Tributes to Chief Judge Robert C. Murphy

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TRIBUTES TO CHIEF JUDGE ROBERT C. MURPHY

INTRODUCTION

WILLIAM H. REHNQUIST*

I am pleased that the University of Maryland School of Law is dedicating an issue of its law review to Chief Judge Robert C. Murphy on the occasion of his retirement from the Court of Appeals of Maryland. Chief Judge Murphy's service to the State of Maryland has been long and productive. I am sure that those who are more familiar with his contribution to Maryland jurisprudence than I am will attest to his major contributions in that area.

I have known Bob Murphy through the activities of the National Conference of Chief Justices, where he was a recognized leader and served as president for a term. He has also been active in the work of the National Center for State Courts in Williamsburg, Virginia, and served as the chairman of its board of directors. He was rightly recognized as a leader among state chief justices, and I am sure that the nation as well as the State will miss his active participation in the administration of justice.

* Chief Justice of the United States.
The retirement of Robert Charles ("Bob") Murphy as Chief Judge of the Court of Appeals of Maryland has produced an outpouring of tributes and ceremonies honoring the man which rival those honoring LaFayette on his return visit to the United States in 1824. The Maryland Law Review, by recognizing Bob Murphy's public service in this issue, takes part in that broad, public expression of appreciation. I am pleased to have been asked to participate.

As directed by the editors, my contribution focuses on Chief Judge Murphy's opinions for the Court of Appeals. In the nearly twenty-five years of his service on the Court, all as Chief Judge, Bob Murphy authored approximately 550 majority opinions. Their intrinsic merit contributes substantially to the jurisprudence of the State and nation. There are probably no topics known to the common law, or subjects of legislation by the General Assembly of Maryland, that have not been addressed in one or more opinions authored by Chief Judge Murphy. This body of work is even more remarkable when one considers that it was produced while administering the entire judicial branch of the government of Maryland without a mishap, or at least not one that the press ever detected.

His first opinion as Chief Judge, filed October 9, 1972, arose out of the tension between changing social customs and an established pattern of conduct—a typical breeding ground for litigation that works its way to state supreme courts. The case, Stuart v. Board of Supervisors of Elections,1 was brought by a married woman against local supervisors of elections who had canceled the woman's voter registration because she refused to use her husband's surname and had registered using her birth-given name by which she was known. After Chief Judge Murphy's opinion had reviewed the law relating to the name of an individual, from English times to the then present, the Court directed restoration to the voters rolls under the name by which the woman was known.

A hallmark of Chief Judge Murphy's tenure on the Court was his willingness to write the opinions in cases of great public controversy. It became clear to me, relatively shortly after my joining the Court in January 1980, that Chief Judge Murphy did not assign these cases to himself because of some desire to be in the limelight. Rather, he

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1. 266 Md. 440, 295 A.2d 223 (1972).
knew that these decisions, whatever they might be, would displease a large segment of the public, and he believed that it was part of the responsibility of the Chief Judge to be the lightning rod for any outcry precipitated by these decisions.

Accordingly, Chief Judge Murphy wrote for the Court:

—when the poorest political subdivisions of the State unsuccessfully challenged the constitutionality of Maryland statutes governing the system of financing public elementary and secondary schools throughout the State;²

—when landlords successfully challenged the constitutionality of an amendment to the Baltimore City Charter that had been proposed by an initiative generated by tenants' rights advocates and that would have established a system of rent control;³

—when opponents of the construction of two sports stadiums in Baltimore City unsuccessfully petitioned to referendum acts of the General Assembly providing for financing construction of the stadiums through the Maryland Stadium Authority;⁴

—when the Commissioner of the Division of Labor and Industry promulgated a regulation under state and federal Occupational Safety and Health Acts banning, with limited exceptions, smoking in places of employment, thereby precipitating an unsuccessful court challenge by businesses, trade associations, and tobacco companies;⁵ and

—when multiple exceptions were unsuccessfully taken to the respective reapportionments of the General Assembly following the federal censuses of 1980⁶ and 1990.⁷

Capital punishment cases also generate intense feelings among large segments of the public. After Gregg v. Georgia,⁸ Proffitt v. Florida,⁹ and Jurek v. Texas¹⁰ introduced the current era of "guided discretion" death penalty statutes, Maryland adopted such a statute.¹¹ Under the Maryland statute, appeals in cases in which the death penalty is imposed, together with a review of that sentence, come directly to the Court of Appeals.¹² Tichnell v. State¹³ was the first death penalty case

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7. See Legislative Redistricting Cases, 331 Md. 574, 629 A.2d 646 (1993).
11. See Md. ANN. CODE art. 27, § 414(a), (d) (1996).
12. See id.
in the Court under the new statute. Writing for the Court, Chief Judge Murphy sustained the constitutionality of the statute and also began the continuing task of clarifying how the statute operates in the myriad situations that can arise during these intensely contested proceedings. Tichnell's case returned to the Court of Appeals on three subsequent occasions, on each of which Chief Judge Murphy wrote the opinion.\(^{14}\)

The convictions and death sentences imposed on John Frederick Thanos were affirmed in opinions written for a unanimous Court by Chief Judge Murphy.\(^{15}\)

On the Court of Appeals he also continued to define and clarify Maryland substantive criminal law with the same balance of scholarship and pragmatism that he had displayed as Chief Judge of the Court of Special Appeals when that court began writing Maryland criminal law on a relatively clean slate. In the realm of federal constitutional criminal law, his analysis in *Smith v. State*,\(^{16}\) holding that there was no search within the meaning of the Fourth Amendment through the use of a pen register,\(^{17}\) was affirmed by the Supreme Court of the United States.\(^{18}\)

On certiorari review of a decision by a divided Court of Special Appeals, sitting en banc,\(^{19}\) Chief Judge Murphy, writing for the four-judge majority in the Court of Appeals, reversed the Court of Special Appeals and upheld the sufficiency of the evidence of rape in which the victim had neither been threatened with a weapon nor beaten.\(^{20}\) In addition, of course, every judge, prosecutor, and defense attorney in Maryland is aware of Chief Judge Murphy's opinion in *State v. Hicks*.\(^{21}\) In that opinion the Court held that dismissal of the criminal charges is the sanction for noncompliance with the court rule, implementing a statute, that specifies the latest date for the initially scheduled trial in criminal prosecutions. The ramifications of the sanction approved in *Hicks* in 1979 continue to this day.


\(^{16}\) 283 Md. 156, 389 A.2d 858 (1978).

\(^{17}\) A pen register is a device installed in the central office of a landline telephone company for recording the telephone numbers of calls made from a particular telephone. *Id.* at 159 & n.1, 389 A.2d at 859-60 & n.1.


