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The Court of Appeals of Maryland a Five - Year Case Study

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THE COURT OF APPEALS OF MARYLAND
A FIVE-YEAR CASE STUDY

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Out of the old common law writs grew the substantive law of England. Today, no less than in past centuries, rights and remedies are so closely intertwined that the conception of an abstract legal right is not significant unless coupled with a practical and available remedy. No lawyer can advise his client merely according to a theoretical view of the law; he must also consider what decision the courts might render in a litigated case.

Thus the study of judicial methods and procedures need not be a dry and barren occupation, but may prove of practical significance as an aid in predicting the course of judicial decision. Moreover, such work has its place as an instrument of reform, since a mere change in form or method often produces fruitful results in the better administration of justice.

The bench and bar of Maryland are presently engaged in the problem of modernizing trial practice in the *nisi prius* courts.[1] At this time, therefore, attention may well be directed also to the work of the Court of Appeals of Maryland. Many lawyers view with concern the fact that, within four years, the entire complexion of the Court will be changed due to the Constitutional compulsory retirement of three-fourths of its present members.[2]

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[1] Pursuant to Md. Laws 1939, Ch. 719, the Court of Appeals appointed a State-wide committee, under the Chairmanship of Hon. Samuel K. Dennis, and with Robert R. Bowie, Esq., as Reporter, to consider and report on the subject of a revision of the rules of pleading, practice, and procedure.

[2] See Table XVIII, *infra*. The six members of the Court who will become ineligible to serve upon reaching the Constitutional age limit of seventy in the years 1941 to 1944 are Chief Judge Bond and Judges Offutt, Parke, Sloan, Mitchell, and Shehan.

As a background for any consideration of the future of the Court of Appeals, we must know something of its past and of its present. The history of the Court has been fully and authoritatively presented by Chief Judge Carroll T. Bond.[3] But, so far as we have been able to discover, no current studies of the work of the Court have ever been published.[4]

In directing and presenting this five-year study of the business of the Court, the authors have had few precedents to serve as guide-posts. While provision is made in Europe for the publication of official statistics covering the principal courts, the Frankfurter-Landis studies of the business of the Supreme Court of the United States represent the work of pioneers in the field in this country.[5]

The Frankfurter-Landis articles were of two kinds. The earlier group was a series of historical studies of federal jurisdiction.[6] This was followed by an extended series presenting annual current judicial statistics, with comments on the trends disclosed.[7] Both series were preoccupied with the principal problem of the Supreme Court throughout its history, the restriction of its jurisdiction so that the justices would not be overwhelmed with a heavy volume of work and unable to devote sufficient attention

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[3] BOND, THE COURT OF APPEALS OF MARYLAND—A HISTORY (1928); and Bond, *An Introductory Description of the Court of Appeals of Maryland* (1940) 4 Md. L. Rev. 333, which article precedes this one in this issue of the REVIEW.

[4] Aside from rumored informal compilations of scores of affirmances and reversals of trial judges, prepared for private consumption, the only study coming to the notice of the writers is a paper by Roszel C. Thomsen, Esq., of the Baltimore City Bar, delivered before the Rule Day Club in 1937. This paper was largely concerned with the division of appellate litigation among the circuits. It was not published, and the manuscript, unfortunately, has become lost.

[5] See Frankfurter and Landis, *The Supreme Court under the Judiciary Act of 1925* (1928) 42 Harv. L. Rev. 1. For a complete list of these articles, see notes 6 and 7, *infra*.

[6] Frankfurter and Landis, *The Business of the Supreme Court of the United States—A Study in the Federal Judicial System* (1925-1926) 38 Harv. L. Rev. 1005, 39 *Id.* 35, 325, 587, 1046. These articles were subsequently published in book form under the same title.

[7] Frankfurter and Landis, *The Supreme Court under the Judiciary Act of 1925* (1928) 42 Harv. L. Rev. 1; *The Business of the Supreme Court* (1929) 43 *Id.* 33, (1930) 44 *Id.* 1, (1931) 45 *Id.* 271, (1932) 46 *Id.* 226; Frankfurter and Hart, (Same Title) (1933) 47 *Id.* 245, (1934) 48 *Id.* 238, (1935) 49 *Id.* 68; Frankfurter and Fisher, (Same Title) (1938) 51 *Id.* 577; Hart, (Same Title) (1940) 53 *Id.* 579.

to the great constitutional issues which require their decision.

The Court of Appeals of Maryland, being the only appellate court of the State,[8] must range over the entire field of law and equity; it must consider appeals from Orphans' Courts, whose members need not be trained in the law;[9] it must review the rulings of administrative boards, after an intermediate appeal to a general trial court.[10] Few questions can be decided by any of the general trial courts without the right of review by the Court of Appeals.[11]

The work of our Court of Appeals is therefore, to some extent, a cross-section of the work of the trial courts. As said by the authors of the Supreme Court studies, "the volume and nature of appellate work depends largely upon the intake of the *nisi prius* courts".[12] A study of Court of Appeals cases may throw additional light on the nature of the questions presented to trial judges and, indeed, on the general problem of trial practice and procedure.

Description of the Methods Used in the Study

In working out advance plans for the present study, the first decision made by the authors was a negative one, limiting the scope of the inquiry. It was decided not to attempt to inquire into the content or merits of the legal rules enunciated by the Court in the period to be covered. While studies of this latter sort had appeared for other States, in other journals,[13] yet the present writers had in mind a different kind of treatment.

Rather it was decided to limit the inquiry to a statistical study of certain facts concerning the Court of Appeals cases for the period, which facts could readily be dis-

[8] Excluding, of course, the final appellate jurisdiction of the general trial courts over decisions of magistrates and certain boards.

[9] Md. Const. 1867, Art. IV, Sec. 40; Md. Code (1924) Art. 5, Sec. 64.

[10] See, e.g., Md. Code Supp. (1935) Art. 66B, Sec. 7 (Zoning); Md. Code Supp. (1935) Art. 81, Sec. 186 (Taxation); and Md. Code (1924) Art. 101, Sec. 56 as amended by Md. Laws 1939, Ch. 465 (Workmen's Compensation).

[11] For the principal exceptions to the general right of review, see 2 Poe, Pleading and Practice (Tiffany's Ed. 1925) Secs. 826 *et seq.*

[12] (1925) 38 Harv. L. Rev. 1005, 1007.

[13] See, e.g., *The Work of the Wisconsin Supreme Court for the August, 1936, and January, 1937, Terms* (1938) Wisc. L. Rev. 43; and *The Work of the Missouri Supreme Court for the Year 1937* (1938) 3 Mo. L. Rev. 345.

cerned, with the minimum exercise of judgment, from a reading of the published opinions in the official Maryland Reports or in the Atlantic Reporter. The facts sought for study thus were apparent from the reported opinions and included: Names of parties; volume and page of report; term of court and docket number; filing date of the opinion; county or City[14] (and court thereof)[15] from which the appeal was taken; name or names of sitting trial judges; original type of litigation, whether civil law, criminal law, equity, Orphans' Court, or administrative board; who took the appeal, whether original plaintiff, original defendant, or cross-appeals; disposition on appeal, whether affirmed, appeal dismissed, reversed in whole, or reversed in part, and whether a new trial was ordered; the names of the Court of Appeals judges who sat; which one wrote the majority opinion; how long was that opinion and any others filed in the case; what judges concurred or dissented, with or without opinions; and certain miscellaneous facts which are not necessarily involved in every opinion, including cases re-argued, cases appealed twice or more, and cases submitted on brief.[16]

One deviation from matters apparent on the face of the opinion, and requiring a certain degree of judgment, was involved in the decision to classify the cases by subject matter. To insure that the judgment in each case was made by the same standards, this classification was entirely done by one of the authors.

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[14] For judicial and local governmental purposes, the State is divided into twenty-four areas, consisting of the twenty-three counties outside of Baltimore City, and Baltimore City, which is itself the equivalent of a county, although not so designated. Baltimore City is not a part of Baltimore County, although it was at one time, and now adjoins it. The Census of 1930 showed that the population of the State was almost exactly divided between Baltimore City and the counties.

