

The State of the Judiciary Address
Chief Judge Robert M. Bell, Maryland Court of Appeals
Message to the Maryland General Assembly
January 29, 1997, in Annapolis, Maryland

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

This is my first appearance before this distinguished body as Chief Judge of the Maryland Court of Appeals, having been so designated by Governor Glendening just more than three (3) months ago. Thus, it is my first opportunity to address you concerning my assessment of the State of the Judiciary. I am honored by your invitation to appear and for the opportunity to share some thoughts with you.

My esteemed predecessors have addressed this body on thirteen (13) occasions my immediate predecessor, Robert Charles Murphy, gave twelve (12) State of the Judiciary addresses. While his predecessor, the illustrious Hall Hammond gave one, the first. While this address, in this sense, therefore, is not historic, there is another sense in which it is. This is the first time in almost a quarter of a century that the leadership of the Judiciary has been in new and different hands, although the tradition begun in 1972, having a Chief Judge Murphy, has continued. In addition to myself at the Court of Appeals, there are new chief judges of the Court of Special Appeals and of the District Court of Maryland. Replacing an extraordinary chief judge and indefatigable worker (whom you will meet shortly), and at the same time upholding the Murphy tradition is another tireless worker, soon to be dubbed the latest phenom, Chief Judge Joseph F. Murphy. Like his predecessor, he also does double duty, chairing the Court of Appeals' Rules Committee. For the entirety of its existence until September 16, 1996, the leadership of the District Court was entrusted to a "very special person," who has been described accurately as "an enlightened, forceful, ever-present, no-nonsense leader an inspiration to us all,"

Chief Judge Robert F. Sweeney. Fully capable of filling Judge Sweeney's shoes and, indeed, ably doing so, is an extraordinarily gifted judge, Martha Rasin. You can also see that this is the most diverse leadership that the Maryland Judiciary has had in the history of this State.

The Constitution of Maryland places the ultimate authority and responsibility for the direction and management of the Maryland State courts in the hands of the Chief Judge of the Court of Appeals. This responsibility is awesome, but not unsettling. This is particularly true when the Chief Judge enjoys the good fortune to have excellent lieutenants with whom to share the responsibility. The team of Bell, Murphy, and Rasin will lead the Maryland Judiciary into the twenty-first century, facing anticipated, but unprecedented challenges. I am pleased, and Maryland is blessed, to have this team in place. I look forward to working with them, Governor Glendening, and you, to meet the challenges to the Maryland Judiciary.

Before proceeding further, let me introduce my esteemed colleagues, the Judges of the Court of Appeals. In transcending order of seniority, they are: the Honorable John C. Eldridge of Anne Arundel County; the Honorable Lawrence F. Rodowsky of Baltimore City; the Honorable Howard S. Chasanow of Prince George's County; the Honorable Irma S. Raker of Montgomery County; and the Honorable Alan M. Wilner of Baltimore County, both a Murphy replacement and a Murphy predecessor. The Honorable Robert L. Karwacki of Queen Anne's County is not with us because of a longstanding commitment. These judges are, and will continue to be, real

assets to me; their support, advice, and, frankly, their help, have been, and I believe will continue to be, invaluable.

My message on the State of the Maryland Judiciary is a mixed one. I prefer to start with the plus side of the ledger.

The next few years and on into the next century and millennium present a challenge. Cognizant of that fact, Governor Glendening has appointed outstanding men and women at each level of court, thus buttressing my ability to guarantee that the Judiciary is in good and competent hands. I have used the first three months of my tenure to take a comprehensive look at our judicial system, its personnel, its dockets, etc., to make certain of its condition. I can, and do, report to you that, while not perfect, it is in excellent functional condition.

Just last year, my predecessor provided an excellent and comprehensive overview of the structure, as well as a brief catalogue of the function, of the various courts comprising the Maryland Judiciary and the adjunct agencies that serve it. Therefore, in the words of today's youth, I will not "go there. I will, instead, focus on the people who give the Judiciary life, without whom it could not function.