Chief Judge Murphy's contribution is equally vast in the field of tort law. He authored *Harris v. Jones*, which recognized the tort of intentional infliction of emotional distress and laid down the elements establishing that tort's boundaries. Speaking through Chief Judge Murphy, the Court in *Adler v. American Standard Corp.* declared the tort of abusive discharge to be part of Maryland common law. *Adler* has provided lawyers practicing in the labor and human resources field with full employment, comparable to that enjoyed by tax attorneys and accountants following a revision of the Internal Revenue Code. He wrote in *Vance v. Vance* that an action for negligent misrepresentation would lie on behalf of an ostensible second wife against her bigamist husband who misrepresented that he had been divorced from his first wife. In *Jones v. Malinowski*, after recognizing a right of action for "wrongful birth"—an action against a health care provider based upon the birth of a child following a negligently performed sterilization procedure—Chief Judge Murphy set forth the principles governing the award of damages in such cases. He wrote in *Wilmington Trust Co. v. Clark* that when a former husband committed suicide, thereby prematurely terminating a stream of support payments to his former wife, the decedent's estate was not liable to the former wife for the economic loss. He has also written on the distinction between property damage and pure economic loss in a case involving the death of more than 140,000 chickens due to the failure of an electric switch, and in a case involving allegedly defective fire retardant-treated plywood used for the roofs of houses.

Decisions by Chief Judge Murphy affecting the practice of medicine have been respectively approved and disapproved by the medical profession. In *Elias v. State*, speaking for a majority of the Court, he held that the State had failed to prove that a male physician had committed a common law battery on a female patient during a medical examination that included brief touching in the vaginal area. In *Faya v. Almaraz* Chief Judge Murphy wrote that a negligence ac-

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tion would lie against a surgeon and hospital on behalf of a patient who had not been informed, before surgery, that the surgeon had AIDS, but the damages in compensation for anxiety would be limited to the period from the discovery of the surgeon's condition to the report of a negative test on the patient.

Sometimes the neutral application of legal principles requires rulings that are contrary to the sympathy that the facts arouse for the losing party. For example, in *Miles Laboratories, Inc. v. Doe,* Chief Judge Murphy's opinion explained to two plaintiffs who had contracted AIDS in hospital-administered blood transfusions that they had no legal action against the suppliers of the blood because, at the time of the transfusions, the blood products were unavoidably unsafe. Similarly, writing for a majority of the Court in *Wentzel v. Montgomery General Hospital, Inc.*, he affirmed the circuit court's decision not to authorize sterilization by hysterectomy of a thirteen year old whose I.Q. was twenty-five to thirty as a result of brain injuries sustained in an automobile accident at age five months.

Chief Judge Murphy's opinions dealing with contract and property rights include interpreting an insurance policy in an environmental tort coverage case that was so important that two full pages of the Maryland Reports were required simply to list the names of counsel. He has interpreted a testamentary trust in the light of changes to Maryland's adoption statute. In statute of limitations cases he has written that the commencement of the running of the statute on the claim of a savings and loan association against its former directors is deferred by the adverse domination of the board of directors by the defendants, but that on the claim of a building owner against a contractor there is no deferral of the running of the statute until all of the harm has occurred.

Chief Judge Murphy's opinions in the fields of administrative law and local government include *County Council v. Investors Funding Corp.*, from which I learned, much to my shock as a practicing lawyer, that a charter county could authorize an administrative agency to impose civil monetary penalties. In *Ad + Soil, Inc. v. County Commis-

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37. 270 Md. 403, 312 A.2d 225 (1973).
sioners,38 his opinion resolved an apparent conflict between a local zoning ordinance and state environmental regulations in favor of the local zoning ordinance.

If Chief Judge Murphy were asked to list the five opinions for the Court that he found to be the most difficult to write, I predict that the list would include Montgomery County v. Woodward & Lothrop, Inc.,39 in which a rezoning by sectional map amendment in an area of extremely valuable real estate was challenged on ten separate grounds by waves of lawyers.

The multitude of legal subjects addressed in Chief Judge Murphy's opinions attests to his intellectual prowess. In an age when the law is becoming increasingly complex and lawyers increasingly specialize in narrower and narrower areas of practice, rare, indeed, is Chief Judge Murphy's command of federal constitutional law and of the whole of Maryland law. His opinions uniformly manifest his full comprehension of the governing law and of the parties' arguments, no matter how complex or esoteric the issues.

The end product of the appellate judge's review, research, and reflection is the written exposition of the facts of the case, the issues, the decision, and the reasons for the decision. In that aspect of his work, as in every other aspect, Chief Judge Murphy excelled. Without exception his opinions are as lean on verbiage and as sharp in clarity as the nature of the case permits.

The citizens of Maryland benefitted immeasurably from the services of Chief Judge Murphy during his active career. Through the opinions of this great judge the citizens of Maryland will continue to benefit, long into the future.

A HUMBLE GIANT

ALAN M. WILNER*

To borrow a phrase from Abraham Lincoln, it is altogether fitting and proper for the Maryland Law Review to devote one of its issues to Robert C. Murphy, who retired as Chief Judge of the Court of Appeals of Maryland in October 1996 after nearly twenty-five years of service in that office.

The world is very different now than it was in 1926, when Bob Murphy was born, or in 1952, when, after a clerkship with a federal

* Judge, Court of Appeals of Maryland.
judge, he began to practice law, or even in 1972, when he was appointed as Chief Judge of the Court of Appeals. So much information flies by so fast that less and less of it is able to be retained; in trying to keep mentally afloat, we tend to forget our history and lose track of who our real heroes and heroines are. They become exiled in cerebral Siberia as we concentrate on what currently confronts us. As we enter a new century, we need, every now and then, to stop for a moment and take our bearings, and when we do, we shall see Bob Murphy as one of the guiding beacons—a visionary who understood well the function of the judiciary and helped to make and keep it responsive to the public need and to public expectations.

Other contributors to this issue have described some of the cases Judge Murphy sat on and some of the opinions he authored. I want to focus on other things, for his true contribution extends well beyond the opinions that he wrote, important as many of them are.

Before he was a judge, Bob Murphy was a lawyer. I first met him in August 1965 in his capacity as Deputy Attorney General of Maryland. In a rare lapse of good judgment, he appointed me as an assistant attorney general. That office now has about three hundred lawyers plus a cadre of law clerks, paralegals, interns, and other support staff. In those days, in addition to the Attorney General himself, it consisted of one deputy—Mr. Murphy—fourteen assistant attorneys general, sixteen special assistants (some of whom did the same work as the regular assistants but got paid less), eight secretaries, one administrative assistant, and six file cabinets. Other than the Attorney General—Tom Finan—the oldest lawyer was not yet forty.

