Appeals of Maryland is of such vital interest to the people of the entire State, it seems proper to present in this Report a fair picture of the present system, its inherent disadvantages, and the system proposed by this Committee, with some explanation of its advantages. It seems also well to present these in such a way that they will be understood and appreciated by laymen as well as lawyers.

"In line with this idea, the present set-up of the Courts of Maryland may be described in this way. Maryland is divided into eight judicial areas called circuits, seven of which are each composed of certain counties and one comprises Baltimore City. Each circuit has a chief judge and several associate judges. The Court of Appeals is now composed of eight judges, seven of whom are the chief judges of their respective circuits and the eighth is elected from Baltimore City.

"In addition to serving on the Court of Appeals throughout the entire year, the seven chief judges are also obligated to sit as trial judges in their several circuits, in equity, criminal and civil trials. In their service in the Court of Appeals, they listen to arguments of counsel, read the long records sent up from the trial courts, study the briefs of counsel and write opinions. They are expected to keep abreast of judicial decisions throughout the United States. The Court of Appeals judge from Baltimore City, however, has no trial duties to perform but devotes all of his time to work in the appellate court.

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8 February 26, 1941 Report of the Committee on Reorganization of the Court of Appeals, pages 1-4.
"The opinion expressed in the Resolution of the State Bar Association (which is shared by many laymen and most of the lawyers) is that the judges of the Court of Appeals should devote all of their time to the work of hearing and deciding appeals; that they should not have their attention distracted from this very important work by trial work and other judicial duties in their respective circuits. If they divide their time between the trial courts and the Court of Appeals, it seems obvious that either trial or appellate work, or both, may suffer, either because of lack of time or overwork.

"While we recognize the necessity of a chief judge in each of the circuits, including Baltimore City, we are convinced that the Court of Appeals ought to be entirely separate from the circuit judges and from the Baltimore City judges, all of whose decisions may have to be reviewed on appeal.

"Your Committee, therefore, has prepared several Bills which recently have been introduced in the Legislature to accomplish the desired reorganization of the Court of Appeals and to bring that body in line with similar courts in the overwhelming majority of the States.

"In substance, the Bills call for the following changes in the existing law:

"(1) That from and after October 1, 1943, the Court of Appeals shall be composed of six judges, four from the counties and two from Baltimore City;

"(2) That these judges shall perform appellate work only;

"(3) That the County members shall be nominated and elected from four separate appellate circuits;

"(4) That in nominating for each of the appellate circuits, the votes shall be on the County Unit Plan;

"(5) That these judges shall be elected for fifteen years;

"(6) That their salaries shall be fixed by the Legislature;
"(7) That no member of the present Legislature or of the Legislature fixing salaries initially shall, if otherwise qualified, be ineligible by reason of his legislative membership.

"The present plan was formulated after a careful consideration of the many suggestions and criticisms which came to us directly and indirectly. In the main, these were quite sincere, constructive and made in the public interest, and, wherever possible, they have been embodied in the present Bills. It was found impracticable because of the State's geographical peculiarities to divide it into four appellate circuits, including Baltimore City, as was at first suggested.

"The original plan had called for a State-wide selection of the new judges. It was suggested that the large population in Baltimore City could control the nomination and election of appellate judges in the Counties. We thought this undesirable, and adopted the appellate circuit system, under which, each appellate circuit will nominate and elect its own appellate judges. Similarly, it seemed better to have the candidates in each appellate circuit nominated by unit vote of the Counties in the circuit to prevent the more populous counties from completely controlling the nominations to the exclusion of suitable candidates in smaller Counties. The present plan supplies a larger area from which to select judges but insures representatives from various sections of the State.

"One of the criticisms which developed while the plan was first discussed is worthy of comment. It was suggested that an appellate judge would be more effective if he did lower court trial work in addition to his appellate work. There are several answers to this. Desirable appellate judges do not need this experience because only competent trial lawyers will be selected and some of these will have been competent trial judges before their election to the Court of Appeals. Again, appellate judges have something more to do than to listen to the argument of cases. Their decisions not only determine the controversies before them, but also establish precedents which may control the rights of all Maryland citizens for generations to come. To properly perform their appellate duties, they must continually keep abreast of the development
of judicial thought throughout the United States and must have time for study and research. Lower court work would curtail their time and interfere with this.

"The plan now proposed seems to embody all of the suggestions of value, and to retain the great advantages discussed at the midwinter meeting."

