

State of the Judiciary Address
Chief Judge Robert C. Murphy, Maryland Court of Appeals
Message to the Maryland General Assembly
January 18, 1996, in Annapolis, Maryland

Governor Glendening; President Miller; Speaker Taylor; Ladies and Gentlemen of the General Assembly of Maryland:

This is the 12th time since my appointment in 1972 as Chief Judge of the Court of Appeals that I have been afforded the high privilege of addressing this distinguished body on the state of the Maryland Judiciary; and because I shall retire from the bench in the fall of this year, this will be the last of these gripping addresses that I shall deliver to you. That said, without even turning around, I can see the broad smile across Senator Miller's face which conveys the unmistakable message: "Thank God, I won't have to listen to Murphy anymore." This is by no means an unexpected reaction since after each of my past addresses, I have asked Senator Miller his opinion of my speech, to which he would invariably say, "There were three things wrong with the address: first, you read it; second, you read it badly, and, third, it wasn't worth reading."

With that pithy introduction, permit me to first express my deep appreciation, and that of the entire membership of the Judicial Branch of government, for your support and many kindnesses and courtesies over the years; and by way of a more personal note, my great admiration for the institution of the General Assembly of Maryland and its members, past and present, for the difficult work which you do so extraordinarily well, and for which you receive, as I have often said, all too little public acclaim. I have observed this body year after year since I first came to Annapolis in 1959 as an Assistant Attorney General working at times in the Attorney General's legislative office, which was then located immediately across the hall on the main floor of the State House where I was confronted by legislators with a dazzling barrage of vexing legal questions usually concerning the constitutionality of proposed legislation. It was indeed, for me, a great education, even though half the time my answers made little sense to me, and none at all to the inquiring legislators.

Throughout the period of my State service, this body has always demonstrated its understanding of the importance of the Judicial Branch of government. Indeed, during my time, you have enacted a mass of farsighted, substantive legislation for the betterment of our judicial system, so please forgive me for calling to mind the words of President Ulysses S. Grant when, in addressing the Congress of the United States well over a century ago, he said that he was thankful for all that Congress had done for the country but regretted that it had not done more. In that regard, the judiciary has repeatedly recommended for your consideration what we perceive to be a number of badly needed judicial reforms that have not as yet found favor with you, some, but not all of which we shall continue to press upon you, but only when the timing is right, and hopefully with a different result, but, if not, the judiciary recognizes that as elected representatives of the people, you must do what in your judgment is in the State's best interest. In other words, when we lose, we do so graciously, albeit at times between gritted teeth.

I have spoken many times of the various levels of our State judicial system – how each interacts with the other, and with the federal court system; about the horrendous caseloads confronting our courts; about the sometimes confusing jurisdiction vested in the various courts; about the intricacies of the trial and appellate process; and of the dire need for the requisite tools in this technological age of electronic marvels to enable the judiciary, in performing its critical mission,

to do so in the most effective and efficient manner available. All of this, and a great deal more, is covered in the breathtaking pages of the Judiciary's Annual Reports – most recently in our FY 95 Report, a copy of which will be available upon request to any legislator. Review the Report, if you will, with the immortal words of the great statesman, Daniel Webster, ringing in your ears, namely, that "Justice is man's great concern on earth," so that when you legislate on matters implicating the judicial process, ponder just how the operation of our court system impacts on the lives, the liberty, the freedom, the property of our citizens; and recognize that the resources made available to the Judiciary must somehow be sufficient to permit it to fairly perform its constitutional mandate. In this regard, the Judiciary is an institution composed of many parts, no one of which, absent a constitutional imperative, should be singled out for legislative favor over others without a full and complete understanding of its impact on overall Judicial Branch operations. Our State enjoys a long history of adherence to the constitutional doctrine of separation of governmental powers – the very foundation stone of our tripartite system of government. The doctrine teaches that each of the three branches – the Executive, Legislative and Judicial – is separate and supreme in its field, none being subordinate to the others, although at this time of the year, the Legislative Branch seems more equal than the other two branches.