In terms of raw talent and exuberance, if not in experience, it was unquestionably the finest law firm in the State. It was so largely because of Bob Murphy's insistence on picking only the most qualified people to serve in it and because of his ability to draw the very best out of those people. He was the one who really ran that office, who guided the young staff around him, and who set State legal policy. It was there that I first observed some of his great human qualities—uncommon common sense and the willingness, on the one hand, to accept responsibility for any failures or deficiencies, even if caused by others, but, on the other, to allow his subordinates to take the credit when things went well. In those days, the State had several cases in the Supreme Court, and rather than taking those arguments for himself, which he had a right to do, he usually shared them with the assistant who worked on the case, to give the young attorney a once-in-a-lifetime chance to make history.
People think of Judge Murphy in terms of his appellate experience, but he was a canny trial lawyer as well. I recall the summer of 1966 or 1967, when a group of rabble-rousing, neo-Nazi white supremacists nearly caused a serious race riot in South Baltimore and threatened to hold additional rallies in other parts of the city. The lead speaker—an itinerant, but charismatic painter from South Carolina—proved himself able to whip up a crowd, and the police were very concerned about the effect of further demonstrations.

The State filed a complaint to enjoin the group from holding any further rallies in the city, and in preparation for a hearing two days hence, we had to figure out a way to overcome the obvious First Amendment problem that Judge O'Donnell was sure to raise. Bob Murphy, with his amiable Irish charm, struck up a "friendship" with the young "philosopher" of the group and, perhaps over a bottle of good Irish whiskey, engaged him in pleasant dialog as to his views, which included a "final solution" for various groups of undesirables. At the hearing, Bob called this young man as the State's first witness, asked him a few friendly questions, and let him explain to the judge, in a rambling fashion, what he and his group had in mind. The judge shook his head gravely as the witness laid out, in some detail, his plan to murder or exile in leaky boats the Jews, the Blacks, and even the Italians. When this budding Hitler added the Irish to the list, however, Judge O'Donnell became visibly incensed, as Bob knew he would, and we had our injunction. The injunction ran for about three months, which got us through the summer and early fall. Judge O'Donnell figured that it would expire before the Court of Appeals could get around to reversing him.

In 1967, the Court of Special Appeals was created, and Bob was appointed as its first Chief Judge. The administrative talents he displayed as Deputy Attorney General (and, for a short time, Attorney General) were transferred immediately to the daunting job of organizing a brand new court, upon which the Court of Appeals immediately dumped four hundred cases. Bob did everything—from setting in motion the mysterious removal of rugs and furniture from various legislative and executive offices throughout Annapolis in the dead of night in order to furnish the court, to hiring the clerical staff, to picking green as the color of the new Maryland Appellate Reports, to creating the procedures for assigning and disposing of cases, to his most important legacy of forging the bond of friendship among the judges that has remained a hallmark of that court throughout its entire thirty-year history. In the process, he set the groundwork for what has
become one of the best and most efficient intermediate appellate courts in the country.

Few people realize that a great part of modern criminal law and procedure in Maryland was fashioned by the Court of Special Appeals in those early days. The State was presented with an explosion of newly recognized rights emanating from the Supreme Court, and for the first several years after creation of the Court of Special Appeals, the Court of Appeals seemed content to allow that court to deal with those issues. Bob Murphy had a great deal to do with the State’s implementation of the new doctrines.

One of the most important tasks he faced was implementing the right of indigent criminal defendants to court appointed counsel at the appellate level. There was no public defender system then, so Bob would call around, importuning lawyers to handle cases, mostly on a pro bono basis. Several times, he called me. His line, each time, was that the court had a case of truly special significance, requiring the thorough analysis that only I could give. Convincing me that I was Maryland’s version of Abe Fortas and that the case was no less important than *Gideon v. Wainwright*,¹ I would accept the appointment, spend hours and hours in research, prepare a brief fit for the Supreme Court, and travel to Annapolis for oral argument, only to get, within a week or two, a one-page per curiam affirmance. I am sure that I was not the only victim of this Murphy malarkey.

Article IV, section 18(b) of the Maryland Constitution declares that the Chief Judge of the Court of Appeals “shall be the administrative head of the Judicial system of the State.”² Although that provision has been in the Constitution since 1944, it was not until Judge Murphy became Chief Judge in 1972 that it was fully implemented. He understood that there was, in fact, a judicial “system” and not just a collection of disparate courts, each doing its own thing. He also understood that the judicial system was part of several larger systems and that it could not operate efficiently or effectively independent of them. We take those precepts for granted now, but they were radical thoughts in 1972.

More than any of his predecessors, Judge Murphy made special efforts to forge cordial relations with the General Assembly. Unlike the view of judges in some other states, he did not regard legislators as just rank politicians, but saw them as decent, hardworking, and dedicated public servants, who, if educated about the judicial system and

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². Md. Const. art. IV, § 18(b).
its needs, would respond constructively. He did not leave the presentation of the judicial budget or of other proposals especially important to the judiciary just to administrative officials, but made it a point to appear personally before the legislative committees to answer questions and impress on them the importance of what was being requested. He used his periodic State of the Judiciary addresses to the General Assembly to lay out both his vision and his immediate laundry list.

As a result of these and other efforts, the legislature has generally responded in a reasonable way, authorizing the judicial personnel and the resources necessary to operate the system effectively. There have been disagreements and occasional flashpoints, of course, but, largely as a result of Judge Murphy's wise strategy and innate skill in involving and educating the legislature and treating its members with respect, the Maryland judiciary has fared far better than its counterparts in most other states.

Judge Murphy displayed the same kind of outreach and involvement with respect to the Maryland State Bar Association. In many states, there is little contact between the chief judge, or the state supreme court, and the state bar association. That is not the case here. Judge Murphy both initiated and responded to multiple formal and informal contacts with the Maryland State Bar Association. He gave formal addresses at the annual meetings in June; he met privately with Bar Association leaders to discuss matters of common interest; he eased consideration by the Court of Appeals of important Bar Association initiatives, such as the professionalism course required for new admittees and the urging of all lawyers to engage in pro bono activities.

On a number of occasions, Judge Murphy personally intervened with the governor and the legislature to have necessary funds restored to the public defender system, thereby saving that operation from extreme hardship. He understood the importance of the public defender system to the operation of the trial and appellate courts and, therefore, in the interest of the judiciary, went to bat for what is clearly an executive branch agency.

