University of Baltimore Law Forum

Volume 30
Number 1 *Summer/Fall 1999*

Article 3

1999

A Court of Appeals of Maryland Time Capsule: Six Historic Arguments in the Nation's Oldest Appellate Court

A Court of Appeals of Maryland Time Capsule: Six Historic Arguments in the Nation's Oldest Appellate Court

INTRODUCTION

This article made its debut as a dramatic presentation at the Maryland State Bar Conference in Ocean City, Maryland on June 10, 1999. It presents a profile of six constitutionally significant cases argued before the Court of Appeals of Maryland. These cases, spanning a 150-year period, combined great lawyers, great issues and historic resonance.

State v. Buchanan was a sequel to *McCullough v. Maryland* and the 19th Century predecessor to the more recent savings and loan scandals. The case rewrote Maryland conspiracy law and featured an appearance by the U.S. Attorney General. It was also Luther Martin's last big prosecution. *Baltimore v. State* involved the State's takeover of the Baltimore City Police Department. It caused as much controversy as the State's takeover of the Baltimore City School Board in 1997. The early property rights case, *Weyler v. Gibson,* anticipates modern takings, and constitutional torts litigation. *University v. Murray* laid the groundwork for the later Supreme Court decision in *Brown v. Board of Education*. The court's decision in *Schowgurow v. State* had a devastating impact on the criminal justice system. The decision ultimately resulted in hundreds of retrials and two Supreme Court decisions on double jeopardy. Finally, *Stuart v. Board of Supervisors*, reminds us that it was not so long ago that a married woman was recognized legally only by the name of her husband.

The arguments below were developed and drafted based on a number of historical resources including appellate briefs, the case as reported in the Maryland Reporter, and other historical and biographical information provided by the Maryland Archives and the Administrative Office of the Courts. The authors of the arguments include the Honorable Glenn Harrell, Court of Appeals of Maryland, and attorneys Dwight Sullivan, Michael P. Smith, and Robert Zarnoch. The dramatic presentation was performed by the Honorable Diana G. Motz, United States Court of Appeals for the Fourth Circuit, the Honorable Alan Wilner, Court of Appeals of Maryland, the Honorable Glenn Harrell, Court of Appeals of Maryland, the Honorable Arrie Davis, Court of Special Appeals of Maryland, and attorneys Kevin Arthur, Michael P. Smith, Ralph Tyler, and Robert Zarnoch.

• •

Narrator: The Court of Appeals of Maryland is probably the oldest appellate court in the United States.[1] Although created by the State Constitution of 1776, its origin goes back more than a half century before, when the Governor and his Council exercised an appellate jurisdiction roughly equivalent to that of the House of Lords.[2]

Despite its ancient lineage, the court has not yet entered middle age. Its arteries are sound. It's gait is sprightly and its heart and pulse beat strongly as it marches toward the millennium. Today, we will look at a small cross-section of the court's history - six cases spanning 150 years. We do not claim that these are the six greatest cases in the court's history. It might be impossible to assemble such a list. The greatest cases could still be waiting to be argued. But these six cases do have one thing in common; they resonate with history — legal history, Maryland history — the history of excellent lawyering in the State. And we hope you will agree that they ring with modern truths.

• •

Journey back to the early part of the 19th Century — 1821 to be exact. The court is presently composed of six appointed judges who were also trial judges.[3] It has

[1] *See* Proceedings of The Court of Appeals of Maryland, at the opening of the Court, statements of Judge Wilson K. Barnes, Oct. 10, 1972, 266 Md. at xxiii [hereinafter Opening of the Court].

[2] *See id.*

[3] *See* Carroll T. Bond, *An Introductory Description of the Court of Appeals of Maryland*, 4 Md. L. Rev. 333, 334 (1940) [hereinafter *Description of the Court of Appeals*].

been located in a room in the State House for some 40 years, although the court also sits on the Eastern Shore.[4] We believe the judges wore robes, but they probably did not have an elevated bench. The room looks very much like a trial courtroom. There was no limit on the length of oral argument.[5] It would not be until 1826, that the court would fix a six-hour limit on arguments on the Western Shore.[6] Arguments by members — of what was probably a genuine appellate bar—could run for days and were marked by dramatic performance, flights of eloquence, learned allusions and, given their length, a great deal of tedium.

• •

Our first argument combines two well-known components of Maryland legal history - banking scandals, like those experienced in the State in the 1960's and 1980's, and Luther Martin — venerable Attorney General, distinguished delegate to the Constitutional Convention, "the bulldog of federalism," "Lawyer Brandy Bottle," and early-American super-lawyer.[7]

Toward the end of his long career, Martin, much like Ahab and the whale, became obsessed with the evils of the National Bank. He argued in the Supreme Court and lost *McCulloch v. Maryland*,[8] which held that the State could not tax a branch of the United States Bank. Undeterred, in *State v. Buchanan*,[9] Martin continued his assault. However, his was not a frivolous obsession. When Bank officers, James Buchanan, George Williams and James McCulloch wanted money from the bank, they simply took it without giving security or bothering to inform the Bank's directors.[10] Martin sought to indict them — charging a conspiracy to defraud and impoverish the Bank.[11] While making the criminal presentments, Martin suffered a disabling stroke.[12] The case moved forward, but upon a demurrer of the defendants, two judges of the County Court of Harford County (over a dissent) dismissed the case, apparently concluding that the indictment charged no crime and that the State court had no jurisdiction.[13] The State appealed.

Despite the confusion of the official reports, in the court of appeals the defendants were represented by Daniel Raymond and William Pickney.[14] The State was represented primarily by Henry M. Murray and Robert Goodloe Harper.[15] Also involved in the case was United States Attorney General William Wirt, who was specially admitted after taking the required oath declaring his "belief in the Christian religion."[16] We will hear from Murray and Raymond.

