State of the Judiciary
Chief Judge Robert C. Murphy, Maryland Court of Appeals
Message to the Maryland General Assembly
January 15, 1993, in Annapolis, Maryland

Governor Schaefer, President Miller, Speaker Mitchell, Ladies and Gentlemen of the General Assembly of Maryland.

The Annual Report of the Maryland Judiciary for the Fiscal Year ending June 30, 1992, contains within its 146 pages a truly gripping display of pie charts, bar graphs, and statistical tables, all of which you will undoubtedly subject to intense study at your very first opportunity.

As was true last year, this year's Annual Report is not a glitzy Madison Avenue-type product; rather, in keeping with these lean economic times, the Report, from cover to cover, has a look of poverty about it. The paper upon which it is printed is inexpensive – "cheap" is a more accurate term. The few photographs in the Report look every bit as bad as Delegate Vallario's passport picture. Nevertheless, I assure you that the content of the Report and the information it conveys is up to the Judiciary's customary high standards – so much so that Senator Miller suggested that I would make a great impression on this body if I took the time to read the Report to you, word by word, page by page. Speaker Mitchell, in his usual genteel manner, suggested that I would make an even greater impression upon you if I did not read the Report, or any part of it, but rather limited my remarks to the fewest words possible. The Speaker's suggestion – actually it is a command – is, I think, the more popular view and I shall make some feeble effort to abide by it, with the caveat, however, that 188 copies of the Judiciary's Annual Report will be delivered to the General Assembly as soon as they are delivered to us from our cut-rate printer's office in outer Mongolia.

This is indeed an important occasion for the judges and nonjudicial personnel of the Judicial Branch of State Government. I cannot help but note how appropriate it is that this State of the Judiciary address coincides with the State Holiday celebrating the birth of that great American and world figure, Dr. Martin Luther King, Jr. The business of judges, of course, is justice and justice was Dr. King's life's work. It is still painfully obvious as we look around us that he did not succeed in all his efforts to erase every vestige of bigotry and discrimination in our society. But more than any other person in our history, he brought about a heightening of our consciousness of the inequities in our society, and he set us on a path which must someday lead to that world of his dreams – that world in which all persons are judged, he said, "not by the color of their skin, but by the content of their character."

Permit me now to focus on the crushing caseload confronting the twenty-four Circuit Courts of Maryland, one being located in each county and Baltimore City. When I first came on the bench in 1967 – twenty-five years ago – the Circuit Courts collectively had new filings in that year, in round numbers, of 90,000 cases. Of these, 51,233 were civil cases; over 20,000 were criminal cases, and just under 19,000 were juvenile matters. With each passing year, these numbers escalated until in FY '92 new case filings in Circuit courts had reached astronomical heights – a blitzkrieg of new filings in that year alone, totaling almost 262,000 cases in all. Of these, over 149,000 were civil cases; 74,000 were criminal, and 38,000 were juvenile matters – a percentage increase between 1967 and 1992 of 195% in civil; 260% in criminal, and 50% in juvenile.

Remaining untried at the end of FY '92, after the Circuit Courts had terminated 228,238 cases during that year, were almost 273,000 cases.

Confronting this avalanche of cases, at present, is an authorized complement of 123 Circuit Court judges – 33 of whom were added to the complement between 1979 and 1992, far less than the corresponding increase in the cases filed within that time frame. Many of these cases, as you know, are both protracted and extremely complicated, individually requiring many weeks or even months to try. Because of cost containments in the last fiscal year, which continue into the present fiscal year, the authorized complement of Circuit Court judges was not realized – for as many as twelve unfilled judicial vacancies existed at various times during that year. And exacerbating our inadequate number of Circuit Court judges was our inability in FY '91 to obtain our demonstrated need for seven additional Circuit Court judges. Moreover, the ability of circuit court judges to dispose of civil cases was seriously circumscribed by the priority required by constitutional and statutory mandates to the trial of criminal cases. To maintain the utmost possible level of judicial productivity, all Maryland judges were required last year to forfeit a full week of their authorized vacation in order to provide the Judiciary with over 1,200 additional judge days throughout the state.