While reaching out to other institutions, Judge Murphy fully appreciated the responsibility of the judiciary itself to keep current and responsive to new needs and changing times. In 1981, by administrative order, he created the Maryland Judicial Institute for the purpose of providing organized, relevant, and high-quality continuing education programs for judges. He launched a major effort to investigate, document, and eradicate gender bias in the Maryland courts. It was
under his tutelage that the Attorney Grievance Commission was created and funded, that sentencing guidelines were established, that the Code of Professional Responsibility for lawyers was revamped, that the Canons of Judicial Conduct were also substantially rewritten, that membership by judges in organizations that practice invidious discrimination was prohibited, that a similar code of conduct was promulgated for masters and other judicial appointees, that the circuit court clerks' offices were brought under court control and modernized, that a fair personnel system, including an antinepotism policy, was established for the clerks, and that a Code of Evidence was adopted by the Court.

It would take more than this issue of the *Law Review* even to summarize the enormous achievements of Bob Murphy. Underlying it all, however, is a very special person—a humble soul with keen insights into human nature and the ways of the world, who has a marvelous sense of history and an encyclopedic interest, who is as conversant with the works of Willa Cather and John Steinbeck as with those of judges and lawyers, and, most important, who embodies everything—everything—subsumed in the notions of decency and integrity: a scholar, a doer, and, in the jargon of East European Gaelic—a *mensch*.

**The Murphy Years: A View From the Trial Court**

**Dennis M. Sweeney* **

Every morning across Maryland for the past eighteen years, a now-familiar chant can be heard in county circuit criminal courts. Trial judges, prosecutors, defense counsel, and courtroom clerks ask each other: "Do we have a *Hicks* problem?" "Will the defendant waive *Hicks*?" "What is the *Hicks* date?"

*Hicks* refers to the opinion in *State v. Hicks*,1 wherein Chief Judge Robert C. Murphy, speaking for the Court of Appeals of Maryland, held that statutory and rule provisions that required trial of a criminal case within four months from the date of arraignment or appearance of defense counsel in the case were mandatory and not merely directory, as had been held earlier by the Court of Appeals2 and Court of Special Appeals.3

Chief Judge Murphy was blunt in spelling out in plain language that the Court of Appeals now meant its rule to be followed even if it

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* Associate Judge, Fifth Judicial Circuit of Maryland.
2. *See* Young v. State, 266 Md. 438, 294 A.2d 467 (1972) (per curiam).
resulted in the dismissal of serious criminal charges. "The provisions of Rule 746 are of mandatory application, binding upon the prosecution and defense alike; they are not mere guides or bench marks to be observed, if convenient."4 In explaining the need for mandatory application, Chief Judge Murphy characteristically relied on the eloquence of others. He quoted at length Judge Jerold Powers in Guarnera v. State,5 who wrote:

Courts and court supporting services spend substantial time 'spinning their wheels', in rescheduling cases. Available court time is lost. The time of attorneys and witnesses is lost. Witnesses themselves are lost. Those who are not are put to severe inconvenience as well as actual loss, and end up in despair at the frustrations of being involved in the trial of a case in the courts. The very image of the judicial system is in serious jeopardy. Public confidence in the courts as instruments of the people is impaired. Judges and lawyers cannot blame the 'system', for they are the people who run that system.6

The Hicks opinion reflects in many ways the values Chief Judge Murphy brought to his opinions and the administration of justice. It relies on a court rule adopted to implement an enactment of the General Assembly, thereby recognizing that both the legislative and judicial branches have significant roles to play in the administration of criminal justice. Chief Judge Murphy did not hesitate to overrule or distinguish precedent to accomplish the result needed for a modern judicial system. He also relied on policy considerations that went beyond whether a rule could be characterized as pro-defendant or pro-prosecution. He took the broader view and considered the impact of the holding on the bench, the bar, the victims of crime and other witnesses, and, finally, on the public's confidence in the courts.

Cases like Hicks and the rule modifications by the Court of Appeals that evolve from them are the work tools of trial judges. We look to the appellate courts and particularly the Court of Appeals to give us useful implements that are forged from common sense, practical realities, and, indeed, justice. This Article examines the illustrious career of Judge Robert C. Murphy from that perspective.

It is perhaps a dangerous exercise for a trial judge to comment on the career and opinions of an appellate judge—particularly the

4. Hicks, 285 Md. at 318, 403 A.2d at 360.
chief judge of the state’s highest appellate court. The professional relationship between trial and appellate judges can be at times a tense and tricky one. Trial judges often make their decisions under the pressure of the clock and with only the most sketchy legal information. With experience, trial judges learn that their work is as much intuition as it is scholarship of the law. They feel anyone can make the “right” decision when they have fully researched all the precedents and authorities. A good trial judge, on the other hand, can and must make the “right” decision even when the judge has only been provided the barest information or authority upon which to operate. After all, this is what “judgment” is about.

Trial judges see themselves as the artists of the judiciary, shaping and molding a dynamic trial to its unknown verdict with an appearance of authority, certitude, and fairness. Unfortunately, this marvelous creation may last only until its first review by an appellate court.

From the trial judge’s peculiar perspective, appellate judges are not artists but are more akin to grim legal technicians. When appellate judges receive the case, it is no longer dynamic. It is a stale and cold record to be autopsied by those on the negative mission of searching for “error.” The words of the trial judge that seemed so wise and clear at the time of ruling now appear as inarticulate and ungrammatical grunts. Little of the ambiance or nuance of the trial appears on the page.

Working with this record, the appellate judge can dissect and parse the trial judge’s words that now lie so awkwardly upon the transcript. A gaggle of law review-trained clerks can spend endless hours researching by computer the decisions from around the country. The appellate judge, again assisted by the eager law clerks, can then take the time needed to draft an exquisite decision demonstrating with endless citations and reams of lifeless prose the clear error committed by the trial judge. For ironic emphasis, the appellate opinion may archly refer to “the learned trial judge” just prior to demonstrating in painful detail the judge’s obvious deficiencies in legal aptitude, learning, and reasoning. The final indignity is the return of the trial judge’s tattered masterpiece for a retrial, this time to be conducted under the careful tutelage of the higher court’s authoritative opinion.

This admittedly biased view of the role and function of appellate judges might suggest that Chief Judge Murphy, who never served as a trial judge, would not be viewed favorably by trial judges. This is not

7. Until the ratification of a constitutional amendment in 1944, the judges of the Court of Appeals, with the exception of the judge from Baltimore City, performed both
so. He brought to his review of trial work and management of trial judges the perfect balance and sensitivity that produced learned and useful opinions and highly practical policies.