• •

THE STATE v. BUCHANAN[17]

Henry M. Murray for Appellant: The first count of the indictment charges the Defendants, Mr. Williams, Mr. Buchanan and Mr. McCulloh with an executed conspiracy — falsely, fraudulently, and unlawfully, by wrongful and indirect means, to cheat, defraud and impoverish the President, Directors and the Company of the Bank of the United States.

These three men conspired together to obtain and embezzle a large amount of money and promissory notes

[4] *See id.*

[5] *See* CARROLL T. BOND, THE COURT OF APPEALS OF MARYLAND, A HISTORY 81 (1928) [hereinafter A HISTORY].

[6] *See id.* at 137.

[7] William L. Reynolds II, *Luther Martin, Maryland and the Constitution*, 47 MD. L. REV 291, 321 (1987) [hereinafter *Maryland and the Constitution*].

[8] 17 U.S. (44 Wheat) 316 (1819).

[9] 5 H. & J. 317 (1821).

[10] *See* Buchanan, 5 H. & J. at 319-322.

[11] *See id.* at 323.

[12] *See Maryland and the Constitution, supra* note 7, at 320.

[13] *See* Buchanan, 5 H. & J. at 324.

[14] *See id.* at 328.

[15] *See id.* at 324.

[16] *See id.*

[17] 5 H. & J. 317 (1821).

for the payment of money, commonly called bank notes, the entire sum having a value of Fifteen Hundred Thousand Dollars in United States currency. This money was the property of the President, Directors, and Company of the Bank of the United States. It came out of the office of discount and deposit of the Bank in the City of Baltimore, the very office where Buchanan was president and McCulloh was the cashier, without the knowledge or consent of the President, Directors, or Company of the Bank of the United States.

The purpose of the conspiracy was to have and enjoy the money of the Bank for a long space of time — two months — without paying any interest or other sum and without securing the repaying of the money. In furtherance of this scheme, James W. McCulloh, the cashier of the office of discount and deposit, would falsely and fraudulently state and represent to the directors of the office of discount and deposit that the monies and promissory notes that were loaned had sufficient and ample security — the capital stock of the Bank. Williams, Buchanan and McCulloh carried out the scheme in abuse and violation of their duty and in violation of the trust reposited in them as officer of the Bank.

It is not open to question that the matters charged in the indictment amount to an offense that could be prosecuted as crime. Conspiracy is a crime and an offense at common law. The gravamen of the offense consists of the unlawful combination or confederacy to injure a third person. The State does not have to show actual execution of that unlawful or wrongful purpose. This was clearly the law of England. But when our ancestors came to this land and they settled the colony of Maryland they brought the common law of England with them as part of their birthright. The law of conspiracy was part of that law and it remains in full force here today as it was in England then. So the act of criminal conspiracy should be recognized by the courts of this State as it has already been recognized by other states in the United States.

Now the Defendants argue that Maryland courts cannot hear the case because the charges refer to the Bank of the *United States*. Nothing in Art. III section 2 of the Constitution requires the case to be filed in a United States court. The Ninth Amendment states that "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the People." The Tenth Amendment states that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States." So therefore, the State of Maryland has retained the power to have these charges heard in its courts.

Daniel Raymond for Appellees: Your honors, the indictment below was properly dismissed. The statute 33 Edward §1 is the origin of the Law of Conspiracy. This statute does not include conspiracies to cheat.

Cheating itself, with one or two exceptions like cheating with false weights, false measures or false dice, is not an offense that is punishable at common law. It would therefore be an absurdity to punish an agreement to cheat, when cheating itself is not punishable by the State.

Now the State has cited many, many cases either in argument or in submissions to you. Almost all of those cases are conspiracies to do acts which are themselves indictable. They have no application here. I am sure that in those many, many cases you might find a few of a different character, that are from doubtful authority, from which one might weave together a principle of law that is just absurd on its face — that you can be indicted for conspiracy to do something that in and of itself you cannot be indicted for. Those questionable cases do not justify a reversal here.

The State also contends that our ancestors brought with them the common law of England, and that that law as it sees it must be taken as established at the time of their emigration. Even if that is so, the common law in England at the time was that a conspiracy is not a crime unless it is to do some act which is itself indictable.

In addition, the indictments were properly dismissed because even if a naked agreement to cheat is indictable in this State, it must still be an agreement to cheat some person or being known to the laws of the state of Maryland. The Bank of the *United States* was created by a government foreign to Maryland. The Bank was created under the laws of the *United States*. An agreement to cheat the Bank of the *United States* is no more an offense against the laws of Maryland, than an agreement to cheat the Bank of *England* would be. So if this Court decides that the matters charged in the indictments are offenses punishable as a crime, the courts of this State still have no jurisdiction over the case. Such a crime being perpetrated

against an entity created by the United States is only cognizable in the Courts of the United States under Article III, Sections 1 and 2 of the Constitution.

• •

Narrator: In 1821, the court reversed the dismissal of the indictment.[18] Judge John Buchanan (no relation to the Bank officer), in a lengthy opinion, noted that Maryland had inherited the English common law on conspiracy and that the offenses were indictable even if nothing had been done in execution of the conspiracy.[19] The court also held that the matters charged were not a crime against the United States, but a common law offense against the State of Maryland.[20] Finally, Judge Buchanan said:

> It may be admitted, that the legislature of the state has no right to pass laws calculated to control or impede the operations of the bank. But it is difficult to imagine, how a general power in the judicial tribunals of the state, to punish an offence against the State, can be considered as an unconstitutional interference with the concerns of the Bank of the United States, or in any manner endangering its security, only because its officers happened to be the objects of the prosecution . . . .[21]

Despite the State's victory in the court of appeals, the scoundrels eventually prevailed.[22] Buchanan and McCulloch were later tried in Harford County and acquitted by the same 2-1 vote that marked the initial decision.[23] Subsequently, Williams was acquitted, because by himself he no longer could be found guilty of a conspiracy.[24]