It is no small wonder then that the weary and beleaguered Circuit Court judges simply shook their heads in dismay upon learning of bills introduced in the General Assembly in the last session, and likely to be introduced again this year, to impose monetary or other sanctions upon them for not doing more – for not working harder and faster in disposing of the civil caseload. They think, as I do, that such legislative efforts are badly misguided, grossly unfair to these dedicated judges, and without understanding of the horrendous caseloads that Circuit Court judges face each day not to speak of the damage done to the traditional comity between members of the Legislative and Judicial Branches of our Government.

This past November, I certified to the President and Speaker a compelling need for ten additional Circuit court judges, with full-year funding for new judgeships in Cecil, Frederick, and Calvert Counties, and in Baltimore City; and one-half-year funding for the remaining circuit judgeships in Howard, Prince George's, Montgomery, St. Mary's, Charles, and Harford counties. I, of course, realize the considerable cost associated with this request. But justification for it is fully documented in my certification to the President and Speaker. In assessing this critical need, I ask that you bear in mind the magnitude, among other things, of the torrent of drug and drug-related prosecutions now swamping our courts and the mass tort litigation which we are now facing, particularly the cases involving property damage and personal injuries claimed to be caused by asbestos and asbestos products. In this category alone, over 10,000 personal injury cases are now pending in the Circuit Court for Baltimore City, most all of them involving demands for jury trials.

Circuit courts are the highest trial courts of general jurisdiction in our State, and they depend on the Office of the Clerk of the Court for clerical and administrative support, in and out of the courtroom. The Clerk who heads the office is an elected constitutional officer who also has responsibility for the maintenance of land records, the collection of transfer and recordation taxes, and the issuance of various business and other revenue-generating licenses. In 1990, under then existing law, the Clerk appointed all employees in the office without regard to the State merit system. At that time, each of the twenty-four Clerks' Offices was, in effect, a separate general fund agency of the State, whose budget appropriations were contained in the Executive,

rather than the Judicial Branch component of the State budget, amounting collectively to roughly $39,000,000, including funding for a then total of 1,114 employees. Under the then controlling Maryland constitutional provision, the judges of the Circuit Courts had only an ill-defined visitorial power over the work of the Clerk. The fiscal and budgetary control of the Clerk's Office was vested in the Comptroller, while the classification and reclassification authority over Clerk's Office employees resided with the Secretary of Personnel.

Upon learning of proposed legislation that same year to place the Clerks' budgetary appropriations within the judicial budget, I stated my opposition to such a change unless clear administrative authority was vested in the Judiciary to superintend the work of the Clerks' Offices. Thereafter, you proposed a constitutional amendment, which was ratified by the voters later that same year. It was thereby provided that the office and business of the Clerks of Court in all their departments, judicial as well as nonjudicial, would be governed in accordance with rules adopted by the court of Appeals pursuant to the Court's constitutional rule-making authority under the Maryland Constitution. Moreover, the constitutional amendment directed that the employees of the Clerks' Offices were to be appointed and removed according to procedures set by law. The constitutional provision was implemented at that same session by a statute placing budgetary appropriations for the Clerks' Offices within the judicial budget, as approved by the Chief Judge of the Court of Appeals. The statute further directed the Court to establish rules to govern “[t]he procedure for appointment and removal of personnel in the Clerk's Office,” it being provided that these positions could be within the classified or unclassified service of the State or in a personnel system developed by the Judicial Branch.

Pursuant to this constitutional and statutory authority, the Court, after public hearings and consultation with Clerks' Advisory Committees, adopted rules in furtherance of these mandated directives, which included the establishment of a personnel system for the employees of the Clerks' Offices based on merit principles and equal opportunity, as well as "appropriate job classifications and compensation scales." The State Court Administrator was required by the rules to develop, with the Court's approval, standards and procedures for the selection and appointment of new Clerk's Office employees, as well as their promotion, reclassification, transfer, demotion, suspension, and discipline. The rules further provided that the Administrative Office of the courts prepare the payroll and time and attendance reports for the Clerks' Offices; and that, in procuring service or property, the Clerk act in accordance with procedures established under the Court's authority, as well as in connection with "case processing, records management, form control, accounting, budget, inventory, and [with some exceptions] data processing."