In view of the number of new Senators and Delegates since I last addressed you in 1993, it may be in order to briefly review the structure of Maryland's judicial system. Excluding for the moment the Orphans' Courts of the State, and the Maryland Tax Court, which is not a court at all but rather an administrative agency within the Executive Branch of government, the judicial power of the State is now constitutionally vested in an authorized complement of 250 judges, functioning within four separate levels of the State court system. Two of these levels are comprised of trial courts – The District Court of Maryland (not to be confused with the federal district court) and the circuit courts of the State. The other two levels are comprised of the State's appellate courts – the Court of Special Appeals, which is our single intermediate appellate court, and the Court of Appeals, which is the State's highest court. Each of these courts operate through well-defined administrative channels with responsibility for their efficient day-to-day functioning being vested in a network of Chief and Administrative Judges who are endowed with broad supervisory and managerial authority.

At the apex of this four-tiered judicial pyramid is the Court of Appeals which, in effect, is the State's Supreme Court; it consists of seven judges initially appointed by the Governor, one each from seven appellate judicial circuits. They are required to stand for election within their respective circuits on a retention ballot, without live opposition, at the general election after one year following their appointment by the Governor. Whether to retain or not retain the judges in office is the voters' choice; if the Governor's appointee is retained, the term of office is ten years and the process is repeated every ten years thereafter unless the judge earlier resigns or retires.

The Court sits only in Annapolis, the judges sitting simultaneously on each case before it. The Court, with few exceptions, structures its own docket pursuant to what is known as the certiorari process whereby it hears only cases of paramount public and legal importance. Appeals in death penalty cases, however, automatically come directly to the Court of Appeals for decision, as do contests involving legislative redistricting of the General Assembly after each decennial census. The Court also decides questions of State law certified to it by other State and federal courts, including the Supreme Court of the United States.

Like the General Assembly of Maryland, the Court of Appeals is a most venerable institution; its roots, like yours, can be traced to the mid-17th Century, well over 100 years before the American Revolution. The Chief Judge of the Court of Appeals is named by the Governor and by constitutional fiat is the administrative head of the entire judicial system. In addition to the Court's adjudicatory and other functions, it acts in a legislative capacity under the Maryland Constitution in promulgating Rules, having the force of law which govern practice, procedure and administration in all the courts of Maryland – a function of the most vital importance in the administration of justice within our State.

(Recognize my esteemed colleagues on the Court of Appeals in transcending order of seniority: Judge John C. Eldridge of Anne Arundel County – the Court's senior judge; Judge Lawrence F. Rodowsky of Baltimore City; Judge Howard S. Chasanow of Prince George's County; Judge Robert L. Karwacki of Queen Anne's County; Judge Robert M. Bell of Baltimore City, and Judge Irma S. Raker of Montgomery County.)

The Court of Special Appeals, the State's single intermediate appellate court, is the State's second highest court. It now consists of 13 judges initially appointed by the Governor who hold their offices on the same retention election format as the judges of the Court of Appeals. Seven judges of this court are appointed, one each, from the appellate judicial circuits, the remaining six being appointed on an at-large basis. The court hears cases only in Annapolis, usually in three-judge panels, mainly appeals and post conviction and other applications from the circuit courts, except death penalty cases.

The court was created by constitutional amendment in 1967 to alleviate the heavy caseload then imposed upon the Court of Appeals in order to afford that Court time for more mature reflection in cases requiring the most careful and thorough research and study in molding and applying the applicable law.

The Court of Special Appeals is headed by a Chief Judge appointed by the Governor, who, because of the great volume of cases before that court, expends considerable additional time in wrestling with the huge array of administrative and other matters involved in the management of those cases. In FY 95, the court disposed of 2,105 appeals and miscellaneous matters, a workload well in excess of other state intermediate appellate courts of similar size and jurisdiction.

(Recognize my esteemed counterpart on the Court of Special Appeals: Chief Judge Alan M. Wilner of Baltimore County.)