[15] In the counties of the State, appeals are taken to the Court of Appeals either from the Orphans' Courts (probate jurisdiction) or from the Circuit Courts, which latter ones exercise equity, civil law, and criminal law jurisdiction. In Baltimore City the Orphans' Courts exercise probate jurisdiction, the two Circuit Courts have the equity jurisdiction, there is one separate Criminal Court, and there are three separate courts exercising common law jurisdiction over civil cases. These last are the Baltimore City Court, the Superior Court, and the Court of Common Pleas.

[16] The information gleaned from these miscellaneous facts proved too insignificant to be worthy of comment herein.

A mimeographed form was worked out to incorporate all of the above-mentioned detail and to permit recording it for each case by simple entries or by check marks. A separate sheet was used for each case. The actual case by case filling out of these sheets, save for some experimental work by the authors, was done by certain members of the Student Editorial Board of the REVIEW who were assigned the work as part of their share of the current routine work of the REVIEW customarily performed anonymously by the student editors. Compilation of the statistics from these "work sheets", however, was done by the authors personally.

In filling out the "work sheets" (and so for purposes of the final tabulations) each separate judicial opinion (including those not officially reported)[17] was regarded as a unit, even though two or more appeals were disposed of in one opinion.[18] Because of this, and also because some appeals are dropped or settled after being docketed, and prior to argument or filing of opinion, the number of units for each term is smaller than the highest number on the Court of Appeals docket for that term. It was believed proper to treat as a single unit several appeals (usually in a single record) argued together and disposed of by one opinion. When this is done the case is, essentially, one case and one appeal. Thus, when there were several appeals argued and decided as one, if all were affirmed, the entry was "affirmed", and if all were reversed, it was "re-

[17] All of the cases designated "Not to be Reported" during the period, and which, therefore, are found in the Maryland Reports only by syllabus in the back of the volumes, appear in full in the Atlantic Reporter, from which they were tabulated. There were 53 such cases in the nine volumes of the Maryland reports covering the 4½ year part of the five year period surveyed in the present study. The Maryland Reports for the last six months of the period have not yet appeared. These figures show almost exactly twelve unreported cases per year. While most of them were not over three or four pages in length, of Maryland Reports size, yet three of them were over ten such pages long.

[18] There were fifty-four instances where two appeals were argued and decided together; six of three together; twelve of four together; and one each of five, six, and ten together. Thus had all the appeals been counted separately, there would have been 834 units instead of 714, which was the count of unit opinions.

versed". If some were affirmed and some reversed, the entry for the unit was "reversed in part".[19]

The period covered consists of the five years beginning with the January Term, 1935, and going through the completion of the October Term, 1939. This period was selected not only because it represents a good round number of years through the most recent full year, but also because, just prior to the beginning of that period, there had been a drastic change in the membership of the Court. To have gone back any farther would have made it necessary to tabulate at least twelve, rather than nine appellate judges, and three would have been judges no longer on the Court. During the October Term, 1934, just prior to the beginning of the period selected, three new Court of Appeals judges (Mitchell, Shehan, and Johnson) took their seats, replacing three others (Digges, Adkins, and Pattison). By starting the period covered in 1935, the study was restricted practically to the present membership of the Court as, during the period covered, there was only one change in membership. This was at the end of the October Term, 1938, when Judge Urner retired, and Judge Delaplaine was appointed to succeed him until the election of 1942. Then, too, the period selected was long enough to provide a number of unit cases (714) which seems large enough for statistical purposes.

Wherever necessary, separate and more detailed explanations of the methods employed in making the survey and in making the tabulations, will be given in the prefatory matter preceding the individual tables which follow. These, in turn, will be followed by specific comment on

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[19] One deviation from this unit treatment was made (in nine cases only, so it happened). When one or more of the grouped appeals was dismissed, and some one or more of them was also considered on the merits, an entry of "appeal dismissed" and a further entry appropriate for the remaining appeals was made, in the figures for scoring affirmances and reversals of the sitting trial judges, for recording the original type of litigation, and for determining appeals by plaintiffs or defendants. This had no effect on the validity of the figures, inasmuch as all "appeals dismissed" were eliminated in the percentage scorings. Thus it is that some totals show as of 714, and some as of 723. Then, too, scoring the multiple judge trial court affirmances or reversals for or against all sitting trial judges shows a total of 794, because there were 49 two-judge trial courts and 11 three judge ones.

their implications. The tables will be presented, and their implications discussed, under the following headings, after the last of which there will be a treatment of certain general considerations, and a concluding section: Subject Matter Classifications; Types of Courts Appealed From; Comparative Records of Plaintiffs and Defendants; Affirmances and Reversals of Trial Judges; Multiple Judge Trial Courts; Volume of Business; Size of Court Sitting; Dissents and Concurrences in the Result; Number of Opinions Written by the Judges; Length of Opinions; Filing Dates of Opinions; and Distribution of Appeals by Counties and Circuits.

Subject Matter Classification

In classifying the cases by subject matter of litigation, a tentative list of some twenty-five headings was worked out before starting to classify. To these were added some ten which suggested themselves as separate topics when the particular type of subject matter was first encountered. For each case there was entered the heading with which the case seemed principally concerned, and, in addition, any other headings (rarely more than one or two others) which the case also involved.

Realizing that this classification was based entirely on the subjective judgment of the individual making it, it was decided to work out tables both for percentages of *principal* topics involved in the cases and for *all* topics involved, including the principal ones. This is the difference between Tables I and II which, with the comments upon them, are found on the first following double page.

Types of Courts Appealed From

On the "work sheets" spaces were provided for checking the original type of litigation from which the appeal was entered. The five separate types of litigation thus recognized were civil law, criminal law, equity, Orphans' Court, and administrative board. For appeals from Baltimore City, this classification was fairly easy, inasmuch as the first four types there have entirely separate named

(Continued on page 352)

TABLE I.

Subject-Matter Classification by Principal Topic of Each Case

	No.	Pct.
Negligence	103	14.4
Decedents Estates	64	9.0
Jurisdiction, Practice & Procedure	64	9.0
Husband & Wife	53	7.4
Crimes	36	5.0
Real Estate	33	4.6
Statutes & Regulations	32	4.5
Workmen's Compensation	31	4.3
Equity	29	4.1
Mortgages & Liens	29	4.1
Banks & Banking	27	3.8
Contracts	27	3.8
Taxation	27	3.8
Trusts	21	3.0
Insurance	20	2.8
Corporations	17	2.4
Municipal Corporations	17	2.4
Agency	11	1.5
Constitutional Law	11	1.5
Evidence	11	1.5
Office & Officer	8	1.1
Partnership	7	1.0
Principal & Surety	6	.8
Elections	5	.7
Personal Property	5	.7
Sales	5	.7
Infants	4	.6
Negotiable Instruments	4	.6
Condemnation	3	.4
Conflict of Laws	3	.4
Malicious Prosecution	1	.1
Totals	714	100.0

Comment—Table I reveals the extreme breadth of the Court's experience. As might be expected, "Negligence" cases constitute the largest group, but they are only 14.4 per cent. of the total. Among all other classifications, only four comprise over 5 per cent. of the total number of cases. The remaining 55 per cent. of the cases are distributed among twenty-six separate classifications. The table discloses no cases on Habeas Corpus, Landlord & Tenant and Navigable Waters.

TABLE II

Subject-Matter Classification of All Topics of Cases

	No.	Pct.
Jurisdiction, Practice & Procedure	143	12.6
Negligence	119	10.5
Evidence	90	7.9
Decedents Estates	83	7.3
Equity	66	5.8
Husband & Wife	57	5.0
Statutes & Regulations	53	4.7
Real Estate	47	4.1
Crimes	45	4.0
Contracts	39	3.4
Municipal Corporations	39	3.4
Mortgages & Liens	38	3.3
Trusts	38	3.3
Constitutional Law	35	3.1
Banks & Banking	34	3.0
Workmen's Compensation	34	3.0
Taxation	28	2.5
Corporations	26	2.3
Insurance	24	2.1
Agency	16	1.5
Personal Property	11	1.0
Infants	10	.9
Office & Officer	10	.9
Partnership	9	.8
Principal & Surety	9	.8
Conflict of Laws	8	.7
Elections	7	.6
Sales	7	.6
Negotiable Instruments	4	.4
Condemnation	3	.3
Malicious Prosecution	1	.1
Landlord & Tenant	1	.1
Totals	1,134	100.0

Comment—As stated previously, Table I is limited to one topic for each case, whereas many of the cases could properly be classified under several headings, as was done in the preparation of Table II. The difference in the results shown does not seem of particular significance. The general heading, "Jurisdiction, Practice & Procedure", becomes the most numerous classification in Table II, with "Negligence" second and "Evidence" third. The broad diversity of the Court's business is apparent from both tables. Table II contains one case dealing in part with Landlord & Tenant, but none on Habeas Corpus or Navigable Waters.

courts for trying them at *nisi prius*. In the counties the first three named are all tried in the Circuit Courts, although there, too, the probate matters are handled in the separate Orphans' Courts. The administrative board cases represent appeals from *nisi prius* courts which, themselves, had heard the cases on appeal from the respective boards. The *nisi prius* courts which hear such appeals are designated by the respective statutes, and are either the civil law courts or the equity courts. Thus the figures for administrative board litigation were compiled separately, so that those for the civil law and equity cases represent the totals for such courts, less those heard on appeal from administrative boards. There is no appeal directly from any board to the Court of Appeals.