Maryland is blessed with, and fortunate to have, some of this nation's most respected, competent and hardworking judges. Men and women of the highest character, they bring integrity, dedication, understanding, and humanity to a calling that, speaking charitably, is difficult, often thankless, and too often frustrating. Day-in and day-out these extraordinary men and women cope with and dispose of huge and ever increasing caseloads, often characterized by complex and multifaceted issues with, if not unfailing enthusiasm, dedication and remarkable stamina and with a real and full commitment to the fair and even without bias or prejudice dispensing of justice consistent with the laws that this body has seen fit to enact.

Upon becoming a judge, having elected to serve a public calling and to forego any opportunities for much greater personal financial gain, these men and women are required to set aside personal preferences and act only in the public interest. Moreover, from that time forward, their actions, their decisions, and, indeed, the results of their deliberations have an awesome impact on the basic fabric of our society. Chief Justice John Marshall, one of the greatest of the chief justices of the United States Supreme Court, observed, more than 160 years ago, that "[t]he judicial department comes home in its effects to every man's fireside; it passes on his property, his reputation, his life, his all." That is as true today as it was then. Consequently, unlike many other public employees, they, like Caesar's wife, must always be above reproach.

Supported by a cadre of over 3,500 hardworking, knowledgeable, and dedicated employees at both the State and local level, they people the courts where thousands of Maryland's citizens each year bring their disputes for a civilized resolution. In many of these courts are played out daily human dramas that reflect the very worst of society, that portray the under-seamy, if you will-side of life. Thus, our judges regularly see and are forced to deal with a myriad of situations foreign to their life experiences and which are productive of stress and frustration. Those situations include an explosion of drug related crimes and violence, the disintegration of families, the abandonment of children, and the break down or total absence of regard for society or its people by certain of our citizens, including an ever-increasing number of our young people. The latter situation has spawned an ever increasing need for, and emphasis on, court security and an understandable concern on the part of judges for personal safety.

As an aside, the Judiciary has recently instituted what we refer to as a "Judicial Ride-Along" program. It is designed to enable all of you, as legislators and as citizens, to see first-hand what goes on in courts and how they are operating. I promise you that what you see is not likely to resemble what you see on television, even when what is shown is a real, but high-profile case. I strongly urge you to take advantage of this opportunity, at your convenience, and pay us a visit.

When I was appointed, in 1975, to the District Court of Maryland, the total caseload of the State's trial courts the District and circuit courts approached one million cases, (994,478 to be precise). At that time, the total number of judges authorized was 160, 80 District Court judges and 80 circuit court judges. We viewed, and said so, that caseload as incredibly high, given the complement of trial judges we had available to cope with the work. Of course, this was before the asbestos dockets, tobacco litigation, or mass toxic torts.

Last year, the District Court alone had filings of approximately 2,000,000 cases (1,952,387 to be exact). One category of cases, particularly vexing and frustrating for our judges, but extremely important not only to those affected but to society as well, domestic violence cases, have increased 70 percent in just the last three years. Almost 270,000 cases (268,399 exactly) were filed in the circuit courts last year. And, like the District Court, though not so dramatically, domestic violence cases in the circuit courts also experienced substantial increases. Together, therefore, the combined caseload for these two trial court levels totaled 2,220,786, an increase of more than 120 percent in the 20 years since I became a judge. By contrast, the complement of trial judges had grown to only 234, an increase of less than 50 percent.

I am extremely proud of the performance of the Maryland Judiciary. I also am confident that it will continue to meet successfully every new and difficult challenge with the same dedication that has enabled it to cope with caseloads that have more than doubled in volume since 1975, are today more complicated, and involve greater numbers of issues. Efficiency—obtaining maximum results from our resources, getting the best from our active judges and making maximal use of our cadre of retired judges—and innovation—finding new and better ways of handling dockets and caseloads are key reasons which explain the Judiciary's ability to continue to play a large and increasingly critical role in the daily lives of our citizens despite its relatively small numbers. An overriding reason for the Judiciary's success is attributable to the caliber of the people who have sought, and been appointed to, judicial office during this period. Not only are they persons of extraordinary ability, but they have demonstrated, over time, an unwavering commitment to the law, the people of this State. whom they serve, and to their oath. In that spirit, they have never sought to shirk their responsibilities, however burdensome; rather, they have proposed, cooperated with, or willingly implemented, ideas or programs that promised to make the processing and disposal of cases more efficient.