The State's 24 circuit courts are common law trial courts of general jurisdiction, rich in tradition, with deep antecedents in the history of our State. They operate within eight judicial circuits under the direction of Circuit and County Administrative Judges appointed or approved by the Chief Judge of the Court of Appeals. There is one circuit court in each county and in Baltimore City, all of which are served by juries. In all, there are 132 circuit court judges, ranging from only one in some rural counties to a high of 26 in Baltimore City. The State's circuit courts operate independently of one another, and, because they are not unified, there is no Chief Judge of all the circuit courts who exercises collective administrative direction over them. There is, however, a Chief Judge in each of the eight circuits, but that individual, who is so designated on a seniority basis, is administratively subordinate to the Circuit and County Administrative Judges and mainly presides over ceremonial activities.

Circuit court judges are initially appointed by the Governor but must stand for popular election against all eligible challengers at the next general election one year following their appointment. The individual elected, whether it be the sitting judge or the challenger, is afforded a 15-year term, and there is no requirement of senatorial confirmation.

The caseload of the circuit courts is truly staggering. In FY 95, these courts recorded a total of 262,320 cases, of which 147,784 were civil; 68,672 were criminal, and 45,866 were juvenile. The circuit courts terminated 219,463 cases in FY 95, leaving an accumulated inventory of untried cases on June 30, 1995 of 304,477. The average elapsed time to disposition of circuit court cases in FY 95 for civil was 174 days, for criminal – 113 days, and 61 days for juvenile cases. These average disposition times in circuit courts take into account the many protracted cases requiring many weeks, sometimes months of trial time. These numbers attest to the fact that circuit court judges are engaged in a tedious day-to-day struggle to keep abreast of ever-increasing, seemingly endless dockets of cases of great importance to the citizens of our State.

The collective voice of the circuit court judges is heard primarily through its Conference of Circuit Judges created by Rule of the Court of Appeals; that body, which meets regularly in Annapolis, consists of the eight Circuit Administrative Judges, and eight other judges, one from each circuit, elected by their peers. The present Chair, who has been elected and re-elected by his colleagues, is Alfred T. Truitt, Jr., a Judge of the Circuit Court for Wicomico County for almost 19 years and, much to my regret, and that of his fellow judges, he will retire in the late spring of this year.

(Introduce Judge Truitt.)

The District Court of Maryland is a unified trial court of limited statutory jurisdiction, with 98 judges parceled among 12 geographic districts, sitting in 106 courtrooms in 35 courthouses throughout Maryland with at least one such facility in each county and in Baltimore City. The court became operational in July, 1971, as a result of a constitutional amendment proposed by the General Assembly and ratified by the people.

The judges are appointed by the Governor for 10-year terms, subject only to senatorial confirmation; they do not stand for popular election nor come before the voters on a retention ballot. At the end of the 10-year term, the Governor must reappoint the judge subject only to senatorial confirmation.

The District Court, like the circuit courts, faces crushing caseloads. In FY 95, it recorded 2,082,973 filings – a 15 percent increase over the prior year, of which slightly over one million were motor vehicle cases, itself a 35 percent increase over the preceding year. Of the total number of filings, 182,967 were criminal, and 810,973 were civil cases, of which 13,925 were domestic abuse cases, an 11.2 percent increase over the preceding year. Unlike the circuit courts, a case before the District Court seldom consumes more than an hour or two of trial time, but District Court judges are faced each day with long streams of cases, one after another, after another, with large numbers of participants clogging the courtroom, nervously awaiting their turn; the stress upon the District judges to complete their daily dockets each day is extreme indeed.

The first Chief Judge of the District Court was appointed by the Governor for a ten-year term, which was repeatedly extended, so that since the court's creation there has been but one Chief

Judge of the District Court who administers the court's vast caseload and multitude of other problems with a strong and steady hand, and a beady eye, for which accolade, after accolade, after accolade has been heaped upon him and upon the judges of that truly remarkable court.

(Introduce Chief Judge Robert F. Sweeney.)