In support of the foregoing proposals, the Committee's report gave the following reasons:*

"(1) Almost half the population of Maryland resides in Baltimore City, and in recent years over sixty-one per cent. of the cases decided by the Court of Appeals came from Baltimore City, while only slightly more than thirty-eight per cent. came from the Counties. In other words, with nearly half the population and more than sixty per cent. of the business, Baltimore City has one Judge on the Court, while the Counties with about half the population and less than forty per cent. of the business have seven Judges.

"(2) There are approximately two thousand five hundred and fifty lawyers in Baltimore City, while the average number of lawyers in each of the seven County Circuits is less than one hundred, the largest number, about one hundred and thirty, being in the Fourth Circuit, and the smallest number, about seventy, being in the Second Circuit. This means that Baltimore City has twenty-three hundred and fifty lawyers from whom to select one Judge for the Court of Appeals, while the seven County Judges must be selected from groups averaging less than one hundred lawyers.

"It is obvious that the greater the number of lawyers there are in a given territory, the greater chance there is of finding among them men preeminently qualified for judicial service. Hence, by taking two of the Judges of the Court of Appeals from Baltimore City, and the other four from the four appellate circuits in which the Counties would be divided, the possibility of securing exceptionally well qualified men for these positions will be enhanced.

"(3) When litigants are dissatisfied with decisions rendered in the lower courts, they are given the right

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*February 26, 1941 Report of the Committee on Reorganization of the Court of Appeals, pages 12-15.
to take appeals from such decisions to the Court of Appeals. The record of the case in the lower court is sent to the Court of Appeals and each Judge of the Court of Appeals receives a printed copy of this record, and printed copies of the briefs prepared by each side. In most cases the Judges also hear oral arguments by the attorneys for each side. Only one Judge prepares the Court's opinion, but all of the Judges participate in the decisions, and in order to exercise an independent judgment, it is necessary for each Judge to study the record and briefs in almost every case submitted to the Court. The average number of cases at present is about one hundred and fifty a year, and if each Judge in the Court of Appeals is to study these one hundred and fifty cases, it is absolutely essential that they be relieved of work in the lower courts. On the other hand, if each Judge does not have an opportunity to make a thorough study of each case, the appeal is largely decided by the single Judge who writes the opinion, and when this happens, the litigants and the people of the State receive the judgment of one Judge instead of the combined judgment of all the Judges, or of the majority of them.

"We appreciate that the Judges confer on each case, and express the views they have formed from hearing the arguments, and perhaps hurriedly examining the briefs, but we do not believe that each Judge on the Court of Appeals at present is able to make a thorough study of the records and briefs, and to examine the authorities cited in every case brought before the Court, nor do we believe that they can do this unless they are relieved of their lower Court work. And certainly they cannot follow the practice of the Justices of the Supreme Court of the United States, of the United States Circuit Courts of Appeal, and of many State Courts of last resort, of reading the briefs and records before the cases are argued and thus advising themselves of the matters which are to be presented for their consideration.

"(4) If the Maryland Court of Appeals is to keep pace with the other appellate courts of the country, it is obvious that the Judges of our Court should be enabled to devote their full time to their appellate work. The Judges in practically all the other States in the
country devote all their time to appellate work, and our Judges cannot be expected to compete on even terms with them if their attention is distracted and their time consumed by trial work and other lower Court duties.

“(5) The entire State is vitally interested in the decisions of the Court of Appeals. Many people doubtless think that only the parties before the Court are concerned, but those who do so fail to realize that the points of law decided by the Court of Appeals in each case are binding on all the other courts in the State, and are applied by the other Courts to the rights of other litigants who come before them. For instance, a man's rights under a will, his right to a divorce, his right to hold office, and practically all his other rights are largely determined by prior decisions of the Court of Appeals, and hence while an individual may never have a case before the Court of Appeals, his rights are nevertheless governed by such decisions. It is for this reason that it is so important to secure the ablest lawyers as members of the Court, and to permit them to use their entire time studying prior Maryland decisions and the mass of other decisions being constantly handed down throughout the country, so that they can sift from these decisions the soundest principles and apply these principles to the administration of justice in Maryland.

“(6) The suggestion that the changes be limited to giving Baltimore City an additional Judge on the Court of Appeals and relieving all the appellate Judges of any lower Court duties was not approved, for the following reasons:

“(a) More than eighty per cent. of the highest State Courts have less than eight members and if the Judges are to perform appellate work only, Maryland, which now has eight members on the Court, would need less, rather than more Judges.

“(b) If the seven County members of the Court of Appeals are limited to appellate work a demand for at least one additional nisi prius Judge in each County Circuit will at once arise, and the cost of these seven additional Judges and an additional Court of Appeals Judge from Baltimore City would exceed the cost of the proposed new
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Court of Appeals, which will require only five new Judges.