Chief Judge Murphy's opinions are precise and concise. They tell readers—busy trial judges and harried litigators—what they need to know, without confusing the issue with unnecessary musings or wanderings down arcane pathways that may be of interest to scholars but of little use to practitioners. In a memorial to an earlier chief judge, William L. Henderson, the distinguished Circuit Judge David Ross quoted another trial judge who complimented the deceased jurist's opinions by saying: "I always liked his opinions. He set out the facts succinctly, then the issue, the law and the holding. No references to Alice-in-Wonderland or quotations from the Bible. Just good, solid legal writing."8

Another speaker at the same memorial, former Chief Judge Hall Hammond, described Chief Judge Henderson's opinion writing by saying:

There was no prolix profundity, no scissors and paste for quotation after quotation and ladder after ladder of cases. The opinions did not wander into side streets or alleys of the law and did not meander through the meadows of generalities and restatements of the obvious. With grace of concept and felicity of phrase they took the high road to the right destination.9

These descriptions neatly encapsulate the legal writing style of Chief Judge Murphy. Direct and held to the point, the opinions speak with strength and clarity. They are immediately accessible to the reader and devoid of egotistical flourishes or florid eloquence. In short, they are the type of opinions appreciated by a busy trial judge with little time to read and digest the sometimes overwhelming flood of appellate opinions that land on the judge's desk with a heavy thud.

The variety of Chief Judge Murphy's opinions can be seen by looking at the entire span of his judicial career, as other contributors to this issue have done. It can also be seen by looking at any single

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9. Id. at XLIII (memorial address presented by the Honorable Hall Hammond).
volume of the Maryland Reports. Volume 340 of the Maryland Reports, for example, contains the opinions for approximately one quarter of 1995. In that volume, Chief Judge Murphy authored eight opinions on a wide array of important subjects. They include issues of double jeopardy as applied to motor vehicle law prosecutions,\(^{10}\) the effect of incarceration on a parent’s obligation to pay child support,\(^{11}\) the rights of the media to publish information obtained in juvenile court proceedings,\(^{12}\) the validity of a real estate contract that failed to disclose a disclaimer required by statute,\(^{13}\) the tax status of computer equipment used to prepare financial information on CD-ROMs,\(^{14}\) the obligation of an insurer to defend a party in a lead poisoning claim,\(^{15}\) the level of proof required in a building encroachment case,\(^{16}\) and the standards for a tort claim involving only economic loss in a homeowner’s suit against plywood manufacturers for alleged defects in residential roofs.\(^{17}\)

Not only did Chief Judge Murphy write on a remarkable array of subjects in this volume, he also carried the entire Court with him unanimously in all opinions he wrote except one.\(^{18}\) In that volume, which contains seventy-five opinions by other members of the Court, Chief Judge Murphy wrote no dissents or concurrences and joined in only one dissent.\(^{19}\)

Dissents by Chief Judge Murphy are rare. For example, in 149 cases with opinions decided in 1991, Chief Judge Murphy wrote no dissents and joined in none. While some judges see frequent dissents as a duty, “an appeal . . . to the intelligence of a future day,”\(^{20}\) other commentators note that the practice of frequent dissents is a relatively modern phenomenon that detracts from the institutional authority of

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18. See id. Judge Eldridge dissented, joined by Judges Bell and Raker. See id. at 547 (Eldridge, J., dissenting).
the Court.\textsuperscript{21} Clearly, Chief Judge Murphy recognized the value of obtaining consensus and, where feasible, producing opinions that speak with the authority of the entire institution. This provides for stability and certainty in the law—a great comfort to the trial judge and to those directly and indirectly affected by the Court's decisions.\textsuperscript{22}

This is not to say that Chief Judge Murphy could not dissent with force and conviction when he thought it necessary. In Schochet \textit{v. State},\textsuperscript{23} the majority held that in order to avoid a constitutional question, a very explicit statute\textsuperscript{24} outlawing fellatio could be construed so that it did not encompass consensual, noncommercial heterosexual activity between adults in the privacy of the home.

Amazed at the legerdemain of the majority's reasoning, Chief Judge Murphy noted that the statute was enacted in 1916, "a staid time in our history when the sexual mores of the people were far less tolerant than the moral attitudes that prevail in today's society."\textsuperscript{25} He could find in the starkly precise words of the statute no exceptions, no possibility of two \textit{reasonable} interpretations.

As to the constitutional question of a right to privacy, Chief Judge Murphy relied on the detailed reasoning of Judge Charles E. Moylan, Jr., in the majority opinion of the Court of Special Appeals\textsuperscript{26} to find the statute constitutional.\textsuperscript{27} Finally, as he has so often done throughout his career, Chief Judge Murphy saw the proper method for changing outmoded statutes to be not well-intentioned judicial blue-penciling but reliance on the legislative branch "as the elected repre-

\textsuperscript{21} See id. (noting that Chief Justice John Marshall dissented only nine times in his thirty-five-year career).

\textsuperscript{22} The disease of dissent has spread from the opinion-rendering function of the Court of Appeals to now infect the Court's rulemaking. For example, the recent rewrite of the contempt rules was adopted by a five-to-two vote. See 344 Md. XLVII (1996). When the Court cannot reach consensus on such basic matters of judicial administration, the Court's institutional authority is unfortunately weakened.

\textsuperscript{23} 320 Md. 714, 580 A.2d 176 (1990).

\textsuperscript{24} Article 27, section 554 of the Maryland Annotated Code provides:

\begin{quote}
Every person who is convicted of taking into his or her mouth the sexual organ of any other person or animal, or who shall be convicted of placing his or her sexual organ in the mouth of any other person or animal, or who shall be convicted of committing any other unnatural or perverted sexual practice with any other person or animal, shall be fined not more than one thousand dollars ($1,000.00), or be imprisoned in jail or in the house of correction or in the penitentiary for a period not exceeding ten years, or shall be both fined and imprisoned within the limits above prescribed in the discretion of the court.
\end{quote}

\textsuperscript{25} Schochet, 320 Md. at 737, 580 A.2d at 187 (Murphy, C.J., dissenting).


\textsuperscript{27} Schochet, 320 Md. at 737, 580 A.2d at 187 (Murphy, C.J., dissenting).
sentatives of the people, and as the primary body which declares the public policy of this State."\textsuperscript{28}

It is not surprising that Chief Judge Murphy came to decide and write as he did. Like his predecessors, Chief Judges Hammond and Henderson, Chief Judge Murphy served a lengthy apprenticeship in the Office of the Attorney General. In a decade in that office, he rose from Special Assistant Attorney General to Deputy Attorney General, and then he briefly served as Attorney General.

One of the duties of any Assistant Attorney General is to draft Opinions of the Attorney General that are hopefully correct, but also are clear, devoid of unnecessary verbiage, and, most important, promptly issued. While there may be lively debate and disagreement among those writing and reviewing the draft opinions, the Attorney General speaks with one voice. There are no dissents.

Likely, the first published legal work of Robert C. Murphy is the lead opinion in Volume 44 of Official Opinions of the Attorney General, in which Special Assistant Attorney General Robert Murphy, barely six months on the job, answers a question concerning the use of confessed judgment notes in sales under the Retail Installment Sales Act.\textsuperscript{29} The opinion is five paragraphs long, containing fourteen sentences, and cites only two cases. It authoritatively and clearly answers the question, but does not burden the requesting official or other readers with any unnecessary verbiage. One can see in this early opinion the embryonic style that would mature over the next thirty-seven years.