All of these courts are State courts and all of the judges who serve upon them are State judges whose salaries are paid by the State through the State judicial budget. The District Court, the Court of Special Appeals, and the Court of Appeals, and the administrative and clerical staffs supporting these three courts are funded in their entirety, both as to operational and capital needs, by the State. Unlike these courts, the circuit courts are funded to a substantial degree by the political subdivision in which each is located, both as to operational and capital costs, and at a level of support determined solely by the local governing body, thus resulting in support disparities, some of which are extreme, between the various counties and Baltimore City. In FY 95, the political subdivisions contributed \$44,753, 019 to the operating support of the circuit court system, the remainder amounting to \$65,118,611 being paid by the State. It is thus clear that the Maryland Judiciary is anything but symmetrical in its organizational design; rather, it presents a crazy quilt-like pattern of organization assembled piecemeal over many years of cut-and-paste adjustments.

One of the most important adjuncts of the Court of Appeals is its Standing Committee on Rules of Practice and Procedure, which consists of 23 members, mostly lawyers, including 2 lawyer-legislators, one each appointed by the President of the Senate and the Speaker of the House. This Committee provides an enormous service to the Judiciary and to the legal profession. Its members work long hours without compensation in recommending rules for adoption by the Court of Appeals to govern practice, procedure and administration in all of the courts of Maryland. The Chair of that Committee, earlier introduced to you, is a man of singular intellectual attainment who does double-duty as the Chief Judge of the Court of Special Appeals – Judge Alan M. Wilner.

The Administrative Office of the Courts was created by statute over 40 years ago as my principal administrative arm and is superbly directed by the State Court Administrator, George B. Riffin, Jr. of Annapolis. George is a member of the Maryland Bar, an honor graduate of the University of Maryland School of Law. He was formerly engaged in the private practice of law, and is a most accomplished electronic data processing wizard with long experience in the administration of the courts of Maryland.

(Recognize George B. Riffin, Jr. of Annapolis.)

Two other very important adjunct Judicial Branch appendages are funded in their entirety by assessments imposed upon the lawyers of Maryland, now over 24,000 in number. The first of these is the Attorney Grievance Commission now chaired by David Downes of Baltimore County; the Commission has several operating segments – the Office of Bar Counsel; the Inquiry Panels, and the Review Board which, together, operate Maryland's very effective attorney disciplinary machinery. These units are staffed by lawyers and lay persons, most of whom serve without compensation of any kind in the public interest.

The second adjunct is the Clients' Security Trust Fund, chaired by Victor Laws of Wicomico County. The Fund is authorized to compensate clients of lawyers who have misappropriated their

funds. In this regard, this past fiscal year, the Fund paid out \$390,760.00, none of it taxpayers' money.

The State Board of Law Examiners, another Judicial Branch adjunct of great importance, is now Chaired by Jonathan Azrael of Baltimore County, a worthy successor to its now deceased, long-time Chairman, the incomparable Charles H. Dorsey, Jr. It consists of seven members and their assistants who serve with only token compensation, and a remarkable administrative and clerical staff of State employees. In 1995, a total of 2326 applicants took the Bar examination; of these, 1575 were successful, an overall passing rate of 67.7%. Actual admission to the Bar requires, as a prerequisite, that the applicants successfully undergo a moral character fitness evaluation by committees of lawyers throughout Maryland, and, in addition, they must complete a one-day course on professionalism – a significant improvement in pre-admission qualification.

There is a fifth level of courts which exercises judicial power under the Maryland Constitution, namely the Orphans' Courts of the State – one in each county and Baltimore City. The judges of these courts are appointed by the Governor for four-year terms and if they seek reappointment they must stand for popular election against all challengers within their jurisdictions. Orphans' Court judges need not be, and most are not, lawyers. In all, there are 66 Orphans' Court judges involved with the probate of decedents' estates – three in each county and Baltimore City, with two exceptions in Montgomery and Harford Counties, where circuit court judges perform this function. Orphans' Courts are not descriptive of their name because they have little or nothing to do with orphans. The name of the court was derived many years ago from the Court of Orphans of the City of London which had the care of orphaned children of London citizens, and could compel executors and guardians to file inventories and accounts and give security for their estates.