Notwithstanding the constitutional amendment, the implementing statute, and the Court rules, some Clerks assert the view that, as elected officials, they cannot lawfully be subjected to this type of managerial governance. Several legislators have expressed to me their agreement with the Clerks' position, despite the plain language of the governing law, supported by opinions of the Attorney General. Of course, the law can be changed by the Legislature if, in fact, it is not in accordance with your intention or your purpose in enacting it. Quite frankly, there is no single administrative task that I perform with the employees of the Administrative Office of the Courts that takes more time and detailed attention than our oversight governance of the Clerks' Offices. I think that the present law, as we are administering it, is consistent with your objectives and that it is in the best interest of the public, particularly as it relates to the basic function of the Clerk to attend to the clerical and administrative needs of the Circuit Court. It is not, as I see it, an

inappropriate consequence of the new law that the political stature or authority of the elected Clerk may thereby be somewhat diminished. If your intention is otherwise, then you may, as I have said, change the law to your liking.

While on the subject of circuit courts, well over 50% of the civil caseload of those courts involves domestic, juvenile, and family law matters. Two study groups – the Governor's Task Force on Family Law and the Advisory Council on Family Legal Needs of Low Income Persons – have urged the creation of an independent and unified Family Court, separate and apart from the Circuit Courts, with its own judges, separate courthouse facilities, and administrative staff, or, by way or a fall-back position, a Family Court functioning within the existing Circuit Court structure, but as a separate and distinct division of the Circuit Courts. Both reports stress the need for judges specially trained in family law matters, unburdened by the mix of cases which circuit judges now hear, and thus totally divorced from the priority afforded to the trial of criminal cases. The jurisdiction proposed to be vested in the Family Court is sweeping; it would encompass, among other things, all divorce, separation, annulment, and marital property matters; custody, visitation, child and spousal support, paternity, adoption, determination of parental rights, juvenile delinquency, juvenile abuse and neglect cases, domestic violence cases, criminal nonsupport, adult and juvenile guardianships, and cases implicating the withholding of life-sustaining medical treatment – the so-called right-to-die cases. These reports, while extremely well done and farsighted, will likely be highly controversial in some of their proposals.

The substantive law changes recommended in these reports, in the main, have the support of the Family Law Committee of the Maryland Judicial Conference, as well as its Executive Committee. In general, the proposed substantive revisions implicate grounds for divorce, residency requirements, marital property, spousal support guidelines, and a number of other important reforms. The proposed structure of the new court – whether as a separate court independent of the circuit courts or as a division of that court – would appear to be a matter of the most vital concern, which requires intense and thoughtful study by the General Assembly and by the Judiciary. One thing everyone agrees upon is that simply to place the label "Family Court" on the proposed new entity, whatever its structure, without the requisite resources to permit it to perform its intended function is to accomplish absolutely nothing.

The wisdom and feasibility of a Family Court in Maryland was considered in the 1982 Report of the Commission to study the Judicial Branch of Government, which was created by House Joint Resolution of this body in 1981. That commission concluded that because there was no indication that the necessary level of funding for the project would be forthcoming, it made no sense to create it. The two new reports, however, have considerable more substance to them than the 1982 report, and may convince you that the time has come in Maryland to create and properly support a Family Court.