Martin never recovered from his stroke.[25] He moved to New York to be cared for by one of his former clients — Aaron Burr.[26] Martin died in 1826.[27]

• •

In 1860 the court still occupied its traditional quarters in the State House, but a great deal had changed. As a result of the Reform Constitution of 1851, judges (who were now called "justices") were elected.[28] To protest the change, the entire membership of the court declined to run for election.[29] In addition, the court of appeals now consisted of only four judges.[30] Bowing in 1828 to Jacksonian democracy, judges no longer wore distinctive dress,[31] and the Constitution now required written opinions.[32]

• •

Bigger changes were taking place in the State. Recurrent election day violence in Baltimore City by members of the Know Nothing Party had won for the City the unenviable title of "Mobtown."[33] Roving gangs with blood-curdling names such as the "Rip Raps," the "Plug Uglies," and the "Blood Tubs" "cooped up" drunks and led them to cast multiple votes for their own party, while intimidating the opposition from voting with bullets,

---

[18] *See id.* at 368.

[19] *See id.* at 352.

[20] *See id.* at 361.

[21] *See id.* at 362.

[22] David S. Bogen, *The Scandal of Smith and Buchanan*, 9 MD. LAW FORUM 125, 131 (1985) (citing R. Harper, *A Report of the Conspiracy Cases*, 3 (1823)).

[23] *See id.*

[24] *See id.*

[25] *See Maryland and the Constitution, supra* note 7, at 320.

[26] *See id.* at 321.

[27] *See id.*

[28] *See Description of the Court of Appeals, supra* note 3 at 334.

[29] *See generally* A HISTORY, *supra* note 5 at 152.

[30] *See Description of the Court of Appeals, supra* note 3 at 334.

[31] *See* Opening of the Court, *supra* note 1, at xxiv.

[32] *See Description of the Court of Appeals, supra* note 3 at 340.

[33] *See* THE BALTIMORE BOOK, NEW VIEWS OF LOCAL HISTORY 3 (Elizabeth Fee, et al., eds., Temple Univ. Press 1991).

brawn and mayhem — oftentimes with the assistance or sufferance of City Police officers.[34]

In 1860 legislation came before the General Assembly to curtail such acts of lawlessness by creating a four-member Police Board of Baltimore City.[35] Unable to kill the bill on the merits, the Know Nothings piled on obnoxious amendments such as one banning "Black Republicans" or "endorsers or supporters of the Helper Book, " an anti-slavery tract, from serving on the new Board.[36] Nevertheless, the bill was enacted and was immediately challenged by the City, which contended that its charter was a constitutional one that could not be diminished by the transfer of control of the City Police; that only the Governor, not the General Assembly, could control appointments to the Board; and that the "Black Republican" disqualification was unconstitutional and not severable from the remainder of the Act.[37] Following a loss in the Superior Court, the City appealed.[38] Within weeks the case was before the court of appeals. Arguing for the City was Thomas Alexander.[39] Among those arguing for affirmance was legal legend Reverdy Johnson.[40]

• •

BALTIMORE CITY v. STATE[41]

Thomas S. Alexander for Appellants: In the late session, the General Assembly of this State passed an Act for the purpose of repealing the powers of the Mayor and City Council of Baltimore to establish and regulate a police force, and in place of that power providing a permanent police for the City of Baltimore. The chartered rights of a large, prosperous city have been invaded by a legislative enactment which has no warrant in the Constitution.

The Constitution does not confer upon the legislature the power to appoint members of the Police Board. Appointment to office is peculiarly an executive, not legislative, power. Section 11 of Article 2 of the Constitution gives the legislature, in creating an office, power only to proscribe the *mode of appointment.* This can, by no legitimate manner of construction, be interpreted to grant the power of legislative appointment.

The Act transfers the whole existing police force of the City of Baltimore — officers and men — from the city government to the Commissioners. That is unconstitutional and illegal. The charter of 1796, in giving to Baltimore a local government, by unavoidable implication gave all the means necessary for the purpose of government, among which was a police power to maintain the peace and security of the governed. This is an inherent right, co-existent with the government, and cannot be separated from it. If the legislature has no power to repeal the charter of 1796, it also has no power to dismember the government created by it, by annulling and destroying important and indispensable powers.

It is further provided by section 6 of the Act, "that no Black Republican ... shall be appointed to any office under said Board." The prohibition of the Black Republican introduces into our legislation the broad principle of proscription for the sake of political opinion. The invaluable birthright of every freeman is that he may express at pleasure his opinions on all subjects of public policy, restrained only by positive enactment to the contrary.

If a legislature in former days had proscribed the Roman Catholic or the naturalized citizen, it is presumed this Court would have no difficulty in pronouncing against the constitutionality of the provision. In principle, the proscription is the same. In degree the difference is that whilst the test of religion or of birth is susceptible of evidence, the test created by the Police Bill rests in the pleasure of the Police Board. What is Black Republicanism? A Black Republican may be defined to be one who thinks the area of slavery ought not to be enlarged. Again, he may be defined to be one who thinks Congress has power to legislate over the subject of slavery

---

[34] *See* H.H. Walker Lewis, *The Baltimore Police Case of 1860*, 26 MD. L. REV. 215, 218-19 (1966).

[35] *See* art. 4, 1860 Md. Laws 312.

[36] *See id.* at 315.

[37] *See Baltimore City v. State*, 15 Md. 376, 407-424 (1860).

[38] *See id.* at 380-401.

[39] *See id* at 407.

[40] *See id.* at 411.

[41] 15 Md. 376 (1860).

in the territories. It is certain that in the letter of the proscription there is an elasticity which will, with willing minds, justify its expansion over two-thirds of the population of Baltimore. If this disqualifying clause is an operative part of the Act, the whole Act must be pronounced unconstitutional.