Each year, in accordance with a policy which you initiated, I formally certify the number of new judges, other than Orphans' Court judges, that are necessary to properly operate our court system. A comprehensive set of factors is determinative of our request which, however, is tempered by a pragmatic realization that the caseload of the courts will always increase in far greater proportion than the number of judges which you can reasonably authorize. In recent years, the Judiciary has been very conservative in its request for new judges, not because they were not badly needed, but because of fiscal restraints on the judicial budget, the lack of courthouse space to house new judges and their supporting staffs, the refusal of some political subdivisions to create and fund positions necessary to support the new judges' function, and because we have made maximum use of retired judges to fill the gaps in the judicial complement.

Considering all of these factors, I ask this year for only two new judges, both in the District Court – one in Anne Arundel County, and the other in Baltimore City, to be shared with the District court in Baltimore County. You should know, however, that our statistics show, at a minimum, a need for new circuit court judges in Carroll, Prince George's, and Washington Counties, and in the first and second circuits on the Eastern Shore.

Many years ago, Alexis de Tocqueville, the great political philosopher, in his book on the American Democracy, observed that every issue in America seems ultimately to become a question for the judiciary to resolve. It should be apparent to you from the sheer number of cases which swamp our trial and appellate courts year after year that he may have been right, and that some fundamental changes in how disputes are resolved must be considered if the Judiciary is to survive as a viable institution of government. The Maryland Judiciary, like most of our sister

states, is in a near state of crisis, so much so that some states have created commissions to conduct in-depth evaluations of their state judiciaries. In this regard, I was most encouraged when at your last session you enacted HB 672, a law creating a 31-member Commission on the Future of Maryland Courts to recommend statutory and procedural changes in Maryland's judicial system. Implicit in the substance of this law is that Maryland is in dire need of a thorough study to determine not whether, but what modifications are needed to satisfy the demands of our people for timely and inexpensive adjudicatory services in the coming decades. The Commission is comprised of well-informed individuals from all three branches of government and from the private sector, knowledgeable in the ways and workings of the Judiciary. Eight legislators – four Senators and four Delegates are members of the Commission, as are six judges, two each from the District and circuit courts, one from the appellate courts and an Orphans' Court judge. The State Court Administrator, together with two Clerks of court, one each from the District and circuit courts, are also members, as are representatives of the Executive Branch from the Offices of the Attorney General, the Public Defender, the State's Attorneys' Association, and cabinet officials from the Departments of Human Resources, Juvenile Justice and Public Safety. Two representatives are public members; two are representatives of county governments – one a Sheriff, the other a County Councilman; and three are members of the Maryland Bar.

The Chair of the Commission, elected by its members, is James Cromwell of Montgomery County, a lawyer of considerable renown, formerly a prosecutor, later a defense attorney, also chair of various governmental committees, and a long-time private practitioner of law. Under his direction, the Commission has organized itself into six subcommittees to undertake its broad study of the Maryland judicial system. One subcommittee, chaired by Judge Theresa Nolan of Prince George's County, deals with criminal, juvenile, and family matters; another chaired by State Court Administrator George Riggan, is involved with court operations and management; a third subcommittee chaired by Judge Alan Wilner is focusing upon court structure and governance; another deals with funding of the courts and is chaired by the immediate past president of the Maryland State Bar Association, Dennis Belman of Howard County; and the subcommittee on selection, tenure and evaluation of judges and court officials is chaired by Eleanor Carey, formerly Deputy Attorney General of Maryland, now in private practice.

(Introduce James Cromwell of Montgomery County.)

The Commission's funding is somewhat meager, and, for that reason, it has enlisted the aid of almost 90 volunteer members of the Maryland State Bar Association to support its research efforts, as well as several professors of the law schools. Albert Winchester, known to many of you because of his work with the Maryland State Bar Association, has volunteered to act as Staff Director of the Commission. The Commission has had a number of meetings and plans to hold other meetings in different parts of the State before filing its report, which is due on or before December 15, 1996. Pending the recommendations of the Commission, the Judiciary will keep a low profile during this legislative session and hope that others will await the Commission's report before advocating any substantive new legislation in the area of the Commission's deliberations, so as to avoid any further piecemeal fragmentation of the structure of the Judiciary.