The Maryland Judiciary has been lucky, its judges have been willing to take on more and more responsibility, work longer hours, and cope with more stress without commensurate remuneration, and with little or no complaint. Those qualities and the critical importance of the Judiciary to an ordered society, and, perhaps, to avoid continuing to rely on luck, prompted the Judicial Compensation Commission to recommend salary increases ranging from 7.23 To 10.09 Percent. That Commission was created by this distinguished body in 1980 for the purpose of "study[ing] and mak[ing] recommendations with respect to all aspects of judicial compensation, to the end that the judicial compensation structure shall be adequate to assure that highly

qualified persons will be attracted to the bench and will continue to serve there without unreasonable economic hardship." I urge favorable consideration of those recommendations.

Much of the credit for the caliber of the Judiciary is due, in truth, to Robert Charles Murphy, on whose watch these changes have occurred. He set the tone for the Judiciary, accepting nothing less than the very best from all of us. For that reason, he sought to make do through the use of innovative ideas designed to make the system work more efficiently before seeking additional judgeships; it was to the alternative that may have demanded a little more of those of us already on board that he looked first, believing, perhaps, that the more efficient the system, the better it serves the citizenry. We owe him an enormous debt of gratitude.

I do not mean to suggest that we have always made do without requesting necessary new judgeships, only that we try to make such requests as a last, rather than first, resort and, then, only after a detailed study assessing judicial manpower needs. Indeed, the drill has been, continued by me this year, that each year, in accordance with a policy initiated by the General Assembly, the Chief Judge of the Court of Appeals formally certifies the number of new Judges, other than Orphans' Court judges, that are necessary properly to operate the State's courts. The certification is the end result of the application of a comprehensive set of criteria balanced against a pragmatic realization that caseloads increase at a faster pace than judges can be supplied. This year, we are seeking six (6) additional judgeships, four (4) circuit one each for Anne Arundel County, Baltimore County, Montgomery County, and Prince George's County and two District one each for Baltimore and Prince George's Counties.

Speaking of innovation and efficiency, by Chapter 561 of the Acts of 1995, the General Assembly created the Commission on the Future of Maryland Courts "to examine the Maryland court system as it now exists and to determine whether changes should be made to ensure that, in the succeeding decades, the courts can fulfill their mission of administering justice wisely, fairly, and efficiently." Chaired by a most outstanding Maryland lawyer, Mr. James Cromwell, the Commission is composed of a cross section of equally outstanding Marylanders, well-informed individuals from all three branches of government and from the private sector, knowledgeable in the ways and workings of the Judiciary, including distinguished members of the Bar and of this body, a judge who now sits on the Court of Appeals, and the very able and astute State Court Administrator, George B. Riggin, Jr.

As you well know, it now has made its final report. That report is comprehensive, articulate, and well reasoned. Besides echoing my sentiments with respect to the high quality of the Maryland Judiciary and the men and women who people it, judicial and nonjudicial alike, it also contains recommendations that, if implemented, will have consequences for the court system that, at the very least, can only be described as significant. Not unexpectedly, the report has advocates and detractors. Before reviewing just a few of the more significant or frequently discussed recommendations, it must be said that, given the thoroughness of the process, whatever your inclination, the report deserves your careful study and serious consideration.