Chief Judge Murphy's service in the Attorney General's Office is also pivotal to understanding his approach to the law. The Maryland Attorney General not only represents all three branches of Maryland government; the Attorney General also exercises an often effectively final authority on many questions of law affecting the executive and legislative branches of government through opinions issued under Article V, section 3(a)(4) of the Maryland Constitution.

Such a tension-filled task requires that the Attorney General be a scrupulous arbiter of the issues, respectful of the prerogatives and powers of both the executive and legislative branches. The Attorney General often must find the middle course—the practical and credible compromise which, while faithful to the law, does not undermine the rightful role of either branch of government.

\textsuperscript{28} Id. at 738, 580 A.2d at 187.
When he moved from Attorney General to Chief Judge of the Court of Special Appeals and then to Chief Judge of the Court of Appeals, Chief Judge Murphy brought with him and employed that heightened sensitivity to both the separation of powers and the need to avoid needless constitutional confrontations among the branches. This legacy can be seen in Murphy opinions such as *Fogle v. H & G Restaurant, Inc.*, in which aggressive executive branch regulations prohibiting workplace smoking were upheld, and *Kelly v. Marylanders for Sports Sanity, Inc.*, in which an intricate legislative scheme for funding and siting new sports stadiums was held to be nonreferable.

When he became chief, Chief Judge Murphy claims that his predecessor gave the following advice about fulfilling the chief judge's role as constitutional administrative head of the judicial branch of state government. "Put all your time and effort into preparing solid legal opinions. There's no time for anything else. Don't answer the phone. Don't open your mail. All those problems will solve themselves if you don't pay attention to them."

Fortunately, Chief Judge Murphy ignored this advice. Without slighting the preparation of "solid legal opinions," he jumped into the then-nascent field of judicial administration. He brought to maturity the Administrative Office of the Courts under a trained and professional staff of State Court Administrators. He oversaw the formation of the Judicial Institute of Maryland, which provides excellent training to trial judges and masters on an ongoing basis. Chief Judge Murphy also began the at-times painful process of bringing the courts into a world of computer technology. All of this administration and supervision was done without impairing in any way the independence and professionalism of the judges under him.

What trial judges know intuitively about the manner in which Chief Judge Murphy "managed" them was recently confirmed in a year-long study by the Commission on the Future of Maryland Courts, a thirty-one member group created by the General Assembly. After the study, the Commission evaluated the present court system, stating:

32. In both cases, the Court of Appeals reversed the rulings of the trial judges, but the Murphy opinions did so with great respect for the careful findings and conclusions expressed by the trial judge and with absolutely no references to the Bible, the Magna Carta, or Alice in Wonderland, and only a single Latin phrase (in pari materia) appears in either opinion.
33. *State Court Profiles: Robert C. Murphy, Chief Judge, Maryland Court of Appeals, Center Court* (National Center for State Courts), Fall/Winter 1996, at 8.
Our conclusion is that Maryland is, and has been, blessed with one of the finest judiciaries in the United States. It consists of hardworking, diligent and honorable people in both its judicial and non-judicial ranks. It has been well managed and, generally, it holds the confidence of the General Assembly, the Executive, and the people.\textsuperscript{34}

This is a high compliment to Chief Judge Murphy's stewardship and a wonderful legacy to his successor.

Chief Judge Murphy's approach to directing trial judges outside of his opinions was characteristically low key and respectful of their independence. Still, a point could be made when necessary. When I was newly appointed to the circuit court bench in 1991, a memorandum came from Chief Judge Murphy addressed to "all trial judges," but it seemed particularly aimed at me, with towering stacks of cases on my credenza, each awaiting in turn an opportunity for me to research and write the perfect opinion.

This memorandum, written with the concurrence of my fellow Judges of the Court of Appeals, is to remind all trial judges in the State of one cardinal principle upon which most lawyers and all appellate judges agree, \textit{i.e.,} that busy trial judges do not have the time, nor are they expected, to write elaborate opinions in cases held sub curia. It is far more important that trial judges decide cases within a reasonable time than it is to unduly delay a decision pending completion of a definitive treatise on the issues presented.

Nothing causes litigants and their lawyers more grief, and the judicial branch of government more criticism, than failure of trial judges to decide cases on a reasonably prompt basis.

This simple directive, delivered in a modest and nonauthoritarian tone but persuasively reasoned, caused me promptly to eliminate my backlog. It still sits on my desk—a constant reminder of the role the trial judge plays in our system of justice.

A memorable achievement of the Murphy years is the establishment and maintenance of a state judiciary of the highest integrity. It was not always so in Maryland. At the dawn of the Murphy era, two district court judges were removed for disposing of parking ticket cases on the basis of friendship or political favoritism when they served on the old Municipal Court of Baltimore City.\textsuperscript{35} The Commission on Judicial Disabilities had found that such practices were "en-

\textsuperscript{35} See \textit{In re} Diener & Broccolino, 268 Md. 659, 304 A.2d 587 (1973).
demic" in the Municipal Court and potentially involved other judges besides the two immediately before it. In this case, the Commission recommended censure for the judges because they did not profit from the improper practices, and the practices were long-standing customs of the Municipal Court. The court's harsher disposition of removal sent a message to the judiciary that still resonates today—abuse of judicial power or the office will not be tolerated. This culture was reinforced continually by the leadership and personal conduct of Chief Judge Murphy, about whom there has never been even a hint of impropriety. In this effort, he was greatly aided by his former colleague and deputy in the attorney general's office, Robert F. Swee- ney, who had been appointed the Chief Judge of the District Court in 1971. Together, they spent virtually their entire legal careers in public service, devoted to the law and the administration of practical justice.

It has often been remarked that talented and ambitious Irish Americans, foreclosed by discrimination in earlier years from many business opportunities, gravitated for advancement to either the Church or to public service in government or politics. It is not too far-fetched to say that these two Irish Catholics from modest backgrounds viewed the judiciary they headed as a secular priesthood in which those who were called to wear the robes should bring to the office the highest morals, integrity, and desire for public service.

When Supreme Court Chief Justice William H. Taft attempted to get the aged and irascible Justice Joseph McKenna to step down, he was met with resistance. Justice McKenna told the Chief Justice that "when a man retires, he disappears and nobody cares for him." There is no danger that such a fate will befall Chief Judge Robert C. Murphy in retirement. He is certainly the leading figure in the Maryland judiciary in the twentieth century. He will be long admired and remembered, both for his legal acumen and his administrative innovations and talents. His human concern for the judges under him and the people of Maryland will ensure that Robert C. Murphy is cared about for generations to come.