Reverdy Johnson for Appellees: The questions regarding the judgment of the court below fall under two heads: the first relating to the authority of the legislature to create a Board of Police and to appoint its members; and the second relating to the powers conferred on the Board.

As to the ability of the General Assembly to create and fill an office, it is sufficient to refer to Article 2, Section 11 of the Constitution which provides that the governor shall nominate and, by and with the advice and consent of the Senate appoint, all civil and military officers of the State whose appointment or election is not otherwise provided for *"unless a different mode of appointment be prescribed by the law creating the office."* The power of appointment to office is not, under our form of government, a purely and inherently executive function.

The City of Baltimore maintains that because the Constitution recognizes the city as part and parcel of the organized government of the State, its charter is therefore placed beyond the power of the legislature to modify or change it. Yet it will hardly be pretended that it is beyond the power of the legislature to enlarge the limits of the city, by bringing portions of the county within its borders, or to confer upon the city authorities the discharge of other duties than those they now possess. Such has never been the construction of the Constitution. The charter of the city, from the day of its passage to the present, has constantly been subject to alteration and amendment by the legislature, and the inconveniences which would result from now placing it beyond the power of such alteration and amendment are so obvious that they need not be pressed. Nothing but plain and explicit language in the Constitution could effect such a result. Such language cannot be found in that instrument. It is clear that the people when they adopted the Constitution never supposed they were parting with the power to govern and control the City of Baltimore, and to pass such laws as they might deem the public good required to meet the constantly changing and increasing necessities of its population.

An objection is raised to the proviso that "no Black Republican, or endorser or supporter of the Helper Book, shall be appointed to any office under said Board." It is said that this proviso proscribes persons for the sake of their political opinions. But, if such proscription was designed, it is totally at variance with the other provision of the law which requires the Commissioners to take an oath that they will not appoint any person to, or remove any person from any office under "on account of his political opinion." It is a provision interjected into the Act repugnant to its whole scope and object, and if it imposes a disqualification for office not sanctioned by the Constitution, it will be stricken from the law without impairing the efficiency of the other parts of the law.

• •

Narrator: As quickly as the case arrived in the court of appeals, it concluded. The justices had little trouble upholding the law, reasoning that the City was a creature of the State and that the Governor had no exclusive power to appoint that was infringed by the Police Reform Act.[42] As to the "Black Republican" qualification for office, the Court's opinion stated that "we cannot understand, officially, who are meant to be affected by the provis[ion], and, therefore cannot express a judicial opinion on the question."[43] Thus, this particular confrontation between City and State ended and order was restored on City election days. Of course, as a result of a series of later General Assembly enactments, the City regained control over its police force.[44] However to this day, the City Police is by law a "state" agency.[45] It would not be the last time that the General Assembly would transfer a major function from the City to the State. With varying degrees of City consent, in the 1990's the jail and the local board of education were made subject to State control.

[42] *See id.* at 459-61.

[43] *See id.* at 468.

[44] *See* Md. Ann Code art. 24, § 16-101 (1957, Repl. Vol 1998).

[45] *See id.*

It is nearly 50 years later. The court survived the Civil War and two more Constitutional Conventions. But a great deal had changed. There was no longer a special appellate bar and lawyers no longer wore long black coats and high silk hats.[46] More elaborate briefs were required. Arguments were shorter and no longer sprinkled with classical allusions.[47] "Justices" became "judges" again. By 1914 the judges would return to black silken gowns as the ceremonial dress.[48] Most importantly, in 1903, after 122 years, the eight judges of the court moved out of the State House into a new courtroom on State Circle.[49] One reason for the move, the need to house an expanding State law library, suggested the increasing complexity of the 20th century legal scene.

Our next case appears to be a small one. The Plaintiffs recovered a one-cent judgment against the State.[50] Naturally, the Government appealed. However, appearances are deceiving and the eventual influence of the decision is immense. Ironically, it involved a dispute over a portion of "Great Constitution" Street in Baltimore City.[51] The roadbed was owned by the Gibsons and on this property the State, without their consent, built an extension of the Maryland Penitentiary.[52] The Gibsons sued John Weyler, the warden of the institution in ejectment.[53] Weyler, the user, not the taker of the property raised the defense of sovereign immunity.[54] Judge Alfred Niles rejected the defense and ordered judgment for the Plaintiffs, including a nominal damage award.[55] On appeal, Weyler was represented by Attorney General Issac Lobe Strauss and the Gibsons by Frederick Fletcher.[56]

WEYLER v. GIBSON[57]

Attorney General Issac Lobe Strauss for Appellant: The State of Maryland may not be sued in this matter directly, nor indirectly through the warden of its penitentiary. The State, without its assent, cannot be impeded and ousted by its own courts from the possession and management of its institutions and property while discharging its public duties owed to the people composing our State. This is a firmly settled principle of law and public policy, supported by a legion of case authorities.

I would note further to this honorable court that Warden Weyler, for the purposes of an action in ejectment, is not the true tenant in possession, nor is he a true party claiming adversely to the appellees' interests. The warden is but a mere servant at will of the directors of the penitentiary. The directors, were they a named defendant here, could assert the immunity of the State, as well as the equitable defense that the appellees should not be heard in ejectment now when they stood by silently, resting on their rights, while the State expended public monies to erect the enlarged prison across Great Constitution Street. The warden, however, as a mere functionary, cannot personally assert such defenses. Appellees should not be permitted to maneuver this suit to choose an opponent whose choice of weapons with which to defend himself is so limited.

Finally, as the public closure of Great Constitution Street has not been consummated in a complete legal sense by the Baltimore City authorities, appellees are not entitled to maintain an action in ejectment for land that legally

[46] *See* A History, *supra* note 5, at 188-89.

[47] *See id.* at 188.

[48] *See* Opening of the Court, *supra* note 1, at xxiv.