"(c) Such a plan would not enlarge the territory from which the appellate Judges could be selected.

"(d) The plan approaches the problem from the wrong direction. It would increase the number of Associate Circuit Court Judges, provide more Judges than are necessary for the Court of Appeals, and add to the cost of the State's Judiciary without securing the maximum possible improvement of the Court of Appeals."

Most of the foregoing factual data was taken from the five-year study of the Court of Appeals of Maryland prepared by Mr. Herbert M. Brune, Jr., and Mr. John S. Strahorn, Jr., and published in the June, 1940, issue of the Maryland Law Review, and so far as the writer has been able to ascertain, there has been no material change in the facts since the publication of their article.

During the discussion of the paper on the reorganization of the Court read at the 1941 midwinter meeting, Chief Judge Carroll T. Bond, of the Court of Appeals, said:

"Mr. President. It seems to me that I might add a word or two that will help the Association a little on this matter.

"I think, Mr. Chairman, in regard to the representation of Baltimore City it would be a useless waste of the public money to add one to the eight Judges now holding seats on the Court of Appeals. It is unnecessary, Mr. Chairman, and we do not need that many."

Then, after pointing out that when an eight Judge Court was established in 1867, a large number of cases had accumulated in the Court of Appeals, and that unavailing efforts had been made from time to time to gain headway over the situation, the Chief Judge said in part:

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7 Brune and Strahorn, The Court of Appeals of Maryland—A Five-Year Case Study (1940) 4 Md. L. Rev. 343.
8 Transactions, Maryland State Bar Association, 1941, page 25.
9 Transactions, Maryland State Bar Association, 1941, page 26.
"And so, in 1867, they made the Court of Appeals to consist of eight Judges, with the Chief Judge, all of whom sat, so as to overcome this accumulation of cases.

"Now, Mr. Chairman, that task has been accomplished. It has been finished long since. I think no such situation has existed in the Court of Appeals since the early eighties. . . .

"Now, there is one other consideration. The work in the Circuit does now interfere with the work of the Judges on the Court of Appeals. I do not purpose going into great detail, but that observation is undoubtedly true. I think therefore, that it is recognized as being highly desirable that those Judges who may sit on the Court of Appeals Bench should be relieved of their work in the Circuits. I honestly think that five Judges are ample. I am heartily in accord with this plan, at least, in its general outline. I think that a Bench of five Judges would work better together than a Bench of eight possibly could. I know that they can all think better if they should have no circuit work to attend to."

Judge Hammond Urner of Frederick, who had recently retired after almost thirty years of service on the Court of Appeals, also participated in the discussion, and made, among others, the following comments:10

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

. . . . . . . . .

"As to whether the Judges of our Court of Appeals should have to continue to perform Circuit work I can say this. For many years I was of the opinion and I am still of the opinion—I have been of the opinion that the work of the members of the Court of Appeals should be confined to appellate work and that the Judges of that Court should not have to perform Cir-

10 Transactions, Maryland State Bar Association, 1941, pages 27, 28.
circuit work. I think that they can perform appellate work much more satisfactorily to themselves, and certainly, probably more satisfactorily to the public if they had no Circuit duties to perform.

"They could then concentrate their attention upon their appellate duties, and they would have more time in which to read over the records, all of the records in a case. To read over all of the records in all of the cases, Mr. President. They would have more time for consultation with the other Judges in the work of the preparation of their opinions, so that upon that point, Mr. President, as I have said, I have absolutely no difficulty. I have also, for a long time been of the opinion that Baltimore City, having approximately, one-half of the entire population of the whole State and furnishing more than fifty per cent. of the cases to be decided upon appeal, ought to have a larger representation in that Court. But in regard to the other phases of the problem, although they seem to me to be very important, still, upon those questions, Mr. President, I really have not been able to reach a conclusion. . . . I approve of the report in so far as it recommends the constitution of the Court of Appeals, by relieving it of Circuit work and probably having the number reduced. I am a sharer of Judge Bond's opinion in that matter although I must say that my mind is moving from five to seven, backward and forward. I am not entirely clear about it although I would be perfectly willing to accept the recommendation of Judge Bond in whose judgment I have always the utmost confidence."