From a tabulation of the division into types of original litigation it was possible to secure figures (Table III) as to the respective proportions of the Court's work devoted to the various kinds of litigation, and from a breaking down of these figures according to appellate disposition there can be seen (Table IV) how the trial courts have generally fared on appeal with respect to their respective tasks. The figures on appellate disposition of "administrative board" cases disclose how the *nisi prius* courts, rather than the boards themselves, have fared in the Court of Appeals in this type of work.

TABLE III

Distribution of Law & Equity Cases, etc.

	No.	Pct.
Equity	304	42%
Civil Law	280	39%
Administrative Boards	55	8%
Criminal	44	6%
Orphans' Courts	40	5%
Totals	723	100%

Comment—Equity cases and civil law cases are almost equal in number and together constitute over eighty per cent. of the Court's work. Note the small number of crim-

inal appeals—only six per cent. of the total. This no doubt is a reflection of the Maryland rule that juries are judges of law as well as fact in criminal cases. As stated above in the text, the appeals classified under "administrative boards" reached the Court of Appeals through the general trial courts sitting at law or in equity.

TABLE IV

Percentage of Reversals, Law and Equity, etc.

	Aff'd	Dism'd	Rev'd	Rev'd in Part	Pct. of Reversal
Criminal	27	2	13	2	.357
Civil Law	171	9	94	6	.368
Equity	179	10	76	39	.391
Administrative Boards	27	2	24	2	.491
Orphans' Courts	17	4	14	5	.528
	421	27	221	54	.395

Comment—The percentage figures are based on the ratio of reversals (including cases reversed in part) to the total appeals (less dismissed appeals). The general percentage of reversal is equivalent to about two cases in every five. The Orphans' Courts, whose members are usually not trained in the law, are reversed more frequently than they are affirmed. The ratio of reversal shown under "administrative boards" is almost one case in every two, but it should be remembered that this is the record of the trial courts on appeal from board rulings, and affords no indication of the correctness of the original rulings made by the boards. The figures might indicate a lack of familiarity on the part of the trial judges with the comparatively new and fast-growing body of administrative law or, more probably, a degree of uncertainty in that branch of the law. As between law cases, both civil and criminal, and equity cases, there is but slight difference in the percentage of reversal.

COMPARATIVE RECORDS OF PLAINTIFFS AND DEFENDANTS

As a result of recording whether the appeal was taken by the original plaintiff or the original defendant, or consisted of cross-appeals by both, and breaking these figures

down according to appellate disposition, it was possible to obtain figures on the respective success of plaintiffs and defendants in the Court of Appeals. Occasionally a problem presented itself of how thus to classify the appellant as plaintiff or defendant, particularly in the case of intervening parties, or in administrative board cases. In the latter the position of the parties before the board was used. In the former an attempt was made to treat as plaintiff anyone seeking positive action from the court.

TABLE V

Comparative Records of Plaintiffs and Defendants (Excluding Cross-Appeals)[20]

A. Percentage of Success as Appellant

	No. Apps.	Aff'd	Dism'd	Rev'd	Total Rev'd & Rev'd in Part	Pct.[21]
Plaintiffs	323	194	10	94	119	.380
Defendants	384	223	16	124	145	.394

B. Total Successes

	Plaintiff Wins	Defendant Wins
Plaintiff as Appellant	119	194
Defendant as Appellant	223	145
Totals	342	339

Comment—Table V answers the question whether plaintiffs or defendants fare better at the hands of the Court, showing conclusively that neither class is favored. The percentage of reversal in appeals by plaintiffs differs by only one per cent. from the percentage of reversal in appeals by defendants. Moreover, the total number of victories by plaintiffs (adding the reversals secured by plaintiff-appellants to the affirmances in cases where plaintiff was appellee) was 342, compared with 339 victories by defendants, a difference of one per cent. While defendants

[20] There were sixteen cross appeals, out of the 723. Of these, four were affirmed, one was dismissed, three were reversed in whole, and eight were reversed in part.

[21] The percentages are figured on the ratio of cases reversed (including those reversed in part) to the total appeals (less those dismissed).

were not more successful than plaintiffs, the Table shows that they exercised their right of appeal more frequently. In the absence of any figures as to whether plaintiffs or defendants usually win below, the greater number of appeals by defendants has no significance.

Affirmances and Reversals of Trial Judges

No doubt most interesting to the reader familiar with the local scene is the matter of the score of affirmances and reversals of the respective trial judges. This would be particularly so were it considered appropriate to list the individual judges' scores by name, but for obvious reasons this could not, and should not, be done. In order to provide a basis for comparison, however, the individual trial judges whose cases were appealed during the period were scored, and the gross figures presented below are based on these tabulations. The Orphans' Court judges were not scored in these tables.

Whenever two or more judges sat in the same case at *nisi prius*, the case was scored for or against each. Thus it is that the gross totals in Tables VI and VII are higher, even after deducting the Orphans' Court cases, and all the others where the appeals were dismissed, than the total number of opinions for the period.

Table VI

Affirmances and Reversals of Baltimore City and County Trial Judges

	Appeals Considered	Affirmed	Reversed or Rev'd in Part	Pct. Reversal
Baltimore City Judges..	428	270	158	.369
County Judges	299	170	129	.432
Totals for State.....	727	440	287	.395

Comment—This comparison of the reversals of City and county trial judges shows that the City judges as a whole have a somewhat better record of affirmance. (But see comments under Table VII.)

TABLE VII

Comparative Record of Judges of Court of Appeals Sitting at Nisi Prius

	Appeals Considered	Affirmed	Reversed or Rev'd in Part	Pct. Reversal
County Judges of Court of Appeals (Chief Judges of Circuits).....	55	35	20	.364
County Associate Judges	244	135	109	.447
	299	170	129	.432

Comment—Under the Maryland judicial system the seven judges of the Court of Appeals other than the judge from Baltimore City are actively engaged in *nisi prius* work as chief judges of their respective circuits. Over 18 per cent. of the County cases reaching the Court of Appeals are appeals from decisions of these chief judges.[22] The record of the county associate judges is affected by the fact that three of them accounted for 42 reversals out of 67 appeals. Eliminating these three judges, the percentage of reversal for the remaining nineteen judges is .378, which is close to the percentage of the City and appellate judges. All of the Baltimore City judges (except one, who did not have a sufficient number of appeals to afford a fair basis of comparison) were affirmed more often than reversed.

It is clear that Tables VI and VII do not possess any great significance, and do not indicate a general superiority of one group of judges over the others.

MULTIPLE JUDGE TRIAL COURTS

In the course of recording, for the judge or judges who sat at *nisi prius* in the cases, the score of affirmances and reversals, it was possible to note, for each county and for Baltimore City, the number of times more than one judge sat. In no case did more than three sit at a time although, in the case of Baltimore City as many as eleven, and for two of the county circuits as many as four, might have sat.

[22] As pointed out by Judge Bond in the preceding article, the judge who sat below does not participate in the hearing of such a case by the Court of Appeals and withdraws from the consultation room when it is discussed.

There was no appeal noted from the Supreme Bench of Baltimore City, as such (with its eleven-judge membership), and none is very likely in view of its peculiar and limited jurisdiction.[23]

The figures for the multiple-judge courts relate only to the law and equity courts, and not to the Orphans' Courts, for which the only break-down was that between counties and City.