36. See id. at 670, 304 A.2d at 594.
On October 9, 1972, several months after his elevation to Maryland's highest court, Chief Judge Robert C. Murphy delivered his first opinion for the Court of Appeals. In *Stuart v. Board of Supervisors of Elections*, he concluded that, under Maryland common law, state election officials could not deny a married woman the right to register to vote in her maiden name if she had openly and consistently used that name after her marriage. A dissent twice decried the majority opinion as "judicial legislation." Nearly a quarter century later, weighed against a body of more than four hundred reported Court of Appeals opinions, the charge of legislating seems particularly ill-suited to describe the decisions of Chief Judge Murphy. In fact, few Maryland jurists have drawn a firmer or more responsible line between the decisionmaking of judges and the policymaking characteristic of the legislative and democratic processes. This was a lesson I learned early in my 1974-75 clerkship, after Chief Judge Murphy had applied the finishing touches to his opinion in *In re Trader*. The 1974 term was the first time a member of the Court was authorized to have two law clerks. Now all judges on the Court have two. My cohort that year was Thomas E. Plank, who now teaches at the University of Tennessee College of Law.

*Trader* involved an equal protection challenge to statutory provisions that accorded juvenile offenders more favorable treatment in Montgomery County than in other portions of the State. In a long opinion, Chief Judge Murphy disposed of the constitutional challenge largely on the basis of the governing "lenient review" equal protection
standard, the absence of a suitable record, deference to the legislature, and a jurisdictional defect in one of the appeals. His opinion carried a stern warning, however, that all such territorial distinctions involving juvenile offenders would not pass constitutional muster. Clearly troubled by the issues raised in Trader and not satisfied with simply a shot across the legislative bow, Chief Judge Murphy mobilized and worked with the governor’s office to develop legislation to remedy the alleged infirmities in the juvenile system and in a sense to “override” the Chief Judge’s own opinion. Although not an easy victory, an administration measure was enacted at the 1975 session of the General Assembly “creating a uniform law for Juvenile Causes.”

Trader and its aftermath illustrate that Chief Judge Murphy was one of “those rare judges who possess both head and a heart,” and that he was obviously mindful of Justice Felix Frankfurter’s admonition that appellate judges “first and foremost” bring to their task “humility and an understanding of the range of the problems and of their own inadequacy in dealing with them.”

This is also apparent from two well-known Murphy opinions from 1983. In Hornbeck v. Somerset County Board of Education, the Chief Judge’s thorough opinion rejecting a state constitutional challenge to Maryland’s scheme for financing public school education among the subdivisions ended with a frank concession of disparities in funding and opportunities. Chief Judge Murphy noted, however, that “it is not within the power or province of members of the Judiciary to advance their own personal wishes or to implement their own personal notions of fairness under the guise of constitutional interpretation” and urged that the legislature was the proper forum to address the disparities. Obviously spurred in part by the conclusion of the school funding litigation, the governor and General Assembly in 1984 approved the largest five-year increase in state aid to education in Maryland history.

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6. Id. at 399-402, 325 A.2d at 417-18.
7. Id. at 402, 325 A.2d at 418.
8. See Act of May 15, 1975, ch. 554, 1975 Md. Laws 2670. Much of the difficult drafting of Chapter 554 and the negotiating of its passage was done by Alan Wilner, then-Chief Legislative Officer of the Governor. Also testifying in support of the measure was then-State Court Administrator, William Adkins. Both later served on the Court of Appeals.
12. Id. at 658, 458 A.2d at 790.
13. See Act of May 8, 1984, ch. 85, 1984 Md. Laws 438. Of course, the Hornbeck decision was not the last legal word on the issue of the adequacy of state educational funding opportunities. In Montgomery County v. Bradford, 542 Md. 175, 691 A.2d 1281 (1997), the Court of
tion, the Chief Judge, relying in large part on sixteen years of General Assembly rejection of comparative fault bills and the difficulties in judicially defining a new standard, declined a request to modify the common law doctrine of contributory negligence. He said that "in the final analysis, whether to abandon the doctrine of contributory negligence in favor of comparative negligence involves fundamental and basic public policy considerations properly to be addressed by the legislature." Although, unlike Hornbeck, there was no immediate fallout from this decision, more than a dozen years later the issue of whether the General Assembly should adopt comparative fault is a question weighed with increasing seriousness each session.

A number of Murphy opinions that will be long cited are those upholding significant or controversial executive or legislative action. Nevertheless, it would be a mistake to regard Chief Judge Murphy as an unhesitant supporter of either government or the status quo or as one merely satisfied with a gentle prod of government in the right direction. For every Harrison there is an Adler v. American Standard Corp. For every Hornbeck there is a Williams v. Wiltzack or a Rand v.

Appeals affirmed a decision denying Montgomery County the right to intervene in educational adequacy and funding litigation in Baltimore City that was eventually settled by a consent decree subject to legislative approval. Now retired and specially assigned, Judge Murphy authored the decision for the Court and provided the swing vote for the 4-3 majority. Most observers would agree that if the appellate Court had ordered intervention and upset the consent decree, the General Assembly at its 1997 session would not have enacted legislation pledging $254 million in school aid for Baltimore City and restructuring the Baltimore City School Board. See Act of April 8, 1997, ch. 105, 1997 Md. Laws 1529.

15. Id. at 463, 456 A.2d at 905.


18. 319 Md. 485, 573 A.2d 809 (1990) (holding that statute providing for involuntary medication of mental patients violated due process).
Most revealing are Chief Judge Murphy's decisions in two areas of public law: First Amendment cases and death penalty litigation.

Like another chief jurist who often mistakenly seemed universally identified with conservative and government positions—Chief Justice Warren Burger—Chief Judge Murphy was a staunch and consistent defender of free speech interests. In *Baltimore Sun Co. v. State* and *Baltimore Sun Co. v. Colbert*, Chief Judge Murphy upheld the right of the news media to obtain access to various judicial proceedings. In *Baltimore Sun Co. v. University of Maryland Medical System Corp.*, he wrote that a newspaper could not be denied the right to see confidential records of a hospital peer review committee that were discoverable in a civil suit. In *Rosenberg v. Helinski* and *Miner v. Novotny*, the Chief Judge gave a broad reading to defamation privileges—in the first case a psychologist's "fair report" of his in-court testimony, in the second, a complainant's communications of police brutality. In *State v. Sheldon*, he voted to invalidate the State's cross burning law as violative of free speech, and in *Curran v. Price*, he stopped in its tracks Maryland's "Son of Sam" law, which prevented criminal defendants from profiting from literary or other "reenactments" of their crimes. Commercial speech interests were advanced in *Comprehensive Accounting Service Co. v. Maryland State Board of Public Accountancy*, in which Chief Judge Murphy concluded that the State could not prevent non-CPAs from advertising themselves as accountants. Speech by public employees was upheld against attempted removals in *DiGrazia v. County Executive* and *De Bleecker v. Montgomery County*.