In addition to having the benefit of the views of Chief Judge Bond and of Judge Urner, the Bar Association Committee addressed a letter to the Chief Judges of each of the forty-seven other States asking an expression of the opinions of these Chief Judges as to the wisdom of limiting the work of members of the highest court in a State to appellate work. Answers were received from each of these forty-seven Chief Judges, and not one Chief Judge expressed an opinion favoring the performance of regular trial work in addition to appellate work by the Judges of the highest Court, though several stated that because trial
and appellate work had always been separated in their respective States, they did not feel qualified to express any decided opinion on the matter. As a matter of fact, in forty-two of the forty-eight States, the Judges of the highest Court exercise appellate jurisdiction only, and of the remaining six States, it is only in Delaware and Maryland that Appellate Judges also have regular trial duties, though, in the other four States, such Judges do perform some trial work. It is also interesting to note that in Delaware, determined efforts are being made to abolish trial work for the Judges of the Supreme Court, and if these efforts succeed, Maryland will have the unique distinction of being the only State in the Union in which Appellate Judges are burdened with regular nisi prius duties.

The following extracts from the replies sent to the Committee by the various Chief Justices are certainly interesting and they illustrate the practically unanimous view of these distinguished jurists on this subject:11

Chief Justice Lockwood of Arizona:

"While we were a territory we had a system similar to that of Maryland. The territory was divided into districts, and the district judges acting together composed the supreme court. Of course, the judge from whose district an appeal was taken did not actually sit on his own case. This system created a great deal of criticism among the members of the Bar for they felt the natural, though perhaps unconscious, tendency of the trial judges was to affirm each other’s decisions

“I think our present system (adopted in 1912) has worked in a very satisfactory manner. If any change were to be made, I think it would be in the line of abolishing our original jurisdiction in all cases except disbarment. This opinion is based on twelve years’ experience in trial work and sixteen in appellate.”

Chief Justice Maltbie of Connecticut:

“I am very sure that the bar of the State would firmly oppose a proposal that the judges of the appellate court should also preside at trials.”

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11 These letters were first published in the February 26, 1941 Report of the Committee on Reorganization of the Court of Appeals, pages 6-11.
Chief Justice Layton of Delaware:

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

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

Justice Mitchell of Iowa:

"Personally, I think the Supreme Court should be limited to appellate work only and in the Courts that I am familiar with where they are limited, it seems to me they function better than in other courts where they are not limited to appellate work."

Chief Justice Rees of Kentucky:

"If the Judges performed nisi prius work, the Court of Appeals would be constantly passing on the work as trial judges of its individual members, which, I think, would be extremely unsatisfactory and undesirable. My experience has convinced me that the judges of a court of last resort should be diverted as little as possible from their appellate work."

Chief Justice Sturgis of Maine:

"There can be no question but what more careful and thoughtful consideration can be given to appellate cases, and opinions more promptly handed down, if the Justices are relieved from other judicial duties. In spite of the interruptions and responsibilities of our nisi prius work, this Court endeavors to hand down sound and well-formulated opinions. It is my considered judgment, however, that an Appellate Court engaged only in appellate work might well be able to render a better service in that regard."

(Prior to 1930, the Justices of the Supreme Court of Maine exercised original jurisdiction in all civil and criminal matters throughout the Counties of the State. Since
1930, their work has been mainly appellate, though they still retain original jurisdiction in equity matters, and in the issuance of certain writs.)

Chief Justice Field of Massachusetts:

"My own view is that while there are some advantages in having a justice of the Supreme Judicial Court do some nisi prius work, these advantages do not offset the disadvantages of interference with the heavy work of the court as an appellate court."

Justice Howard Wiest of Michigan:

"I have been a justice of the Supreme Court of the State of Michigan for twenty years and, before that, was a circuit judge for twenty-one years.

"I am strongly of the opinion that this State was wise, many years ago, in departing from having circuit judges act in an appellate capacity or, what is practically the same thing, having the Supreme Court justices perform nisi prius work."

Chief Justice Leedy of Missouri:

"I think I am safe in saying in answer to your first question that the judges of our highest court (Supreme Court) are limited to appellate work only. At least this is true in the sense that they do no nisi prius work. . . . The policy of the state in this respect has remained unchanged since statehood, and personally I favor the plan."

Chief Justice Johnson of Montana:

"It seems to me very clear that it is a mistake, especially in this age of specialization, to attempt to combine nisi prius work and appellate work, and I have no doubt whatever that if the suggested change is made it will prove to be entirely satisfactory to the Bench and Bar of Maryland."

Chief Justice Allen of New Hampshire:

"The judicial system creating a separate appellate from a trial court has been in force since 1901."
"It is regarded as so great an improvement over the former system by which one court combined 'law' and 'trial' terms in its functions that there would be no favor for any change in the present system."