[49] *See* Opening of the Court, statements of Chief Judge Robert C. Murphy, *supra* note 1, at xxii.

[50] *See* Weyler v. Gibson, 110 Md. 636, 651, 73 A. 261 (1909).

[51] *See id.* at 648, 73 A. at 261.

[52] *See id.* at 648-49, 73 A. at 261.

[53] *See id.* at 650, 73 A. at 262.

[54] *See id.* at 650-51, 73 A. at 261.

[55] *See id.* at 648, 73 A. at 261.

[56] *See id.* at 637, 73 A. at 261.

[57] 110 Md. 636, 73 A. 261 (1909).

remains impressed with a public easement as a street. If appellees have any right to sue, it is to sue the City and its commissioners for opening (and apparently closing) streets, for completion of the abandonment process and for a determination as to whether the value of their property interest is greater or lesser for having the street closed and whether the value of any public benefit accruing from closure would result in an assessment against appellees.

Frederick H. Fletcher for Appellees: It cannot be, indeed it has not been, disputed that my clients, the heirs of the late Governor Carroll and his wife, are lawfully the owners of the fee of the roadbed of Great Constitution Street. Likewise, it is patent that the State, without my clients' permission and without compensation being paid to them, has taken upon itself to appropriate that land for use as part of the Maryland Penitentiary, thereby also denying to the public the former use of the land for its dedicated public easement as a road. Further, the State concedes, as it must, that its efforts to close Great Constitution Street legally were incomplete and imperfect.

My clients have every right to maintain this suit in ejectment. It may be argued that we are arrogant to ask any court to order the State to move or remove a structure, built with considerable public tax revenues, that is fifty-five feet tall with walls three feet thick. That, however, is not necessarily our objective. We ask rather that the wrong committed against my clients be remedied as the court sees fit.

Our Declaration of Rights declares that every man for any injury done to him in his person or his property ought to have remedy by the course of the law of the land, and that no man ought to be deprived of his property, but by the judgment of his peers, or by the law of the land, and section 40, Article 3 of the Constitution prohibits the passing of any law authorizing private property to be taken for public use, without just compensation as agreed between the parties, or awarded by a jury, being first paid or tendered to the party entitled to such compensation. Nor shall any State deprive any person of his property without due process of law. Speaking of the 14th Amendment of the Constitution, Judge Dillon says:

> "[i]t was of set purpose that its prohibitions were directed to any and every form and mode of State action - whether in the shape of constitutions, statutes, or judicial judgments - that deprived any person, white or black, natural or corporate, of life, liberty, or property, or of the equal protection of the laws. Its value consists in the great fundamental principles of right and justice which it embodies and makes part of the organic law of the nation."

If these rights are to have any meaning, the State cannot evade its obligations here.

• •

Narrator: The court of appeals affirmed Judge Niles, resting its decision on constitutional grounds.[58] The judges said that:

> [I]t would be strange indeed, in the face of the solemn constitutional guarantees, which place private property among the fundamental and indestructible rights of the citizen, if [the] principle of [sovereign immunity] could be extended and applied so as to preclude him from prosecuting an action of ejectment against a State Official unjustly and wrongfully withholding property . . . .[59]

The judges in essence told the State to settle the case or condemn the Gibson property. So presumably, they received a little more than a penny.

Although rarely cited for 80 years, in the 1980's and 1990's *Weyler v. Gibson* became the cornerstone of the court's unique constitutional torts jurisprudence.[60] As a result of Weyler, State and local officials have no immunity from a state constitutional claim such as taking of property or deprivation of due process. It is hard to imagine a greater deterrent to arbitrary and unconstitutional State conduct.

---

[58] *See id.* at 653-55, 73 A. at 263-64.

[59] *Id.* at 654, 73 A. at 263.

[60] *See also* Clea v. City of Baltimore, 312 Md. 662, 541 A.2d 1303 (1988)(reads Wyler v. Gibson as eliminating immunity for state constitutional torts).

A major event in the history of the Court of Appeals also happened to be a major event in the history of the civil rights movement and a major event in the life of Thurgood Marshall. It began in 1930 when Marshall was denied admission to the University of Maryland Law School solely because of his race.[61] Instead of being allowed to attend a school in his home state that was a 10-minute trolley ride from his home, for three years Marshall had a grueling commute to Howard University in Washington, D.C.[62] At Howard, Marshall graduated first in his class.[63] After he passed the Maryland bar, he entered private practice.[64] Soon, however, his major occupation was helping to rebuild the Baltimore branch of the NAACP[65] and planning litigation to open doors for African Americans, particularly at post-graduate institutions such as the University of Maryland Law School.[66]

Marshall helped choose an ideal plaintiff to attack the segregationist policies of the law school — Donald Gaines Murray, a 20-year old Amherst graduate.[67] Murray wrote once to the University and received back a form letter advising him of the school's separatist policies, but of the possibility of a scholarship at an out of state school.[68] He applied once, then twice to Maryland, but was denied admission on both occasions.[69] The last letter notified Murray of the "exceptional facilities open to you for the study of law" at Howard University.[70] Soon thereafter, Marshall filed a mandamus action against the University of Maryland, seeking Murray's admission.[71] Using the "Separate but Equal" doctrine as a sword, Marshall charged that the University's policies denied equal protection because there was no state law school for African American students.[72] Although there had never been a court-ordered desegregation of a public school, Marshall convinced Baltimore City Judge Eugene O'Dunne that the University's exclusionary policy was unconstitutional and that a mandamus should issue.[73] An appeal followed to the court of appeals. Arguing for the State was Assistant Attorney General Charles LeViness; for Murray, Thurgood Marshall.[74]

UNIVERSITY v. MURRAY[75]

Charles LeViness for Appellant: While preserving Maryland's traditional policy of separation of the races, the State has met the demand of the negroes for higher education by establishing a system of scholarships to institutions out of the State for the exclusive use and benefit of colored students. This scholarship policy was launched by the Legislature of 1933, which provided that the Board of Regents of the University of Maryland might set apart a portion of the State appropriation for Princess Anne Academy and establish scholarships for negro students who might wish to take professional courses or other work not offered in Princess Anne but which were offered white students at the University of Maryland.