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19. 280 Md. 508, 374 A.2d 900 (1977) (holding that Equal Rights Amendment (ERA) prevents gender from being a factor in allocating responsibility for child support awards). *Rand* remains the Court's broadest reading of the ERA. See id. at 515-16, 374 A.2d at 904-05. It had been regarded by some as standing for the proposition that the ERA is absolute and that a gender-based classification can never be justified. See 68 Op. Att'y Gen. 173, 283 (1983). *State v. Burning Tree Club, Inc.*, 315 Md. 254, 554 A.2d 366 (1989), however, makes it clear that "strict scrutiny" is the appropriate test under Maryland's ERA.


Even cases that were not immediate media victories contained the patented Murphy shot across the bow. For example, in *City of New Carrollton v. Rogers,* the first decision interpreting the State's Open Meetings Law, Chief Judge Murphy, speaking for the Court, overturned a finding of a violation of the law by city officials, but noted:

> Of course, to give notice of a meeting of the public body, and then intentionally prevent the public from attending, would constitute a gross violation of the Act, as the trial judge held. Indeed, any action taken by the public body which discourages public attendance at the meeting to any substantial degree would likely violate the Act's provisions. The locking of doors, for example, even for legitimate security purposes, would normally violate the Act's provisions.

Similarly, in *Avara v. Baltimore News American Division,* the Chief Judge concluded that the jurisdictional provisions of the Open Meetings Law did not permit a suit against a conference committee of the General Assembly considering the Budget Bill. At the same time, however, he concluded that the law applied to the committee—a conclusion that has ensured open budget conference committee deliberations for the last fifteen years.

In capital cases, while neither morally nor philosophically opposed to the death penalty, Chief Judge Murphy vacated a number of death sentences. In *Bartholomey v. State,* decided shortly after he joined the Court, the Chief Judge held unconstitutional Maryland's death penalty law. In the cases of Richard Danny Tichnell, on four separate occasions, Murphy authored death penalty opinions, twice vacating the death sentence.

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31. 287 Md. 56, 410 A.2d 1070 (1980).
32. *Id.* at 69, 410 A.2d at 1077.
34. Two notable exceptions to Chief Judge Murphy's generally sympathetic view of First Amendment issues were *WBAL-TV Division, Hearst Corp. v. State,* 300 Md. 233, 477 A.2d 776 (1984), which allowed state prosecutors to have access to an unbroadcast videotape of an interview with a criminal defendant, and *Tofani v. State,* 297 Md. 165, 465 A.2d 413 (1983), which upheld a decision requiring a reporter to testify before a grand jury about information obtained from a confidential source.
35. 267 Md. 175, 297 A.2d 696 (1972).
36. *See State v. Tichnell,* 306 Md. 428, 509 A.2d 1179 (1986); Tichnell v. State, 297 Md. 482, 468 A.2d 1 (1983); Tichnell v. State, 290 Md. 43, 427 A.2d 991 (1981); Tichnell v. State, 287 Md. 695, 415 A.2d 830 (1980). After each successive *Tichnell* decision, it must have been more and more difficult for the Chief Judge to open the case file. Perhaps the only other series of cases that so preoccupied the Chief Judge was original action redistricting litigation, in which he authored three decades worth of decisions for the Court. *See Legislative Redistricting Cases,* 331 Md. 574, 629 A.2d 646 (1993); *In re Legislative Districting,* 299 Md. 658, 475 A.2d 428 (1982); *In re Legislative Districting,* 271 Md. 320, 317 A.2d
Chief Judge Murphy may have had his *Tichnell* experience in mind when in 1991 he invited a stunned General Assembly to assess the worth and effectiveness of your 1978 capital punishment statute, in light of its extraordinarily high costs, the difficulties so readily apparent in its constitutional implementation, and the countless hours committed by prosecutors, public defenders, and the courts to the trial of these cases—hours that might be more productively devoted to the trial of violent, noncapital felony offenses.\(^{37}\)

Two public law oddities that marked Chief Judge Murphy's service on the Court of Appeals, unfortunately to some degree, both involved me. In *Murphy v. Yates*,\(^ {38}\) the Chief Judge was a party on the losing side of a test suit he himself had encouraged to clear the way (or close the door) to service by three judges on the State Prosecutor Selection and Disabilities Commission. Fresh from my clerkship, I now had my first appeal, and along with a host of able attorneys from the Attorney General's Office, I defended my former employer. We lost, and lost big. The Court (minus its leader) never reached the esoteric dual office-holding issues that troubled Chief Judge Murphy, but rather invalidated the whole State Prosecutor Law as an invasion of the constitutional powers of the state's attorneys.\(^ {39}\)

Another first for Chief Judge Murphy arose from his generous decision to volunteer his Court of Appeals judges to each sit a month on the Court of Special Appeals to cut down on a backlog. Not exempt from this service, the Chief Judge took his turn on the intermediate appellate court, assisted by his two law clerks. In a case better left unnamed, the Chief Judge, contrary to his wise and customary practice, included in his opinion virtually every word I had drafted for him—a grievous error in light of the fact that after certiorari was granted, the Court of Appeals reversed this decision that carried the name of its own Chief Judge.

While I may have regarded these incidents as disasters, I am sure Chief Judge Murphy was bemused by them. I have never met a judge

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477 (1974). Because of the Chief Judge's practice of choosing a retired appellate judge to serve as special master and to recommend a legislative redistricting decision to the Court of Appeals, now-retired Judge Murphy may find himself involved in a fourth decade of state legislative redistricting in the year 2002.


with a greater sense of humor. His many speeches rang with wit, elegance, and eloquence. In my view, he deliberately withheld these features from his opinions. He did not mix judging and joking. His opinions were workmanlike, precise factually, thorough in their analysis of applicable law, respectful of the reader, and clear in their conclusions. There were no hidden messages. He felt a duty to provide guidance. To the government, he dispensed admonitions and criticism when warranted and praise when merited. In his public law opinions, however, his humility and humanity shone through and usually led him down the right path. No better characterization of his own contributions can be found than Chief Judge Murphy's capsulation of the talents of his predecessor, the Honorable Hall Hammond: "Maryland's most distinguished and eminent jurist, a man of such rare endowment that his equal will likely not be encountered for many generations to come."

40. Several years ago, in a phone call, he related his desperate need for the precise wording of the "there will be time" verse from T.S. Eliot's *The Love Song of J. Alfred Prufrock* in order to describe in a speech a judge's excuses for tardy opinion writing.