Associate Justice Rand of Oregon:

"I am firmly of the opinion that the jurisdiction of the appellate court should be confined to appellate work only and that its members should not be compelled to perform nisi prius work."

Chief Justice Moffat of Utah:

"The statement of Mr. Chief Judge Bond that the Supreme Court should be limited to appellate work and that the members not be called upon to perform other judicial duties, I agree with. Personally, I have served as a trial judge and the experience prepares one for appellate work but I would suggest that the two be made separate and distinct."

Chief Justice Campbell of Virginia:

"I am in thorough accord with the views of Chief Judge Bond, that the work of the appellate court should be limited to appellate jurisdiction. From my experience of sixteen years on the court, I believe that it would be a horrible situation if the members of the court were required to perform nisi prius duties."

Chief Justice Rosenberry of Wisconsin:

"I should think there would be a good deal of lost motion in a judge adjusting himself from trial to appellate work, especially if the change were to be made frequently. I am sure we here would be very much opposed to having the Judges of this Court take on trial work."

Chief Justice Riner of Wyoming:

"My personal views, and I think I may say these are the views of the membership of our entire Court, are that your Chief Judge Carroll T. Bond is exactly right in the views expressed by him as set forth in the first paragraph on the second page of your said letter."
"To what has been said above I may add that during our territorial days we had the arrangement that you have heretofore apparently had in Maryland. It did not work satisfactorily at that time and a change was made to our present system by our State Constitution, . . . ."

Chief Justice Schaffer of Pennsylvania:¹²

"The Constitution of Pennsylvania, Article V, Section 3, provides: 'The jurisdiction of the Supreme Court shall extend over the State, and the judges thereof shall, by virtue of their offices, be justices of oyer and terminer and general jail delivery in the several counties.' Under this provision, I think it has never been doubted that we can sit in courts of oyer and terminer and general jail delivery; years ago members of the Court often did so sit. However, never but once in the more than twenty-one years that I have been in the Court has any member of it sat in a lower court and that was in a very notable murder case. I am quite confident that this will not occur again, as we concluded, after the trial, that it was not wise to do so.

"The work of the Court should be confined to that of an appellate character. I am satisfied from my years of service that trial work should not be carried on by members of the Supreme Court."

Armed with the foregoing data, and supported by the views of Chief Judge Bond, Judge Urner, and the Chief Judges of practically every other State in the country, the Bar Association Committee presented to the 1941 Legislature, which was then in session, two bills designed to carry into effect the proposed reorganization. In drafting the bills, the Committee enlisted the aid of former State Senator William A. Gunter of Allegany County; Philip B. Perlman of Baltimore City, former Secretary of State, former Assistant Attorney General, and a member of the

¹² The above quotation is from a letter of Chief Justice Schaffer written under date of January 22, 1942. The writer had communicated with him further because he was in Florida when he replied to the Committee's letter last year, and did not have the State Constitution of Pennsylvania before him.
1922 Commission appointed by Governor Ritchie; Herbert Levy of Baltimore City, a former Assistant Attorney General; G. C. A. Anderson, former Assistant Attorney General, and now President of the Bar Association of Baltimore City; and William J. McWilliams of Anne Arundel County. The Committee also had the assistance of Hon. William L. Henderson, then Deputy Attorney General and now Chairman of the State Tax Commission, who made many valuable suggestions regarding both the plan and the bills.

The first bill proposed "An Amendment to Section 14 of Article IV of the Constitution of the State of Maryland, title 'Judiciary Department', sub-title 'Part II—Court of Appeals', providing for a Court of Appeals of six judges and prescribing their duties and method of selection; and providing for the submission of said amendment to the qualified voters of the State of Maryland for adoption or rejection."

As heretofore shown, this proposed amendment provided that two of the judges should come from Baltimore City, and one from each of four appellate judicial circuits into which the remainder of the State was divided by the amendment, and it also provided that the members of the Court should exercise appellate jurisdiction only. The first appellate judicial circuit comprised the nine counties on the Eastern Shore; the second, as finally agreed upon after the bill was introduced, consisted of Harford, Baltimore and Carroll Counties; the third included Prince George's, Charles, St. Mary’s, Calvert, Howard and Anne Arundel Counties; and the fourth was composed of the five Western Maryland Counties, Montgomery, Frederick, Washington, Allegany and Garrett.

The second bill simply amended the election laws to provide for the nomination by the County Unit System of the judges to be elected to the Court of Appeals from the first, second, third and fourth appellate judicial circuits. This was designed to prevent the more populous counties from controlling the nominations, and under the plan suggested, each County in making nominations was to have a
vote equivalent to its representation in both houses of the General Assembly.