The Commission recommended: (1) consolidation of the existing circuit courts along the model of the District Court, but preserving local autonomy, where appropriate, to be fully funded by the State, and having a Chief Judge as its administrative head. Perhaps the most controversial and, ultimately, the most costly, it would create a major change in the current court structure. Thus, its implementation, as with several other recommendations, must be accomplished, if at all, by way of an amendment to our Constitution; (2) establishment of a State-wide personnel system for

clerical and other nonjudicial and nonprofessional personnel designed to equalize the pay and other benefits of persons doing the same work. Although its objectives cannot reasonably be questioned, the devil is in the detail. Having recently wrestled with major personnel reforms, you certainly are fully familiar with the many difficult issues associated with such efforts; (3) abolition of the Orphans' Courts and transfer of their jurisdiction to the circuit courts. The choice this recommendation presents is between eliminating an unnecessary bureaucracy and retaining an institution with roots to colonial times, which is perceived to serve the public well; (4) abolition of contested circuit court judicial elections in favor of retention elections, an issue by no means new to this body; (5) develop and implement a system of judicial evaluations, designed to improve each judge's performance and provide information relevant to the decision whether, or not, to retain the judge. This recommendation goes hand in hand with the prior one; (6) abolition of the contested election of circuit court clerks and (7) abolition of the contested election of the Registers of Wills. Adoption of these recommendations, like the one relating to the election of Judges, requires a Constitutional amendment and a phase-in period; (8) decriminalization of nonincarcerable traffic offenses and conducting their trial administratively. These are the so-called "rules of the road" cases such as running a stop-sign or exceeding the speed limit, which do not rise to the same level as an alcohol related driving offense or other more serious crime. Although District Court judges would be relieved of that caseload, again, the devil is in the detail; (9) mandatory alternative dispute resolution (ADR) in all but a few selected cases. For many years, courts have turned to ADR in various forms as a means to sustain court productivity and avoid undue delay in resolving cases; (10) abolition of trial de novo criminal appeals; (11) requiring all contested juvenile cases to be tried by a judge rather than a master; (12) establishment of a family division within the circuit court in all counties in which it is feasible, given the number of judges.

These recommendations, and perhaps some I have not mentioned, have generated a great deal of discussion among the judges and other affected persons and groups. Some, most notably the proposal to consolidate the circuit courts and those calling for the abolition of certain contested elections, have sparked real controversy. Some have been the subject of similar reports to this body. Proposals to consolidate the circuit courts were mentioned in each of Chief Judge Murphy's first three State of the Judiciary addresses and in Chief Judge Hammond's. Abolition of de novo criminal appeals from the District Court was mentioned in three of the first four addresses, as was the call for the removal of circuit court judges from the electoral process. In 1972, Chief Judge Hammond alluded to the transfer of the Orphans' Court's jurisdiction to the circuit courts, while, in 1977, Chief Judge Murphy spoke at length about the "family court division" of the circuit court and transferring "minor traffic offenses" from the District Court to a new bureaucracy. All deserve, I reiterate, critical analysis.

Unlike in some quarters, the Judiciary has taken no firm position. Although I have begun the process of evaluating all of the recommendations in light of my new position, it is not yet complete. Input from my colleagues at all levels of the court, but especially from those most affected by particular proposals, is critical. Some, most notably on the issue of circuit court consolidation, I have already received; however, input on others of the recommendations, as well as from other sources, especially with respect to those issues as to which there are many divergent points of view, has not. Indeed, it is my intention to solicit the views of the State and local bar associations. The Commission has itself recognized that those recommendations that seem noncontroversial may present troublesome issues when the details are filled in. This report

does not purport to fill in the details. The Judiciary will, I promise, formulate a position on each relevant issue in sufficient time to have input and meaningful participation in any debate that might precede the introduction of legislation. That said, I recognize, as the Commission report points out, that the success of its plan depends on a concerted effort by the Executive, Legislative, and Judicial branches of government. I also am aware that whether there will be such an effort depends, in turn, upon a threshold determination, whether the recommendations are, in fact, necessary to assure the proper and efficient operation of the courts into the 21st century. Because, whatever the outcome of the debate, the impact will be felt well into the 21st century, it is critical that all branches of government give due consideration to that issue. I assure you that the Judiciary will and that it will share the results of its study with you timely and candidly.