TABLE VIII

Multiple Judge Trial Courts

	Two Judge	Three Judge	Total Multiple Cases	Pct. of Total Appeals
Baltimore City	8	....	8	1.8%
Anne Arundel	....	1	1	2.4%
Caroline	2	....	2	40.0%
Carroll	2	....	2	20.0%
Cecil	4	2	6	54.5%
Dorchester	5	3	8	57.1%
Frederick	8	1	9	56.2%
Harford	2	....	2	7.7%
Howard	1	....	1	11.1%
Montgomery	....	2	2	25.0%
Prince George's	2	....	2	33.3%
Queen Anne's	2	1	3	60.0%
St. Mary's	1	....	1	50.0%
Talbot	5	....	5	38.5%
Washington	3	....	3	33.3%
Wicomico	3	....	3	37.5%
Worcester	1	1	2	22.2%
Totals for State	49	11	60	8.4%
Totals for Counties alone	41	11	52	19.0%

Comment—Table VIII gives some indication of the extensive use of multiple-judge courts in many of the counties. The percentage of reversal of the two-judge or

[23] The functions of the Supreme Bench of Baltimore City (i. e., the entire eleven judge panel sitting as a body rather than as sitting judges in some one of the six constituent courts) seem to be limited to hearing motions for new trial in criminal cases (from which no appeal lies) and to making rules of court, admitting to practice, and hearing disbarment cases. Md. Const. 1867, Art. IV, Sec. 33.

three-judge courts has been, if anything, larger than that of the individual judges generally.[24] An affirmance or reversal of a two-judge or three-judge court must be counted for or against each of the judges, and these cases therefore weight the averages shown in Tables VI and VII to some extent. The percentage of these cases which involved the constitutional right of having points reserved to be heard in *banc* (in the counties) is not available.[25]

VOLUME OF BUSINESS

The Court holds three terms each year, in January, April, and October. The figures showing the volume of business are stated below in terms of the number of opinions filed at each term of Court. As pointed out above, this is less than the highest number of cases on the docket for each term both because some cases are settled or dropped before opinion filed, and because separate appeals argued together and decided in one opinion were treated as single cases for purposes of this study.

[Table IX, and Comment appear on the opposite page.]

[24] Of the 49 instances of two-judge trial courts, there were 24 affirmances, 2 appeals dismissed, 20 reversals in whole, and 3 reversals in part, for a reversal percentage of 48.9%. The eleven cases coming from three-judge trial courts showed 6 affirmances, 1 dismissal, 3 reversals in whole, and 1 reversal in part, for a reversal percentage of 40%. The reversal percentage for all multiple judge courts was 47.3%. As pointed out in Tables VI and VII, the state-wide reversal percentage for the judges individually was 39.5%; that for Baltimore City judges was 36.9%; for county Chief Judges, 36.4%; and for county Associate Judges, 44.7%.

[25] Md. Const. 1867, Art. IV, Sec. 22.

TABLE IX

A. Volume of Business by Terms

	Term Totals	Yearly Totals
January Term, 1935	41	
April Term, 1935	30	
October Term, 1935	73	
Total 1935		144
January Term, 1936	29	
April Term, 1936	37	
October Term, 1936	67	
Total 1936		133
January Term, 1937	50	
April Term, 1937	31	
October Term, 1937	69	
Total 1937		150
January Term, 1938	44	
April Term, 1938	59	
October Term, 1938	69	
Total 1938		172
January Term, 1939	30	
April Term, 1939	37	
October Term, 1939	48	
Total 1939		115
Five-Year Total		714

B. Average, by Terms

Average January Term	38.8
Average April Term	38.8
Average October Term	65.2
Average per year	142.8

Comment—This Table shows the number of cases decided at each term during the five-year survey. While

there is a marked falling off in volume from 1938 to 1939, this is apparently not an indication of a general trend over the period studied, since the 1938 total was as much above the five-year average as the 1939 total was below it. Examination of the dockets of the Court for January and April, 1940, shows that the decline, if any, has not been arrested.[26]

SIZE OF COURT SITTING

The full membership of the Court consists of eight. The Constitution provides that four shall constitute a quorum.[27] Whenever, in the case of County appeals, the case was heard at *nisi prius* by a member of the Court of Appeals, that judge takes no part in the decision of the case on appeal.[28] In tabulating the cases, entries were made for all then current judges who did not sit, and from these the following figures were compiled.

[Table X, and Comment appear on the opposite page.]

[26] There were 49 cases on the docket for the January Term, 1940, and 58 on that for the April Term. Of these latter, however, eight were cases continued from the January Term, leaving a net count of 50 for April. When it is remembered that the usual number of opinions filed approximates three-fourths of the highest number on the docket, this indicates a probable opinion count of 37 and 38, respectively, for the two terms, which is just under the five-year average for those terms.

[27] Md. Const. 1867, Art. IV, Sec. 15.

[28] *Ibid.*

TABLE X

A. Size of Court Sitting

	No. Cases	Pct.
Full Court	376	52.6[29]
7-man Court	217	30.4
6-man Court	89	12.5
5-man Court	26	3.7
4-man Court	6	0.8
	714	100.0

B. Minimum Number of Judges Sitting

	No. Cases	Pct.
Full Court	376	52.6
Court of 7 or more	593	83.0
Court of 6 or more	682	95.5
Court of 5 or more	708	99.2
Total (4 or more)	714	100.0

Comment—It is evident from these figures that every member of the Court makes an effort to sit in every case except where disqualified; and that even unavoidable absences are reduced to a minimum. The Table should be read in the light of the disqualification of one judge in 18 per cent. of the County appeals, representing the cases appealed from a judge of the Court sitting at *nisi prius*. There were 57 of these cases (see Table XI, which also shows the number of times each judge sat during the period).

DISSENTS AND CONCURRENCES IN THE RESULT

The following table shows the number of times each judge sat, and also the number of times each concurred in the result or dissented, and whether these were with or without filing an opinion. Of the nine judges sitting during the period, Chief Judge Bond was eligible to sit in all cases, six of the county judges were eligible in all less those

[29] This percentage would be larger if it could be safely assumed that in the 57 instances when a member of the Court of Appeals had sat at *nisi prius*, he was the only one absent at the argument. If so, this would show a "full court" in 433 instances, for a percentage of 60.6%.

in which they sat at *nisi prius,* and two were eligible in only those cases heard during the respective four and one year periods they sat, less those (nine and two, respectively) in which they had been the trial judges.

TABLE XI

Dissents and Concurrences in the Result

	Was Trial Judge	No. Times Sitting	Total Concurrences	Concurring Opinions	Total Dissents	Dissenting Opinions
Bond	....	690	10	6	23	10
Urner[30]	9	498	4	1	12	1
Offutt	1	676	8	4	12	5
Parke	10	673	9	6	24	7
Sloan	13	641	1	1	10	0
Mitchell	5	621	1	0	3	0
Shehan	9	640	0	0	5	0
Johnson	8	660	3	1	10	0
Delaplaine[31]	2	112	0	0	2	0
	57	5,211	36	19	101	23

Average number of cases per year..... 142.8
Average number of cases heard by each judge per year 130

Comment—The average Justice of the Supreme Court of the United States participates every year in deciding about 240 cases and in dismissing about 700 petitions for certiorari. It must be remembered, however, that the Justices (unlike the Maryland Judges) are provided with law clerks and are not required to engage in *nisi prius* duties. The average Justice dissents nine or ten times per year. The number of dissents for the average Judge of the Maryland Court of Appeals is equivalent to about two and one-half per year, but this comparison should be read in the light of the smaller volume of cases decided by the Maryland Court.

[30] There were 599 cases heard in the period before Judge Urner retired, and 115 after Judge Delaplaine was appointed to succeed him.
[31] *Ibid.*

Number of Opinions Written by the Judges

As pointed out by Judge Bond in the preceding article, the Court has the rule of automatic assignment of opinion-writing in rotation, subject to necessary deviation. In theory this should result in approximately an equal number of opinions being written by each member of the Court. The figures below show that this is not quite achieved, but, of course, the system of automatic allotment at time of argument results in an inequality whenever the number of opinions cannot be divided evenly by the number of judges. Then, too, some cases may be settled after assignment but before the opinion is ready to be filed.