To its negro citizens who desire to take up law work, Maryland says substantially this: "under our policy of separate schools for both races it is permissible and proper

[61] MICHAEL D. DAVIS & HUNTER R. CLARK, THURGOOD MARSHALL: WARRIOR AT THE BAR, REBEL ON THE BENCH 47 (1992) [hereinafter THURGOOD MARSHALL].

[62] *See id.* at 47-48.

[63] *See id.* at 61.

[64] *See id.* at 69.

[65] *See id.* at 75.

[66] *See id.* at 77.

[67] *See* Appellee's Brief at 4, University v. Murray, 169 Md. 478, 182 A. 590 (1936) (No. 53).

[68] *See id.* at 5-6, Murray (No. 53).

[69] *See id.* at 4, Murray (No. 53).

[70] *See id.* at 6, Murray (No. 53).

[71] *See* University v. Murray, 169 Md. 478, 479, 182 A. 590 (1936).

[72] *See* Appellee's Brief at 7, Murray (No. 53).

[73] *See* Murray, 169 Md. at 479, 182 A. at 590.

[74] *See id.* at 479-80, 182 A. at 590.

[75] 169 Md. 478, 182 A. 590 (1936).

for the University of Maryland Law School to deny your admittance. If you were admitted, you would have to pay the tuition fee of $203 a year. We cannot yet give you a separate law school in the State: there is no sufficient demand for it, nor sufficient money available to start it. However, to even things up, we will pay your tuition at some law school of your own selection out of the State. You will save the $203 tuition fee at Maryland and you may apply this money to your maintenance at the law school of your choice."

The classification of students is a matter of internal State policy. If it were unconstitutional to classify on the basis of race, it also would be improper to classify on the basis of studies, or on the basis of sex. Certainly, it cannot be contended that if a state provided a law school for its citizens it also must provide a medical school, or an engineering school. The University of Maryland includes among its Baltimore schools a law school and a medical school. It does not include an engineering school. Yet, this is a discrimination in favor of those desiring to study law or medicine and against those desiring to study engineering. Similarly, a state might provide, without encountering constitutional objections, a certain school for men without a corresponding school for women. Distinctions on the basis of sex uniformly have been upheld by the courts.

In the absence of statute compelling mixture of the races at professional levels, it is submitted that the Regents are entirely within their rights in cleaving fast to Maryland's traditional policy of separation.

Thurgood Marshall for Appellee: What is at stake here is more than the rights of my client. It is the moral commitment stated in our country's creed. The State is under no compulsion to establish a state university. Yet if a state university is established, the rights of white and black are measured by the test of equality in privileges and opportunities. No arbitrary right to exclude qualified students from the University of Maryland is claimed by appellants except as to qualified Negroes, whom the administrative authority would reject on the sole ground of race or color.

While the Board of Regents of the University of Maryland has large and discretionary powers in regard to the management and control of the University, it has no power to make class distinctions or practice racial discrimination. The reason is obvious. A discrimination by the Board of Regents against Negroes today may well spread to a discrimination against Jews on the morrow; Catholics on the day following; red headed men the day after that.

The dual and inferior standard which appellants apply to Negro education is evidenced by the pitiful attempt of the President of the University on the witness stand to assert that just as good a course was offered at Princess Anne as at College Park. May it please the Court, a college of *technology* for Negroes does not compare equably with a college of *law* for white students, whatever the cost. It is the essence of the idea of "equality" in this case that the facilities be the same. There is *no school of law* for Negroes in the State of Maryland. Further it does not sound well for the agents of the State to complain that there is no great demand on the part of Negroes for collegiate and professional education, when the State itself has made it difficult for Maryland Negroes to qualify for collegiate and professional education because of the inferior elementary schools which the State and counties maintain and the absence of adequate high school facilities for Negroes.

The State's scholarship program is a specious gesture to delude the Negro population of Maryland and keep it quiet. The scholarship is but a tempting mess of pottage held out to induce my client to sell his citizenship rights to the same treatment which other citizens of Maryland receive, no more and no less. Equivalents must also be considered in terms of self-respect. Appellee is a citizen ready to pay the same rate of taxes as any other citizen, and to go as far as any other citizen in discharge of the duties of citizenship to state and nation. He does not want the scholarship or any other special treatment.

We do not concede that it is constitutional for a State to export its obligations and to exile one set of its citizens beyond its borders to obtain the same education which it is offering to citizens of different color at home. It is not without significance that all the "free scholarships" which the State provides for its white citizens are in Maryland colleges and universities. Only its Negro citizens are exiled.

Finally, Mr. Murray is an individual. His years and days are numbered, and he cannot wait for his education until there is a mass demand to the satisfaction of the

Regents. A citizen's constitutional rights receive protection on an individual basis.

• •

Narrator: On January 15, 1936, Martin Luther King's seventh birthday, a unanimous court of appeals affirmed, agreeing that Murray had to be admitted to the University of Maryland Law School.[76] The building of a second school was not deemed an available alternative remedy.[77] Chief Judge Bond wrote that "[c]ompliance with the Constitution cannot be deferred at the will of the State. Whatever system it adopts for legal education now must furnish equality of treatment now."[78]

We all know what happened to Marshall. In *Brown v. Board of Education,*[79] he successfully attacked as unconstitutional the separate but equal doctrine he relied on in *Murray,* as the Supreme Court opened the doors of segregated public schools throughout the country. Then, as Solicitor General and later as Justice of the Supreme Court, Marshall continued his lifelong dedication to the preservation of civil rights. One biographer of Marshall has said that he was actually hoping for a loss in *Murray,* so that the issue might be taken to the Supreme Court for a ruling of greater impact.[80] However, upon his retirement from the Court in 1991, Marshall admitted that his 1936 victory was "sweet revenge."[81]

After losing to Marshall, Assistant Attorney LeViness was quoted as saying that he hoped that Murray would "lead[] the class in law school."[82] Like his classmates, Louis Goldstein and Fred Malkus, Murray did not finish first in his class. But he graduated, became a respected member of the bar, practiced in Baltimore, and continued to devote his energies to NAACP civil rights work. His statue can be found in Lawyer's Mall in Annapolis, not far from that of Marshall's, on the very spot where the court of appeals building once stood.