After the bills were introduced various changes in the details of the proposed constitutional amendment were suggested by members of the Legislature, and accepted by the Bar Association Committee. These changes included transferring Howard County from the second appellate judicial circuit to the third appellate judicial circuit, and specifically providing that the judges of the Court of Appeals should be subject to the payment of the State income tax. A third change provided that with the exception of the additional judge from Baltimore City, the judges to be appointed to the reorganized Court by the Governor in 1943 should be selected from the judges then on the Court, and that the judges so appointed should serve for the remainder of the terms for which they had originally been elected to the present Court. This amendment would have avoided the possibility of the Governor appointing an entirely new Court when the Court was established on October 1, 1943, by limiting the selection of five of the six members to judges then sitting on the Court, and it would also have relieved the judges then appointed from standing for re-election until the terms for which they were originally elected had expired.

It is to be noted, however, that these changes did not alter the fundamental provisions, which were to give Baltimore City two judges on the Court, to reduce the total

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13 This amendment, which was approved by the Senate Committee on Judicial Proceedings, read as follows:

The additional judge from the City of Baltimore shall be appointed by the Governor to serve until the said election in November, 1946. Except as to such additional judge, the judges of said Court in the first instance shall be appointed by the Governor from their respective appellate judicial circuits; but such appointments shall be made from among the judges composing the Court of Appeals as of September 30, 1943. If any judge so appointed shall be a member of the Court of Appeals as of September 30, 1943 by virtue of having been elected to that office, his appointment shall be for the balance of the term for which he had theretofore been elected without the necessity of standing for re-election in November, 1946. If any judge so appointed shall be a member of the Court of Appeals as of September 30, 1943 by virtue of having been appointed thereto, his term shall continue until the Tuesday after the first Monday in November, 1946 and until his successor is elected and qualified.
membership of the Court to six, and to limit the duties of the judges to appellate work only.

There was, of course, opposition to the plan, and extensive hearings both for and against the Bill proposing it were held by the Judiciary Committee of the House of Delegates, and by the Senate Committee on Judicial Proceedings. Governor O'Connor not only endorsed the reorganization plan, but actively supported it, and with his aid the Bill passed the House of Delegates by a vote of 88 to 15.

Under the provisions of the Constitution, bills proposing amendments to it must be passed by a three-fifths vote of each House of the General Assembly, so that the Bill embodying the Court plan required an affirmative vote of seventy-two of the one hundred and twenty members of the House of Delegates, and an affirmative vote of eighteen of the twenty-nine members of the Senate.

The House vote of 88 exceeded by 16 votes the needed three-fifths, but in the Senate the proponents of the Bill were able to secure only sixteen votes, which, though more than a majority, was two short of the required three-fifths.

After the Senate hearing on the Bill was completed, it became the object of certain parliamentary jockeying. As a matter of fact, the Bill was not reported out by the Senate Committee on Judicial Proceedings until the final night of the 1941 session, at which time its final passage would have required a suspension of the rules, and this needed a vote of two-thirds of the Senate or a total of twenty. However, while some Senators would probably have preferred to have had the Bill kept in Committee, and its retention by the Committee until the last night of the session rendered its passage impossible under the existing circumstances, the actual fact is that the delay in reporting the Bill was not contrary to the wishes of its supporters. They were utilizing this time in an effort to obtain votes for the Bill, and while they did succeed in securing more than a majority, they were not able to get the additional two votes needed to give them the required three-fifths.

So ended the most recent attempt to reorganize the Court of Appeals, but the margin of defeat was so slim, and
the reasons adduced in support of it so compelling, as to leave little doubt that eventually some reorganization will be accomplished.

Indeed, active steps towards this end have already been taken. At the annual meeting of the State Bar Association held in Atlantic City last June, a resolution was passed requesting Governor O'Connor to appoint a Commission to study not only the Court of Appeals, but the entire judicial system of the State as it is established by Article IV of the Constitution, and to suggest improvements to the next Legislature. In response to the request of the Association, the Governor recently appointed the following distinguished judges and lawyers as members of this Commission: Hon. Carroll T. Bond, Chief Judge of the Court of Appeals, Chairman; Charles Markell, President of the Maryland State Bar Association; Hon. F. Neal Parke, former member of the Court of Appeals; F. W. C. Webb, Chairman of the State Board of Law Examiners; Walter C. Capper, former President of the State Bar Association; Hon. Hammond Urner, former member of the Court of Appeals; Samuel J. Fisher, former President of the Baltimore City Bar Association; S. Marvin Peach; Hon. Eli Frank, member of the Supreme Bench of Baltimore City; Harry N. Baetjer; J. Howard Murray; Joseph Bernstein; G. C. A. Anderson, President of the Baltimore City Bar Association; Edward D. E. Rollins, State's Attorney for Cecil County; and Clarence W. Miles, who was one of the outstanding leaders of the fight to reorganize the Court of Appeals in 1941. The Commission, under the able leadership of Chief Judge Carroll T. Bond, is already at work, and while no one can predict what it will recommend, we may be certain that its recommendations will be constructive, and that they will represent the results of a thorough and impartial study of Maryland's entire judicial system made by some of the ablest members of our profession.