Table XII

Number of Opinions Written by the Judges

	1935	1936	1937	1938	1939	Total
Parke	19	18	21	30	15	103
Offutt	20	16	24	20	15	95
Bond	18	17	21	23	15	94
Johnson	17	16	18	22	15	88
Sloan	19	15	20	19	14	87
Mitchell	16	17	13	20	14	80
Shehan	17	17	15	15	14	78
Urner	16	16	15	20	....	67
Delaplaine	....	....	....	....	12	12
Per curiam	....	....	....	....	....	10
						714

Average number of majority opinions per judge per year	17.6
Average number of opinions per judge per year (including concurring and dissenting opinions as shown in Table XI)	18.65

Comment—In the last five-year period (1934-1938) covered by the Frankfurter-Landis studies, the average number of majority opinions written by a Justice of the Supreme Court of the United States was about 20 per year (as to additional duties of Supreme Court Justices, see comment under Table XI).

LENGTH OF OPINIONS

In counting and recording the respective lengths of the opinions filed, the count was taken (to the half-page) according to the standard page of the official Maryland Reports. For those cases "not to be reported" and for those subsequent to the latest volume of Maryland Reports, recourse was had to the Atlantic Reporter and a correction was made to allow for the different sized type used therein, so that the recorded number of pages was that which would have been covered had the same material appeared in the Maryland Reports.

TABLE XIII.

Length of Opinions

	Average Number Printed Pages
Offutt	10.78
Mitchell	9.71
Parke	9.49
Johnson	7.36
Shehan	6.46
Sloan	6.04
Urner	5.41
Bond	5.36
Delaplaine	4.54
General Average	7.64

Comment—While surveys of members of the bar indicate that a majority prefer shorter opinions, counsel in each case desire to have every point adequately covered in the opinion. In a state like Maryland, with a comparatively small number of adjudications, it is at least debatable whether opinions may not profitably be more extended than in states with a large volume of annual reported cases.

Filing Dates of Opinions

The Constitution requires an opinion to be filed in each case within three months after argument or submission.[32] Both the official Maryland Reports and the Atlantic Reporter indicate the filing date, and from these the following figures were tabulated.

Table XIV

Comparative Statistics on Half-Way and Final Filing Dates of Opinions

		Number	Half-way	Final
January Term	1935	41	April 3	May 22
	1936	29	February 20	May 18
	1937	50	March 17	May 17
	1938	44	March 10	May 20
	1939	30	February 22	April 14
	Median		March 10	May 18
April Term	1935	30	May 22	July 12
	1936	37	June 9	June 20
	1937	31	May 25	June 17
	1938	59	June 14	August 3
	1939	37	May 17	July 5
	Median		May 25	July 5
October Term	1935	73	January 15	February 6
	1936	67	January 13	February 17
	1937	69	December 10	April 8
	1938	69	December 1	February 1
	1939	48	November 29	January 29
	Median		December 10	February 6

Comment—This Table assists in answering the question when an opinion from a given term is likely to be issued, i. e., when the half-way mark may be passed in opinions of that term, and when the final opinion of each term is likely to be filed.

Distribution of Appeals by Counties and Circuits

In compiling the figures on the geographical distribution of litigation, an entry was made on each "work sheet"

[32] Md. Const. 1867, Art. IV, Sec. 15.

concerning the county or City from which the appeal was taken. Where the case had originally been filed in another county, and removed, this was noted. In such latter instances, the appeal was treated as coming from the county where the case was originally filed, because the object of the particular figures was to arrive at an estimate of which jurisdictions were providing the most work for the Court of Appeals.

TABLE XV

County—City Distribution of Appeals

	Total	Baltimore City	%	Counties	%
1935	144	93	64.6	51	35.4
1936	133	76	57.1	57	42.9
1937	150	96	64.0	54	36.0
1938	172	110	64.0	62	36.0
1939	115	66	57.4	49	42.6
	714	441	61.7	273	38.3
Average	142.8	88.2		54.6	

Comment—This Table shows that, while Baltimore City produces a greater volume of appellate litigation than the counties, the ratio is only about 5 to 3.

TABLE XVI

Geographical Distribution of County Appeals

First Circuit	1935	1936	1937	1938	1939	Total	Pct.
Dorchester ..	2	3	2	5	2	14	5.1%
Somerset ...	0	1	1	0	2	4	1.4
Wicomico ...	2	1	2	3	0	8	2.9
Worcester ..	1	3	1	3	1	9	3.3
Total ...	5	8	6	11	5	35	12.7
Second Circuit							
Caroline	0	0	2	3	0	5	1.8
Cecil	0	5	2	1	3	11	4.0
Kent	0	0	0	2	0	2	0.8
Queen Anne's	1	0	0	1	3	5	1.8
Talbot	5	3	4	1	0	13	4.8
Total ...	6	8	8	8	6	36	13.2
Third Circuit							
Baltimore Co.	8	3	12	11	5	39	14.3
Harford	6	4	4	6	6	26	9.5
Total ...	14	7	16	17	11	65	23.8
Fourth Circuit							
Allegany ...	9	6	3	5	4	27	9.9
Garrett	1	0	0	0	0	1	0.4
Washington..	4	2	0	1	2	9	3.3
Total ...	14	8	3	6	6	37	13.6
Fifth Circuit							
Anne Arundel	5	12	7	10	8	42	15.3
Carroll	0	1	4	1	4	10	3.7
Howard	2	1	3	1	2	9	3.3
Total ...	7	14	14	12	14	61	22.3
Sixth Circuit							
Frederick ...	2	4	1	4	5	16	5.9
Montgomery..	1	3	1	3	0	8	2.9
Total ...	3	7	2	7	5	24	8.8
Seventh Circuit							
Calvert	0	0	2	0	1	3	1.1
Charles	1	2	1	0	0	4	1.4
Prince George's	1	3	1	1	0	6	2.1
St. Mary's ..	0	0	1	0	1	2	0.8
Total ...	2	5	5	1	2	15	5.4

Comment—This Table shows a great disparity among the present County Judicial Circuits in volume of appellate litigation. The Third Circuit, which includes Baltimore County, and the Fifth Circuit, which includes Anne Arun-

del, together produce nearly half of the County appeals. On the other hand, the Seventh Circuit (Southern Maryland) and the Sixth Circuit (Frederick and Montgomery) together produced only about eight appeals per year, or 14 per cent. of the County total.

TABLE XVII

Geographical Distribution Among All Circuits

	No. of Appeals	Pct.
First Circuit (Dorchester, Somerset, Wicomico and Worcester Counties)	35	4.9%
Second Circuit (Caroline, Cecil, Kent, Queen Anne's and Talbot Counties)	36	5.0%
Third Circuit (Baltimore and Harford Counties)	65	9.1%
Fourth Circuit (Allegany, Garrett and Washington Counties)	37	5.2%
Fifth Circuit (Anne Arundel, Carroll and Howard Counties)	61	8.6%
Sixth Circuit (Frederick and Montgomery Counties)	24	3.4%
Seventh Circuit (Calvert, Charles, Prince George's and St. Mary's Counties)	15	2.1%
Eighth Circuit (Baltimore City)	441	61.7%
Total	714	100.0%

Comment—Under Article IV., Sections 2, 14 and 21, of the Maryland Constitution, one judge of the Court of Appeals must be elected from and by the voters of each Judicial Circuit.

GENERAL COMMENTS AND SUGGESTIONS

Among the significant facts appearing from the foregoing tables are the diversity of the problems presented to the Court; the high percentage of reversals of Orphans' Courts and of the general trial courts in administrative law cases; the close similarity between the percentage of reversals in law and equity cases and between the comparative records of plaintiffs and defendants; the high percentage of attendance of the members of the Court at its sessions; and the despatch with which the Court's business is taken up and concluded.

The promptness of the Court in clearing its dockets contrasts with a record of congestion and substantial delays before the adoption of the Constitution of 1867.[33] At that time, however, almost unlimited argument was allowed in each case, and old-fashioned oratory, embellished with rhetoric, was in vogue at the bar. Today, rigid adherence to the rule limiting oral argument,[34] rather than differences in the organization of the Court, would appear to account for the speedy disposition of appeals.