In my 1990 judiciary address, I suggested the need to empanel a Select Committee on the Administration of Justice in Maryland to consist of our most astute and visionary leaders in the fields of business, education, community affairs, government, law, and politics. The purpose of the Committee would be to conduct an in-depth assessment of whether, present mode of operation, absent substantial change in our present mode of operation, the court system was capable of satisfying the demand for timely and effective adjudicatory services; and, if not, what steps must be taken in our state to retool our judicial system to enable it, fairly, expeditiously, and inexpensively, to administer justice in our tripartite system of government in the coming

decades. I pointed out that a number of states, and the federal government, had engaged in futuristic judicial branch studies of this type, with excellent results. The last study of our Judicial Branch was completed in 1982, and most of its conclusions are no longer of any relevance. It is, I think, imperative that a fresh look be made now if we are to position ourselves in the coming decades to cope with new and greater demands in our rapidly changing society, without slavish devotion to the status quo when more effective means are readily at hand to accommodate and implement the overriding interests of the public. Through the enactment of rules and statutes, some enlightened states have placed emphasis upon an alternative approach to the traditional adjudication of civil disputes filed within the court system – I speak, for example, of arbitration, mediation, and conciliation techniques, and neutral case evaluation sessions for settlement purposes, preliminarily utilizing nonjudicial court personnel to screen cases, in accordance with court-developed standards and criteria, for subsequent outside referrals for case disposition. It is being increasingly shown that such methods may be more efficient, faster, less costly, and frequently more satisfying to the litigants than the slow and tedious movement of cases through the arteriosclerosis of the traditional litigation process – thus obviating the need for more and more judges and supporting staff. These referrals or diversions save the time of judges for the complex cases that must be tried in court, usually before juries, and are by no means the equivalent of the "rent-a- judge" gimmickry utilized in some areas of the country.

Turning now to the District Court of Maryland, which in a few months will complete its twenty-second year of operation, the importance of that court continues to grow with each passing year. It is with that court that our citizens have the most frequent contact, and I am fully satisfied that the ends of justice are well served by the ninety-seven judges and nonjudicial personnel who handle its enormous caseload.

In its first year of operation – 1971 – 750,000 criminal, civil, and motor vehicle cases were filed in the District Court. In the fiscal year just concluded, almost 2,000,000 such cases were filed, an increase of 166% over 1971.

Efforts of the District Court to make the maximum utilization of its judicial complement are well known to the lawyers of Maryland. On almost a daily basis, District Court judges from the smaller Maryland counties, where court sessions are not required every day, are assigned into those metropolitan areas where their services are more sorely needed. This practice has enabled the court to address its ever-expanding caseload with minimal requests for additional judgeships. Indeed, during that twenty-two year span, within which its caseload has almost trebled, the number of District Court judges has increased by only 33%.

At your 1992 session, this body made a number of enlightened revisions to our domestic violence statute, expanding its protections to thousands of individuals theretofore outside its jurisdiction, and making provisions relating to child support and child custody that had not been available under the prior law. The Judiciary, although supportive of almost all of the changes, was apprehensive about our ability to timely afford the mandated priority to the expanded number of these cases certain to come. These apprehensions proved well founded, as there has been an extraordinary increase both in the number of domestic violence petitions and in the judicial time required to be devoted to these cases.

The new law became effective October 1, 1992. Under the old law, in October and November of 1991, there was a total of 987 domestic violence cases filed in the State. In October and November, 1992, under the new law, 1,561 domestic violence cases were filed in the District

Court alone, and an additional 162 cases were filed in the circuit courts, where they were seldom filed before the enactment of the new law. Our evaluation shows that the average time per hearing has almost tripled. Indeed, hearings sometimes last for several hours, or a full day, and some have gone over into a second day. Despite the greatly increased burdens that this law has placed upon the Judiciary, the District Court has been able to dispose of these cases without major inconvenience to the citizens who seek the protections of the new law, and without creating gridlock or enormous backlogs in the other areas of District Court jurisdiction. This is so, in some part, because in the past year there has been a sudden and extreme reduction in the motor vehicle caseload in the District court, which has made it possible for its judges to address the ever-increasing onslaught of domestic violence cases. Notwithstanding this unexpected benefit, the General Assembly may well consider whether our police departments, because of unfilled vacant police positions or for some other reason, have lessened their efforts to prevent death and injury on Maryland highways.