• •

It is 28 years later, and once again, much has changed both with respect to the court of appeals and the judicial system. A 1944 constitutional amendment reduced the size of the court to five judges, but more importantly confirmed the court's key executive and legislative roles in the administration of the state judicial system.[83] By the 1960's, the Supreme Court's criminal justice revolution foreshadowed the need for an intermediate appellate court to handle the suddenly heavy workload of criminal cases. However, Maryland was to create its own mini-criminal justice revolution stemming from a routine murder case tried in the Circuit Court for Cecil County in the late summer of 1964.

Lidge Schowgurow, a Buddhist who disavowed a belief in God, was accused of murdering his wife.[84] He was indicted by a grand jury and convicted by a petit jury required by Article 36 of the Maryland Declaration of Rights to believe in the existence of God.[85] Challenging his conviction of first degree murder as a violation of the First and Fourteenth Amendments to the United States Constitution, Schowgurow appealed to the court of appeals.[86] He was represented by J. Grahame Walker; the State, by Assistant Attorney General Roger D. Redden.[87]

---

[76] *See id.* at 489, 182 A. at 594.

[77] *See id.* at 488, 182 A. at 594.

[78] *See id.* at 487-88, 182 A. at 594.

[79] 349 U.S. 294 (1955).

[80] *See* THURGOOD MARSHALL, *supra* note 61, at 92.

[81] *See id.* at 90.

[82] *See id.* at 87.

[83] *See* ch. 772, 1943 Md. Laws 1368 (ratified Nov. 7, 1944). In 1960, a constitutional amendment increased the size of the court to its present level of seven judges. *See* ch. 11, Md. Laws 21 (ratified Nov. 8, 1960).

[84] *See* Schowgurow v. Maryland, 240 Md. 121, 123, 213 A.2d 475, 477 (1965).

[85] *See id.*

[86] *See id.* at 123-24, 213 A.2d at 477-78.

[87] *See id.* at 123, 213 A.2d at 477.

• •

SCHOWGUROW v. STATE[88]

J. Grahame Walker for Appellant: Mr. Schowgurow was raised in the Buddhist faith. In an affidavit duly filed, he stated that the Buddhist religion to which he adheres does not teach a belief in the existence of God or a Supreme Being. He challenged the compositions of the grand jury which indicted him and the petit jury which tried and convicted him because Article 36 of the Declaration of Rights requires jurors to express a belief in God and that requirement deprives him of due process and equal protection of the law.

Four years ago, in *Torcaso v. Watkins,* the Supreme Court told the State of Maryland that it's requirement that public officers believe in God invaded their freedom of religion. What is unconstitutional for an officer is no less offensive for jurors.

The jurors in this case were sworn in accordance with the requirements of Article 36 and obliged to profess their belief in God. It is common knowledge that substantial minorities do not profess to believe in God and it is presumed that such persons exist among the citizens of Maryland and the residents of Cecil County.

We do not need to know how many Buddhists live in Cecil County or whether they were deliberately excluded from the grand and petit juries. No proof of discrimination is needed where the State Constitution requires the exercise of discrimination. Article 36, by its very terms, sets apart and discriminates against a segment of citizens who do not believe in the existence of God. It clearly prohibits an accused, whether a believer or a non-believer, from being tried by a jury composed of persons who do not believe in God, as well as persons professing a belief in God. Its application can easily result in prejudice to an accused when his lack of belief is manifested to the jury by his failure to take the oath before testifying.

The First Amendment proscribes the use of essentially religious means to serve governmental ends. The trial, conviction and punishment of an offender is solely a government function for the protection of society. Its secular character is obvious, but is perhaps best illustrated by the imposition of a death sentence, which would be hard to justify under any known religion. If the doctrine of separation of church and state is to mean anything, this Court should find that Article 36 has violated Appellant's constitutional rights and his conviction must be set aside.

Assistant Attorney General Roger D. Redden for Appellant: Due process of law is an oracular concept, which eludes expository definition. Even the prodigious intellect of Justice Frankfurter found the task staggering. But, however complex the problem of definition, one finds solace, and at least visceral comprehension, in resort to due process's equivalent and basic measure — fairness.

The question before this court is one of fairness alone, and in that portion of the criminal process which is devoted to the selection of jurymen, fairness requires only that the jury be indiscriminately drawn from among those eligible in the community for jury service, untrammeled by any arbitrary and systematic exclusions.

The Appellant, a Buddhist, asserts that his co-religionists have been a *priori* excluded from Cecil County jury service because (1) they do not believe in the existence of God and (2) nonbelievers are excluded from Cecil County jury service on account of Article 36 of the Maryland Declaration of Rights.

Here is the center of dispute. Mr. Schowgurow has proved nothing beyond his own allegiance to the Buddhist faith. He has not even tried to prove anything else. There is nothing in the record to show that there has ever been a single adherent of Buddhism resident in Cecil County who, aside from the belief-in-God issue, was otherwise qualified to serve as a juror, let alone that any Buddhist was excluded from the call or, being called, was excluded from the panel for failure to affirm his belief in the existence in God.