During my long years of service, I have come to know virtually all the judges who have served in our court system, past and present. I can tell you categorically that the people of Maryland have been singularly blessed by their integrity, their dedication, their humanity and

understanding. All judges, at one time or another, have what some perceive as a lapse of good judgment – a lapse if it occurred, which must not be viewed in isolation, but rather in light of that individual's achievements and contributions to our society during his or her judicial career. Individually, or as a group, they are of the highest character, with all of whom I have been extremely proud to serve.

Finally, on July 5 of this year, the District Court of Maryland will celebrate its 25th year of service to the people of Maryland and this event is one deserving of very special recognition.

Some of you were not yet of voting age when this court was created and became operational in 1971 and, therefore, are not familiar with the circumstances which led to what many believe to be the greatest judicial reform in our State in this century.

From colonial days, minor civil and criminal cases in Maryland were tried in magistrate courts where part-time judges, mostly non-lawyers beholden to their sponsors, dispensed justice on what, charitably speaking, was an uneven scale. These courts were beset with incompetence, political favoritism, racism, and simple corruption. In the decade of the 30's, some counties sought to improve justice in these courts by creating People's courts, staffed by full-time lawyer-judges, in Montgomery, Baltimore, Prince George's and Anne Arundel Counties and a Municipal Court in Baltimore City. Some of these courts, however, like their predecessors, were unable to rise above their tainted legacy, which led the Constitutional Convention of 1967 to propose the abolition of all such courts and the creation of a single statewide, fully state funded, centrally administered District Court system.

When the proposed new Constitution was not enacted, then Governor Mandel persuaded this body to propose a constitutional amendment creating the District Court and with the voters' approval it became operational on July 5, 1971. The creation of this court and the appointment by Governor Mandel of its Chief Judge, Robert F. Sweeney, and a solid corps of new judges of great ability had the effect almost overnight of instilling confidence in the public and eliminating the flaws which were the unfortunate hallmark of its predecessor courts.

Since that court's creation, more than 270 individuals have served as its judges. Over 90 of them subsequently served on the circuit courts of this State, eight were subsequently appointed to the State's intermediate appellate court, where five still serve, and four were subsequently appointed to the Court of Appeals of Maryland, where three now serve. The District Court has indeed put an entire new face on the administration of justice at that level of our judicial system.

In its early days, the court established itself in store fronts, fire halls, abandoned warehouses, public schools, and even the basement of an ice cream store. But through the cooperative efforts of the Executive and Legislative branches of government, the District Court now sits in 35 courthouses throughout the State, and within a short time a new District Court building will rise in Annapolis on Rowe Boulevard, and another is slated for Baltimore City on Potee Street, hopefully in the very near future. The cost of this mammoth construction program, when completed, will be more than \$200,000,000. These facilities, although not lavish or ornate, are fully suitable to the business which the court conducts throughout Maryland. Of the 35 million cases that have been filed in that court in its 25-year history, 12 million trials were conducted and each year more than one million of the State's citizens visit a District courthouse in our State.

As you have heard, Chief Judge Sweeney will retire from the Bench after 25 years of service on September 16 of this year. Words alone are woefully inadequate to portray the great contributions and achievements to the administration of justice in Maryland made by Chief Judge Sweeney. Without getting mushy, what he has accomplished in 25 years in and for the District Court has assured him top billing in the judicial history of our State. His whole being has been devoted to the District Court from its very inception and, in turn, that court will always embody his personage in all its workings. He is a very, very special person and his retirement will leave not just a very large void, but one that will be keenly felt for decades to come. If this body could legislate into existence a perfect individual to have led the District Court in its crusade to overcome the shortcomings of its predecessor courts, you, I predict, without dissent, would have settled upon Chief Judge Sweeney. He has been an enlightened, forceful, ever-present, no-nonsense leader – an inspiration to us all. To say he will be sorely missed is the grossest of understatement.

Mr. President, Mr. Speaker, speaking for myself as I begin my own personal countdown into oblivion, and for all members of the judicial family of judges and supporting personnel, we thank you for all your good works and deeds on our behalf. Our trust and confidence in the Legislative Branch of government with which I have worked so closely for so many years simply could not be higher. For every member of this distinguished assembly, we wish for you a smooth and productive session for all the people of our great State.