Maryland is a conservative State, and we of the legal profession are certainly not the most liberal element of the population. We are accustomed to chart the future by reference to the past. We deal in precedents and are
wary of innovations, and some of us seem to cling with almost blind unreasonableness to ancient forms and practices simply because they are ancient. This attitude may serve a useful purpose as an antidote to those who go to the opposite extreme, who have no confidence in the past, and who favor novel things simply because they are new. However, neither extreme is particularly intelligent, and those who hold either are generally influenced by their natural disposition rather than by reason.

A middle course is usually safer and sounder. A due regard for the wisdom of our predecessors and the lessons of experience should make us slow to discard established forms and institutions, while on the other hand the knowledge that conditions do not remain the same, and that improvements can be made in almost every human institution, should give us the courage to make changes when the reasons for them are clear and their adoption gives real promise of producing improvements.

The reasons for reorganizing the Court of Appeals along the lines approved by the Bar Association are quite clear, and certainly justify the belief that their adoption would prove beneficial to both the Court and its members.

It is obvious that Baltimore City with half the population of the State and more than sixty per cent. of the business of the Court, is entitled to more than one Judge on the Court. It also seems obvious that if the Judges can devote all of their time to the work of the Court, they will be able to perform better work than when part of their time is spent in judicial work in the lower courts. It has been said that at present some of the judges on the Court of Appeals perform little if any work in their respective Circuits, but if this is so, there is no reason for not confining their duties to appellate work. And further, the writer understands that in at least some of the County Circuits, the Chief Judges perform a great deal of Circuit work in addition to their appellate work.

The experience of the Supreme Court of the United States and of the highest Courts in practically every State in the Union clearly demonstrates that contemporaneous
trial work is not essential to the making of an able appellate judge. And it can be taken for granted that our appellate Judges would have had prior trial experience, because they would almost invariably be selected either from nisi prius judges, or from leading lawyers who had enjoyed extensive trial practice before going on the bench. The members of our Court of Appeals are in a sense in competition with the Judges of the highest Courts of the remaining forty-seven States, and fairness to our own Judges would certainly seem to require that they be given the same opportunity afforded other appellate Judges to devote all of their time and talents to their appellate duties.

It is apparently conceded that if the Judges of the Court of Appeals are limited to appellate work only, a membership of five or six Judges will be sufficient to perform the work of the Court. And, while County lawyers may be, and some often are, equal in ability to the leading lawyers of Baltimore City, there is certainly a better opportunity of securing men pre-eminently qualified for judicial service if the number of lawyers from whom they are to be selected is enlarged. There are approximately 2,350 lawyers in Baltimore City, as against slightly less than 700 in the Counties, and the lawyers in the Counties are divided among the seven Circuits, which gives an average of about 100 in each. Under our present system, one Judge on the Court of Appeals is selected from the 2,350 lawyers in Baltimore City, while seven are selected from the Counties with each County Judge coming from a group of about one hundred lawyers. Under the proposed reorganization of the Court, two members of the Court would be taken from the 2,350 lawyers in Baltimore City, and the remaining four would be taken from the four Appellate Judicial Circuits into which the remainder of the State would be divided. There would thus be larger pools of lawyers from which to select the individual members of the Court, and it is only common sense and no reflection on anyone to believe that this would normally improve the chances of securing men particularly well-qualified for appellate judicial service.
It is believed that most Maryland lawyers favor increasing Baltimore City's representation on the Court, enlarging the fields of lawyers from which the Judges can be selected, and relieving the Judges of regular nisi prius work, but there are differences of opinion as to the best methods of accomplishing these ends, and as to other details. However, such differences of opinion can and certainly should be composed, in order to obtain the essential objectives, and a brief summary of some of these differences clearly demonstrates that they are not insurmountable. For instance, it was proposed in 1908 that our appellate Judges be relieved of regular circuit duties, but that they be given authority to preside at trials when assigned to such duty by the Chief Judge, and there is merit in this suggestion. There is also merit in the suggestion that there should be an uneven number of Judges on the Court of Appeals to avoid the evil of an equally divided Court, and it has also been suggested that our appellate Judges be selected from the State at large and elected by the State at large. The paper read at the 1941 midwinter meeting of the Association offered a compromise of this last suggestion by proposing that the Judges be elected by the entire State, but that two of them must come from Baltimore City, and that the Counties be divided into three designated districts, with one Judge coming from each district. At that meeting there was immediate criticism of the proposal that the Judges be elected by the entire State, the point being made that this would lead to political maneuvering of one sort or another, with Baltimore City exercising a preponderant influence not only in the election, but perhaps also in the nomination of the Judges.