The satisfactory results which the Court has achieved in expediting its business were attained despite the handicap of inadequate clerical assistance. With few exceptions, the judges of the highest courts of the Eastern and other populous states, and the various Federal judges, are provided with legally trained clerks or secretaries, usually recent law school graduates of high standing, who can relieve the judges of the labor of checking citations, abstracting cited cases, and supplementing the authorities furnished the Court by counsel.

In Maryland, where the members of the Court have no law secretaries, this work now consumes a large part of the judges' time, and it is poor economy, at the least, to require judges to perform tasks involving routine research which could be done equally well by law clerks.[35] As will

[33] See the article by Judge Bond immediately preceding this one.

[34] Rule 41 of the Court of Appeals.

[35] The annual salary of a judge of the Court of Appeals is $11,500, Md. Code Supp. (1935) Art. 26, Sec. 45. In view of the honor of being selected as law clerks of the Court of Appeals, recent law graduates of the highest standing would probably be attracted by a salary of $1,800 or less.

be shown, the highest courts of most states consist of fewer judges than the Maryland Court of Appeals,[36] but at present the eight members of the Maryland Court are well occupied with their duties. The provision of law clerks or secretaries might well lead ultimately to the conclusion that fewer judges could perform the work of the Court.[37]

A brief comment might be made on the ratio of dissents as shown by Table XII. The average number of dissents is low in comparison with the difference of opinion shown between the Court of Appeals judges sitting at *nisi prius* and the Court itself on appeal. Each judge, on the average, dissents from the conclusion of the majority in 2 per cent. of the cases; but his decisions at *nisi prius* are reversed in 36 per cent. of the appeals taken therefrom.

It remains to consider the general problem of the organization of the Court in relation to the geographical origins of its business. In this article it is not proposed to urge that the present Constitutional provisions be altered, nor, in case of amendment, to favor any particular form of reorganization. It is desired merely to present the facts fully.

If any reorganization of the Court is undertaken, it could not and should not affect the tenure of the sitting judges.[38] Reference has already been made to the disturbing fact that three-fourths of the present members of the Court will be retired due to reaching the Constitutional age limit within the next four years. The facts as to expiration of terms and ages of the judges are shown in Table XVIII.

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[36] See the Table in note 52, *infra*.

[37] The judges are further hampered in performing their duties by the fact that only one stenographer is provided for the Court. Much of their research and the writing of opinions is necessarily done in their respective circuits of residence, where there is no opportunity for consultation with other members of the Court. Provision of adequate stenographic service in Annapolis would involve a comparatively small increase in the Court's budget, would lead to a greater degree of collaboration in the writing of opinions, and would permit each member of the Court to examine at leisure a copy of every proposed opinion before it is approved and filed. At present insufficient copies of the opinions are available for this purpose.

[38] See, e.g., Art. 33 of the Declaration of Rights of the Maryland Constitution. It seems clear that a plan could be proposed under which the tenure of each sitting judge would continue until his death or retirement.

TABLE XVIII

Retirement of Present Members of Court of Appeals
(Arranged in order of age of judges)

Judge	Circuit	Cause	Date
Francis Neal Parke	5th	Age limit	Jan. 6, 1941
Walter J. Mitchell	7th	Age limit	Mar. 16, 1941
T. Scott Offutt	3rd	Age limit	June 12, 1942
Carroll T. Bond	8th	Term expires Election Age limit	Nov., 1941 Nov., 1942 June 13, 1943
Wm. Mason Shehan	2nd	Age limit	Dec. 24, 1943
D. Lindley Sloan	4th	Term expires Election Age limit	Nov., 1941 Nov., 1942 April 3, 1944
Benjamin A. Johnson	1st	Term expires (Eligible for reappointment and ensuing election for part of another term.)	Nov., 1949
Edward S. Delaplaine	6th	Appointment expires (Eligible for election for a full term.)	Nov., 1942

Under the present Constitutional provision, the successor of each retiring judge must be chosen from the circuit which he represents,[39] and, due to the increasing concentration of legal business in the cities, there are comparatively few lawyers today in some of the circuits. Table XIX shows the number of lawyers, according to the Martindale-Hubbell Directory, and the number of members of the State Bar Association in each circuit.

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[39] Md. Const. 1867, Art. IV, Secs. 2, 14.

TABLE XIX

Geographical Distribution of Lawyers

	No. of Lawyers[40]	State Bar Association Membership[41]
First Circuit	82	29
Second Circuit	65	22
Third Circuit	96	57
Fourth Circuit	129	38
Fifth Circuit	70	28
Sixth Circuit	110	40
Seventh Circuit	87	35
Eighth Circuit (Baltimore City)	2,350	439
	2,989	688

As Judge Bond has pointed out in the preceding article, there were originally no geographical requirements as to residence of the members of the Court, which consisted of five judges who had no local trial duties.[42] For forty-five years in the early part of the last century, the six members of the Court were also chief judges of circuits and chosen from them.[43] In 1851 the system of having chief judges of circuits sit on the Court of Appeals was abandoned, and the Court was limited to four full-time members elected by the voters of the entire State from four divisions of the State, one of which consisted of Baltimore City.[44]

Both the Constitution of 1864 and that of 1867, under which the State is now operating, were adopted under stress of war conditions and reconstruction days.[45] The first added one judge, making the Court five, and gave Baltimore City additional possible representation, since certain wards of the City were included in the Baltimore-

[40] In this compilation, made from the Martindale-Hubbell Directory, it was impossible to take account of the numerous duplications. Lawyers often have offices in Baltimore or Washington and are also listed at their residences in the Counties. Others are listed at a County town and also at the County seat. Many of those listed are not in active practice.

[41] Proceedings, Maryland State Bar Association, 1939.

[42] Md. Const. 1776, Arts. 40, 48, merely provided for appointment of judges by the Governor. See Judge Bond's article immediately preceding.

[43] Md. Const. 1776, Amendment by Md. Laws 1804, Ch. 55, Secs. 1, 5, ratified 1805.

[44] Md. Const. 1851, Art. IV., Secs. 2, 4.

[45] NILES, MARYLAND CONSTITUTIONAL LAW (1915) 10-11.

Harford County division.[46] But this Constitution was short-lived, as it was based on the disfranchisement of thousands of voters, and was superseded three years later.[47]

It was not until 1867 that the circuit system became finally established. The geographical lines were rigidly fixed at that time by constitutional provision and have not since been altered.[48] Moreover, the representation of Baltimore City, which had previously enjoyed the possibility of electing two of the five judges, was reduced to one judge out of eight.

It is apparent from this resumé that there is precedent in Maryland for almost any method of constituting the Court. In this connection it may be helpful to consider how the highest courts are constituted in other states. Some years ago a comparative study was made of the State constitutional provisions,[49] and it disclosed the following facts:

> (1) A large majority (then 85 per cent.) of the States choose their appellate judges at large, without geographical restrictions.[50]

[46] Md. Const. 1864, Art. IV., Sec. 17.

[47] NILES, *loc. cit. supra* n. 45.

[48] Md. Const. 1867, Art. IV, Secs. 2, 14.

[49] The New York State Constitutional Convention of 1915 published an "Index-Digest of State Constitutions."

[50] The following table showing methods of selection of judges of the highest State Courts was compiled from the Index-Digest of State Constitutions and covers 46 States:

	No. of States	Pct.
Elected by voters from State at large	30 a	65.1%
Appointed from State at large	5	11.0%
Elected by legislature from State at large	4	8.7%
Total choosing judges at large	39	84.8%
Elected from districts but by voters of entire State	4 b	8.7%
Elected from districts by local voters	3 c	6.5%
	46	100.0%

a One of these States, Tennessee, has a constitutional provision that not more than two of the five judges may be elected from one of the five "grand divisions" of the State.

b In this group, Kentucky has a provision for re-districting by the legislature. The other States in this group are Indiana, Oklahoma, and South Dakota.

c These States are Maryland, Illinois and Louisiana. Of these, Illinois permits re-districting by the legislature, so that only Louisiana and Maryland have rigid district lines which can be changed only by a Constitutional amendment.