I stated that I come before you today with a mixed message. Many observers of the courts would likely dispute my glowing assessment of the Maryland Judiciary. Despite our best efforts to date, the public's perceptions, and particularly its misperceptions, of how well the courts perform, have deteriorated over time. There is, in other words a gap between the reality of the situation and its perception.

Certainly, public dissatisfaction with the courts and the way they administer justice is not new. In 1906, one of America's noted legal scholars, Roscoe Pound, delivered his celebrated address on "The Causes of Popular Dissatisfaction With the Administration of Justice." universally considered one of the most influential legal papers ever written. Pound believed that his address would at least promote, if not usher in, an era of great judicial reform. Having presented a lengthy, but careful, analysis of the causes of public dissatisfaction, he concluded his address with the observation. ". . . We may look forward to a near future when our courts will be swift and certain agents of justice, whose decisions will be acquiesced in and respected by all." If Pound were alive today, he no doubt would be shocked, if not greatly saddened and disappointed, that this era of judicial preeminence has yet to be realized.

In point of fact, over the last ten years, surveys in a number of states have uniformly reported that only 22 to 48% of the public have a high degree of confidence in the judicial system, or rate the court system as doing a good or excellent job. More recent surveys reflect that confidence in the courts is linked to confidence in public institutions generally. This is consistent with what we have all observed recently, that the public has become more critical of government in general, while at the same time expecting more of governmental services.

And lack of confidence being skeptical of the courts' ability to deliver equal treatment is particularly strong among people of color: in a recent California survey, for example, 70% of African-American respondents reported a lack of confidence in the courts compared with 53% of the general population, which rated the courts as only fair or poor. The point to be derived from this data has neither a racial nor ethnic agenda, rather it simply illustrates that our courts face a crisis of confidence that crosses racial, ethnic and economic lines.

While, as I have indicated, the court system is not the only public institution to suffer a crisis of confidence, it suffers perhaps more because its effectiveness is directly dependent on public trust, confidence and respect. As Alexander Hamilton noted in the Federalist Papers, the Judicial branch of government is the weakest and least dangerous branch of government because it has neither the power of the purse, nor the power of the sword. The Judicial branch, Hamilton observed further, has merely its own good judgment. More recently, the late Supreme Court

Justice Thurgood Marshall declared, along the same lines, "we must never forget that the only real source of power that we as judges can tap is the respect of the people."

How do courts inspire public trust and confidence? The answer is, I think, through their actions—good and prompt performance and sensitivity—and effective public communication. Certainly, trust and confidence must be commanded and earned, it cannot simply be demanded. With this in mind, the Maryland Judiciary is committed to closing the gap between perception and reality; we cannot and will not permit misperceptions of our courts to go unanswered. This will require a commitment to greater public out-reach, a willingness to go beyond the courthouse walls to restore the public's faith and trust in the Judiciary as a viable institution of justice, accessible and affordable, colorblind, and fair. It is a commitment we must make, not only because it is right to do so, but also because, with the public's respect, the courts' effectiveness will be enhanced.

As I have already indicated, the courts have done a good job. There is, however, as there always is, room for improvement. Avoidable trial delays or unexplained time lapses between judicial rulings and mysterious court procedures must be avoided. Where delay is unavoidable, the reasons must be better communicated.

On the issue of better communication, the courts have not informed the public of their structure, functions, and programs or educated the community about the law very well. My intention and vision is for the Maryland Judiciary to increase its focus on public outreach to inform the public better as to how best they can negotiate what is to some a mysterious and sometimes tricky path to justice. Through both written and electronic Judiciary outreach programs, we intend to make our courts, and especially their procedures, more understandable and user friendly. As we speak, the Public Awareness Committee of the Judicial Conference, under the able leadership of Judge Angeletti, is in the process of designing programs and initiatives to that end. Moreover, so important is the demystification of the courts that the only restrictions on a judge's public outreach are those imposed by the Code of Judicial Conduct and the judge's court schedule. In other words, judicial involvement in the community is encouraged.