When the committee appointed at that meeting met to study the matter, it found that the proposed division of the State into three appellate circuits was impractical from a political standpoint at that time, and it accordingly modified the proposal by providing for four appellate circuits outside of Baltimore City, and also adopted the suggestion, made at the meeting, that the Judges be elected by the voters of their respective appellate circuits. This
eliminated the possibility of Baltimore City controlling either the nomination or election of a majority of the Court, but it likewise resulted in giving us an even number of Judges on the Court, so that in avoiding the difficulty first mentioned, another was created.

During the debate, before the committees of the Legislature, the point was made that if an exclusively appellate Court was established and the Chief Judges in the County Circuits were continued, we would have more Circuit Judges than we needed. This would probably be true in some circuits, but the committee believed it would be better to establish the separate Court of Appeals by providing for five appellate Judges, in addition to the one appellate Judge now elected by Baltimore City, without disturbing the Circuit Judges, and to then find out from actual experience whether this would leave too many Judges in the circuits, rather than to take it for granted that the number should be reduced.

The foregoing are some of the various views which have been and are held about this matter, and there may be others, but despite these differences as to detail, there has been for more than thirty years a remarkable unanimity of opinion as to the desirability of giving Baltimore City increased representation on the Court, reducing the number of Judges on the Court, and divorcing the appellate Judges from regular circuit duties.

A reorganization of the Court along the lines suggested would be bound to affect some of the members of the Court, and it is also probable that such a reorganization would interfere with the ambitions of some who might desire to serve on the Court. Lawyers are naturally reluctant to advocate changes which would affect sitting Judges, and it is also embarrassing to propose changes which might militate against the legitimate ambitions of fellow members of the profession. It was largely because of these factors that the 1907 and 1923 reorganization movements were not pressed. However, in 1941 a situation existed which would have permitted the adoption of the reorganization plan with a minimum of interference to sitting
Judges, and it was because of this circumstance that the effort to reorganize the Court was suggested at the January, 1941 meeting of the Bar Association.

The Bar Association Committee made a very sincere effort to develop a plan which would interfere as little as possible with the sitting Judges, and readily agreed to suggested changes designed to further minimize such interference.

It is possible and may ultimately be necessary to devise a plan which would not in any way affect the terms of sitting Judges. This could be accomplished by having the reorganization go into effect gradually, and thus permit each sitting Judge to serve out the full term for which he was elected. Such a course would be somewhat awkward and would delay the final reorganization, but it is only natural that a Judge who has been duly elected a member of the Court of Appeals should want to serve out his term, and that those who elected him should feel the same way. The 1941 Bar Association Committee did not go this far because when the matter was before the last Legislature there were only two elected members of the Court who would have been affected, and the Committee was confident that whoever was Governor in 1943 would appoint both of these Judges to the Court. However, in 1942, seven members of the Court are to be elected for fifteen year terms, and while it is probable that some of those then elected will, because of the seventy-year age limit, retire before the expiration of their terms, the majority will undoubtedly be able to serve the full fifteen years. And this, of course, will increase the difficulty of reorganizing the Court unless provision is made to permit these judges to serve the remainder of the terms for which they will be elected this fall.

In conclusion, it should be noted that no plan can be put into effect except by a constitutional amendment, and the Bar Association Bill before the last Legislature was in the form of such an amendment to be voted on by the people of the State. The Bill secured more than the necessary three-fifth vote in the House of Delegates, and re-
ceived a majority vote in the Senate, thus showing that a majority of the people's representatives in the Legislature favored the proposed reorganization of the Court, and were willing to give the voters of Maryland an opportunity to express their views about it. Since the adjournment of the Legislature, the discussion of the plan has continued, and while there are differences as to detail, most Maryland lawyers are certainly now in favor of the three essential objectives, and there is undoubtedly a reasonable hope that a suitable plan will soon be developed and submitted to the people of the State who have the ultimate right to decide the matter.