(2) Only two states—Maryland and Delaware—retain the system of having appellate judges do *nisi prius* work.[51]

(3) A majority of the States have a smaller highest appellate court than Maryland.[52]

If, in any revision of the Constitutional provisions, geographical restrictions are retained, it may be of interest to compare the existing Circuit divisions of the State under the Constitution of 1867 with a possible new alignment based on equalizing the county areas as to volume of appellate litigation. These are presented by means of two maps, found herein facing each other on the double page immediately following this one. The second map is not offered as a recommendation of the writers, but merely for the purpose of indicating that a reasonable realignment

[51] The following table, compiled from the Index-Digest of State Constitutions, shows the division of the 46 States covered according to whether the highest court consists of full-time or part-time appellate judges:

	No.	Pct.
States having only full-time appellate judges	42	92%
States having some full-time and some part-time appellate judges (S. C.[a], N. J.[b], & Md.[c])	3	6%
State for which all appellate judges also have trial functions (Del.[d])	1	2%
	46	100%

[a] In South Carolina the highest court usually consists of full-time appellate judges, but under certain conditions all the judges of the General Trial Court can be summoned to sit with them.

[b] The highest court in New Jersey consists of seven full-time judges and the judges of the intermediate appellate court.

[c] The full-time appellate judge from Baltimore City need not be the Chief Judge but is at present so designated.

[d] Delaware has a Chancellor, a Chief Justice, and four Associate Judges, the six of whom, less the one who sat at trial, constitute the Supreme Court.

[52] An examination of the latest bound volumes of the National Reporter System disclosed the following figures as to the present sizes of the highest courts of the 48 states: One (New Jersey) has a court of possible sixteen judge membership; three have nine judges; Maryland and one other State have eight; 19 have seven judges, including one with six, and another with four additional "Commissioners"; five have six judges; 14 have five judges; and four have three judges, including one state (Texas) which also has six Commissioners. It must be remembered, of course, that some of these states also have intermediate appellate courts which absorb much of the appellate litigation, and thus affect the necessary size of the highest court. Maryland has no such courts. The above figures (counting the Commissioners as judges) show that 14.59% of the states have nine or more judges, 4.16% have a court of eight, which is the Maryland size, and that 81.25% of the states have a smaller court than Maryland, viz., 35.42% have seven judges, 10.42% have six, 29.16% have five, and 6.25% have three.

could be devised, which would bear some relation to the volume of appellate litigation.[53] It is interesting to note that the possible realignment of the counties, indicated in the second map, is exactly the same as the division of the counties under the Constitution of 1864.

CONCLUSION

In closing this five-year study of the work of the Court of Appeals of Maryland, a brief reference to its past and a word as to its future will not be out of place. The Court is the direct successor to the Governor's Council of early

(Continued on page 378)

[53] If a reorganization were proposed which involved a smaller court and the assignment of four appellate judges to the counties, a natural regrouping of counties, geographically and according to volume of litigation, would be as follows (see also Map B, page 377):

	No. Cases	Pct.
Group A		
1st & 2nd Circuits: Worcester, Wicomico, Somerset, Dorchester, Caroline, Talbot, Queen Anne, Kent, Cecil	71	26.0%
Group B		
3rd Circuit: Baltimore & Harford Counties	65	23.8%
Group C		
7th Circuit, parts of 5th & 6th: Anne Arundel, Montgomery, Prince George's, Calvert, Charles, St. Mary's	65	23.7%
Group D		
4th Circuit, parts of 5th & 6th: Allegany, Garrett, Washington, Frederick, Carroll, Howard	72	26.5%
	273	100.0%

As pointed out in the text, and on Map B, *infra*, this possible realignment conforms exactly to the division of the *counties* under the Constitution of 1864, save that, under that, seven wards of Baltimore City were appended to the Baltimore County-Harford County area. See also on Map B, *infra*, reference to the variation of the 1864 division from that of the Constitution of 1851.

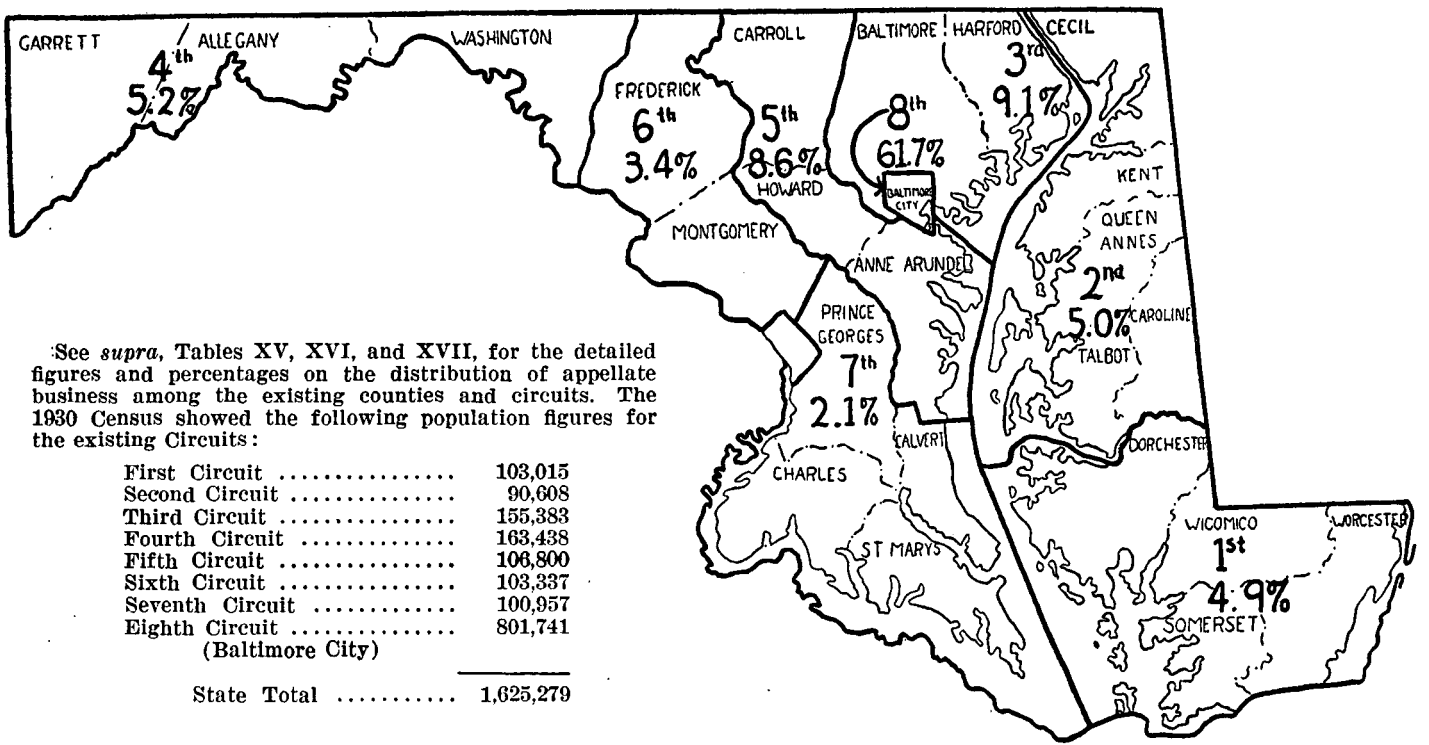
A possible realignment of the areas from which the county Court of Appeals judges are chosen would not have to involve any realignment of the *nisi prius* circuits, so long as all Court of Appeals judges were to be released from trial functions. Thus, under the 1851 and 1864 Constitutions, there were eight and thirteen *nisi prius* Circuits and only four and five Court of Appeals areas. One of the *nisi prius* Circuits, in fact, lay in two different Court of Appeals areas.

It is interesting to note the language of the provision for selection of the Court of Appeals justices under the 1864 Constitution, Art. IV, Sec. 17:

> "The court of appeals shall consist of a chief justice and four associate justices, and for their selection the State shall be divided into five judicial districts . . . and one of the justices of the court of appeals shall be elected from each of said districts, by the qualified voters of the whole state. The present chief justice and associate justices of the court of appeals shall continue to act as such until the expiration of the term for which they were respectively elected . . ."