With your support, the Judiciary is engaged in a massive Statewide computer project to automate the circuit courts and provide better services to court users. The new circuit court case management system will have the capability for lawyers and the public to access court information remotely and, eventually, file pleadings that way. Through extensive computer networking, the system will also provide judges with better information about the criminal records of defendants who appear before them, thus, making it more likely that proper sentences will be imposed upon a finding of guilt. It will also insure that the courts continue to absorb caseload increases, reduce trial delay, and enhance the services offered to court litigants. I might add that, unlike many of the failed automation projects you often read about in the news, the Judiciary case management automation project has been a complete success and is being migrated to jurisdictions throughout the State. I attribute this accomplishment to the hard work of the Administrative Office of the Courts, in partnership with the circuit court clerks' offices. Your continued support and funding of the project is critical.

We must also make the courts more accessible to those who cannot afford lawyers or lengthy proceedings, yet who need better court access. Aware that less than 20% of Maryland's low income population was being served by existing legal services for critical legal problems, most particularly, domestic and family law issues, with your support, the Judiciary has responded. We allocated funds to ten jurisdictions to enhance family-related services which support mediation,

parenting seminars, the dissemination of legal information, lawyer referral, and automation. Last year, for the first time, the Judiciary requested and received funds to hire contractual court masters to reduce the time required to resolve domestic and family-related disputes in 15 counties, in which local funding was unavailable. Because of the importance and success of this initiative, we are seeking additional funds in our Fiscal 1998 Budget to increase this program. And we are working cooperatively with the Maryland State Bar Association to develop sources of funding to replace that cut from the Legal Services Corporation's budget.

The Judiciary has formed a partnership with the Women's Law Center to establish and maintain a legal forms help line. It is a Statewide, toll-free telephone service staffed by experienced family law practitioners to assist litigants using simplified court forms. This is the only such Statewide service in the Nation and it has been recognized by the American Bar Association and the National Association of Court Management.

We have formed a partnership with the University of Maryland Law School to provide legal assistance to income eligible litigants using the services of supervised law school students at the courthouses in Anne Arundel County, and Baltimore City. The use of students is unique to Maryland and has attracted considerable interest from many other states.

A partnership has also been formed between the Judiciary and the House of Ruth and the Women's Law Center to establish a pilot project in Baltimore City to provide both legal and service related assistance to domestic violence litigants on site at the circuit court and the District Court.

Insuring equal access to indigent criminal defendants may have Constitutional implications, particularly as it relates to adequate representation and speedy trial. Last year, the State Judiciary reverted a portion of its FY 1996 Budget to support the Office of the Public Defender when, due to high caseload volume, it was unable to provide, in a number of cases, the representation statutorily or Constitutionally mandated. This was done in the interest of the system, for, in truth, the Public Defender, like the State's Attorney, is an integral part of the criminal justice system. It is not true, as many on-lookers who are critical of State funding for the Public Defender would suggest, that such support is somehow being "soft on crime." But providing adequate representation for indigent defendants is guaranteed under both the federal constitution and our own. In addition, this body has implemented those guarantees by enacting the Public Defender Act. The effect of insufficiently funding the Public Defender, therefore, serves no purpose other than to delay trial, a result which, ironically, usually benefits the defendant, rather than the victim.

In his 1975 State of the Judiciary Address, my predecessor commented, "We of the Judiciary are, of course, ever cognizant of the fact that we are servants of the people, even as we judge them; that courts exist, not for the convenience of judges, nor to provide a livelihood for lawyers, but solely for the administration of justice for all the people of Maryland, be they litigants, victims, of crimes, advocates of freedom, or parents concerned with the State and country their children will inherit. We continue to be devout believers in the doctrine of separation of powers of governmental checks and balances, in practice as well as in theory. We believe that each of the three coordinate branches of government, to successfully accomplish its function, must work in harmony with the others, if the good government envisaged by the Constitutional creation of three branches the Legislative, the Executive and the Judicial is to be achieved."

Believing that accurately and fully describes the role of the courts and the way the government should work, I thank you and the Governor for your continuing support of the Judiciary and I look forward to carrying on that cooperative spirit. And, once again, I thank you for the privilege of appearing before you.