In this regard, I point out that in the first quarter of fiscal 1993, the number of traffic citations issued in Maryland dropped by 24% when compared to the same time frame a year ago. Reasons suggested for this stark reduction range not just from police vacancies resulting from budget cuts, but possibly to police protests over salary freezes. Others suggest that police departments in Maryland have shifted emphasis from traffic enforcement to crime prevention, and that the accent on community policing has brought about a mass reduction in departmental traffic safety programs.

Of particular interest is the fact that the reduction in motor vehicle charges includes a continuing drop in DWI arrests. Four years ago, there were almost 45,000 DWI cases filed in the District Court; last year there were only 37,000. As much as I would like to believe that the reduction arises from a more sober motoring public, I am fearful that it may be simply a result of lessened police activity in this area. We have alerted the Department of Budget and Fiscal Planning that because of the reduction of motor vehicle cases in the District Court we anticipate a drop in court revenue of almost $5,000,000 when this fiscal year concludes on June 30, 1993.

Finally, a word about our criminal justice system. Those who break our criminal laws, we are fond of saying, will be subject to swift arrest, prompt trial, and certain punishment. To realize that goal, adequate funding for all components of the system is absolutely essential. The police, other than the State Police, the prosecutors, the sheriffs, and the nonjudicial personnel of the Circuit Courts, other than those in the Circuit Court Clerks' Offices, are all funded by the political subdivisions, consistent with their level of affluence or lack of it. The judges, the public defenders, the personnel of the Circuit Court Clerk's Office, and the parole, probation and correctional officers are funded by the State on a uniform financial keel. Budget cuts as to any of these component parts that are too severe, whether locally or state imposed, may well cause a system breakdown with dire consequences to our citizens.

Focusing in particular on the Office of the Public Defender, roughly 85 to 90% of all persons charged with crimes in Maryland are financially unable to employ their own lawyers; they necessarily depend upon the Public Defender for their constitutionally guaranteed right to counsel. That office is staffed for trial and appellate work by 243 full-time and 17 part-time attorneys. The office represents roughly 150,000 defendants a year at an average statewide cost per case of $166. There can be no lawful movement of the vast majority of criminal cases through the system unless and until the Public Defender appears as counsel for the defendant;

indeed, absent waiver, police are prohibited from even interrogating an arrested individual in counsel's absence. If the defendant's constitutional right to counsel is not timely satisfied, the consequences can truly be draconian – outright dismissal of all charges, no matter how grave and the release of the accused from custody.

There is, of course, an understandable reluctance to provide public funds for the defense of persons charged with crimes. But, we simply must if the prosecution of criminals, both violent and nonviolent, is to proceed with dispatch. In Baltimore City alone, some 12,185 indictments and informations were pending trial as of November 30, 1992; the figure in Prince George's County was 4,952; in Montgomery County, 4,802; and in Baltimore County, 2,256.

The highly structured presence of the Office of the Public Defender, in its institutional capacity, is every bit as vital to the successful operation of the criminal justice system as the police, the prosecutors, and the judges. There is no returning to the bygone days when judges appointed lawyers for indigent defendants shortly before trial, on an ad hoc, "catch as catch can" basis with little or no time for trial preparation by defense counsel. The constitution no longer sanctions this unorganized, willy-nilly approach to the defense function. I am, therefore, hopeful that in the budget process this year the General Assembly will fully recognize the critical role played by the Public Defender's Office and strive to approve the requisite appropriations essential to the performance of its constitutionally mandated duties. In this regard, please do not be victimized by those strident voices who, without any factual foundation, say that the Public Defender represents defendants who drive BMW's and wear alligator shoes; it is simply not true.

I said at the beginning of these remarks that I would make an effort to be brief. Obviously, I failed. I do, however, apologize if I have unduly trespassed on your time and patience. All members of the judicial family, as I am sure you know, are appreciative of the extreme difficulty and complexity of your work, and we wish you well in your deliberations at this 1993 General Assembly Session.