MAP A

PRESENT CIRCUIT DIVISIONS, WITH PERCENTAGES FOR EACH CIRCUIT OF ALL APPEALS (BOTH COUNTIES AND CITY)

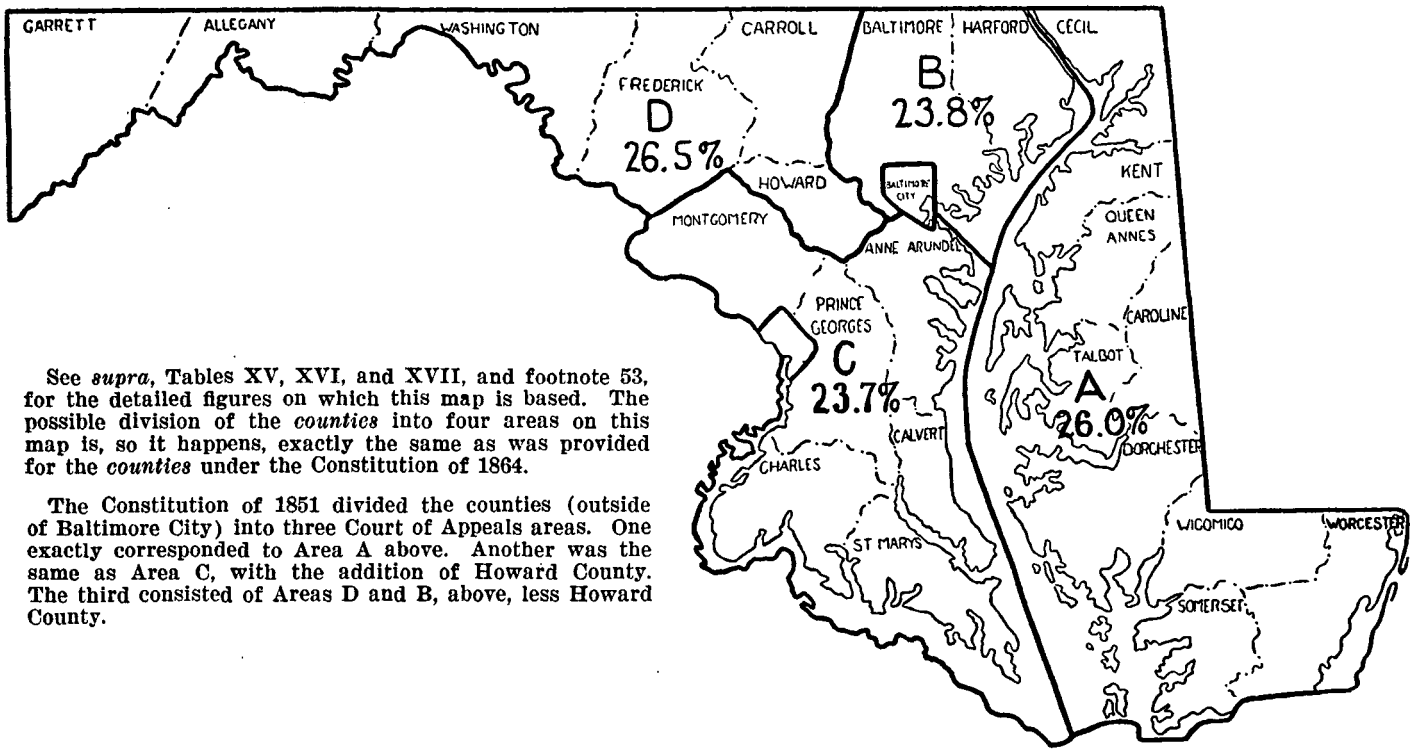


See *supra*, Tables XV, XVI, and XVII, for the detailed figures and percentages on the distribution of appellate business among the existing counties and circuits. The 1930 Census showed the following population figures for the existing Circuits:

First Circuit	103,015
Second Circuit	90,608
Third Circuit	155,383
Fourth Circuit	163,438
Fifth Circuit	106,800
Sixth Circuit	103,337
Seventh Circuit	100,957
Eighth Circuit (Baltimore City)	801,741
State Total	1,625,279

MAP B

A POSSIBLE DIVISION (SIMILAR TO THAT OF THE CONSTITUTION OF 1864) OF THE *COUNTIES* INTO FOUR AREAS APPROXIMATELY EQUAL IN PERCENTAGE OF *COUNTY* APPEALS



See *supra*, Tables XV, XVI, and XVII, and footnote 53, for the detailed figures on which this map is based. The possible division of the *counties* into four areas on this map is, so it happens, exactly the same as was provided for the *counties* under the Constitution of 1864.

The Constitution of 1851 divided the counties (outside of Baltimore City) into three Court of Appeals areas. One exactly corresponded to Area A above. Another was the same as Area C, with the addition of Howard County. The third consisted of Areas D and B, above, less Howard County.

Colonial times, whose jurisdiction as a judicial tribunal dates from a period which cannot be exactly determined.[54] It has passed through the War of Revolution, the birth and growth of the Republic, the War of Secession. The members of the Court, and the members of the bar who practiced before it, have always ranked high in learning and ability among the bench and bar of the nation.

More than once in its history the entire personnel of the Court has been replaced at one time by a new set of judges.[55] At other times as many as half of the members of the Court have ended their service within two or three years.[56] But the quality of the Court has remained, and fears expressed that the new judges would not live up to the standard set by their predecessors have always proved groundless.

Today, under conditions of legal practice differing widely from those of the past century, the State will soon be called upon to find new judges to replace six of the present members of the Court. Three of these have a

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[54] BOND, THE COURT OF APPEALS OF MARYLAND—A HISTORY (1928) 3 *et seq.*

[55] I. e., at the times of changes in the mode of selecting the members of the Court, when new constitutions were adopted, or, as in 1806, when a constitutional amendment concerning the Court was ratified. Thus, in 1806, the newly constituted Court consisted entirely of new members. BOND, *op. cit. supra* n. 54, 97-98. The same was true of the new Court under the Constitution of 1851, *Id.* 153. In 1867 Judge Bartol of Baltimore City, who became the new Chief Judge, was the only one first serving on the new Court who had also served on the old Court, *Id.* 179. The change of 1864 merely resulted in a fifth and added judge joining the four who were already serving under the previous Constitution, *Id.* 171.

[56] On two occasions since 1867 four of the Court of Appeals judgeships have changed hands within two or three years. Thus in 1923-1924, Chief Judge Boyd of the Fourth Circuit was succeeded by Judge Walsh; Judge Thomas of the Fifth Circuit by Judge Parke; Judge Briscoe of the Seventh Circuit by Judge Digges; and Judge Stockbridge of the Eighth Circuit by the now Chief Judge Bond. In the 1881-1883 period, Judge Grason of the Third Circuit was succeeded by Judge Yellott; Judge Bowie of the Sixth Circuit by Judge Ritchie; Judge Brent of the Seventh Circuit by Judge Magruder, who was shortly succeeded by Judge Stone; and Chief Judge Bartol of the Eighth Circuit was succeeded by Judge Bryan.

Likewise, on two occasions, three of the judgeships have changed hands within a short space of time. In the Fall of 1934 Judge Digges died and was succeeded by Judge Mitchell in the Seventh Circuit; and Judges Pattison and Adkins retired in the First and Second Circuits, and Judges Johnson and Shehan were elected to their seats. In the 1907-1909 period three of the judgeships were each held by three different incumbents: First Circuit, Page, J., Henry, J., and Pattison, J.; Fifth Circuit, Jones, J., Rogers, J., and Thomas, J.; and Sixth Circuit, McSherry, C. J., Worthington, J., and Urner, J.

valuable experience acquired over a period of fifteen years or more, which would seem to render them irreplaceable. Another has already served for almost that long.

To insure that their successors shall be worthy of the great tradition of the Court will require not only intelligent effort but a high degree of statesmanship. It is perhaps the principal task of social engineering which confronts the Maryland bar today.[57] And it is a task which can be performed only with the fullest measure of cooperation between the State's political and civic leaders and the members of the legal profession. Upon the lawyers of the State rests the burden of presenting and publicizing this problem, and of inviting the cooperation of leading citizens throughout the State in seeking its solution.

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[57] As is obvious from Table XVIII, *supra*, six of the eight judgeships of the Court will have to be voted for at the 1942 general election, the next at which such positions can be voted for. These consist of all save those for the First and Second circuits (which, together, constitute the Eastern Shore). Then (assuming intervening re-appointment and re-election of incumbents until retirement age) three of the positions, at least, will have to be voted on at the 1946 general election. These are those for the Second, Fourth, and Eighth Circuits.