The *only pertinent evidence of any kind* is the uniform declaration of the oaths administered by the Clerk of the Circuit Court for Cecil County: "In the presence of Almighty God, you . . . do solemnly promise and declare that . . . ." This declaration is no filter through which nonbelievers cannot pass. Appellant negotiated it himself without difficulty when he testified during his trial, a fact which exposes the desperate emptiness of his present claim, something conjured up from a series of unfounded assumptions.

[88] 240 Md. 121, 213 A.2d 475 (1965).

As to the *Torcaso* decision, it helps not hurts the State's position. First, to the extent that Maryland caselaw may be construed to opine that the discovery of a single nonbeliever on a panel voids that panel's action, it was overruled by *Torcaso*, which held that expression of a belief in the existence of God could not be imposed as a condition precedent to holding public office.

Second, Mr. Justice Black's identification of Buddhism as an atheist religion in *Torcaso* does nothing but confirm what the encyclopedists tell us. It does not create any presumption as to the extent of Buddhist practice in Maryland. It does not plant nor evangelize Buddhism on the Eastern Shore. It does not oblige the State's Attorney for Cecil County to canvass the countryside for naysaying witnesses to prove what is a good deal closer to common knowledge than the tenets of Buddhism - that resident adherents to Buddhism are unknown to Cecil County.

The Appellant has not met minimal standards of showing unfairness and his conviction should be affirmed.

• •

Narrator: The *Schowgurow* case was reargued and the panel included specially assigned Circuit Court Judge Shirley Jones, the first woman to sit on the Court of Appeals (however briefly). The court, in October 1965, announced its anguished but almost inevitable decision that the belief in God requirement for grand and petit jurors was unconstitutional.[89] Rejecting the State's and a dissent's contention that no prejudice had been shown, the majority held that an actual showing of discrimination was not necessary when the exclusion of nonbelievers was "not only authorized but demanded by the Maryland Constitution."[90] In a seeming victory for the State, the court held that its decision did not apply retroactively "except for convictions which have not become final."[91] But later decisions made it clear that a defendant could not implicitly waive this issue if his or her conviction was not final before *Schowgurow*.[92] According to the Attorney General, this meant that two or three thousand defendants had to be reindicted.[93]

Not only did *Schowgurow* move the criminal justice system into overdrive, but when some defendants on retrial received a higher sentence, double jeopardy claims were pressed. These Maryland cases eventually reached the Supreme Court and convinced the Justices for the first time to apply the Double Jeopardy Clause of the Fifth Amendment to the states.[94] As to Lidge Schowgurow, after his retrial resulted in a hung jury and a mistrial, he pled guilty in exchange for an 18-year sentence.[95]

• •

Our last argument occurred some 28 years ago and, although the Court appeared to change very little since 1965, the world had changed immeasurably. The typical woman was no longer a "June Cleaver." She had entered the workforce, the marketplace, and the practice of law. She was no longer imprisoned by stereotypes or quietly willing to accept discrimination. Mary Emily Stuart was such a woman.

Married to Samuel Austell, Ms. Stuart continued after her marriage to use her birth name.[96] But when she tried to register to vote with the local election board, she was told that under state law she had to register as Mrs. Austell.[97] Stuart promptly filed suit in the Circuit Court for Howard County, raising both statutory and constitutional claims to the apparent state bar to the use of her real name.[98] Denied relief, she appealed to the court of appeals

[89] *See id.* at 131, 213 A.2d at 482.

[90] *See id.*

[91] *See id.* at 131-32, 213 A.2d at 482.

[92] *See e.g.*, Schiller v. Lefkowitz, 242 Md. 461, 219 A.2d 378 (1966) (holding that while the rule of Schowgurow applies to civil cases, it does not apply retroactively even to those cases not finalized prior to the date of Schowgurow).

[93] *See A Test For Retroactivity In Criminal Cases*, 26 Md. L. Rev. 272, 273 (1966).

[94] *See e.g.*, Benton v. Maryland, 395 U.S. 784 (1969).

[95] *See* State v. Schowgurow, No. 541 (Cir. Ct. Garrett Co. Aug 25, 1966).

[96] *See* Stuart v. Board of Elections, 266 Md. 440, 295 A.2d 223 (1972).

[97] *See id.* at 442, 295 A.2d at 224.

[98] *See id.*

and was joined by a number of Friends of the Court, including the ACLU represented by Ruth Bader Ginsburg.[99] Stuart was represented by Arold Ripperger; the State Election Board by E. Stephen Derby.[100]

• •

STUART v. BOARD OF SUPERVISORS[101]

Arold Ripperger for Appellant: Mary Emily Stuart testified below that her marriage to Samuel Austell was "based on the idea that we're both equal individuals and our names symbolize that." Indeed, she said she would not have gotten married if it would have jeopardized her name. Her name is on charge accounts, her driver's license and social security registration. Everyone, she testified, knows her by the name Mary Stuart.

Neither Maryland common law nor its election laws force her to deny the truth and register to vote in her husband's name. The common law rule is that a person may adopt any name he or she wishes in the absence of fraud or deceit.

As it was at common law, so now is it the option of a married woman to choose the name that she desires to use. Nellie Marie Marshall retained the name of her first husband at the time of her second marriage. Amy Vanderbilt, who has been married four times, said, "I have always used my maiden name." Lynn Fontanne, of the fabled Lunt and Fontanne acting team, adopted a hyphenated name, Fontanne-Lunt, as her legal name. Lucy Stone looked upon the loss of a woman's name at marriage as a symbol of a loss of her individuality and consulted several eminent lawyers, including Salmon P. Chase, later Chief Justice of the United States, and was assured that there was no law requiring the wife to take her husband's name, only a custom. She remained Lucy Stone.

It is true that § 3-18 of the Election Code requires clerks of court to notify election boards of the "present names" of women over the age of 18 after being advised of a "change of name by marriage." However, that statute does not apply in this case. Mary Stuart did not change her name by marriage. There was no duty to advise the clerk, no duty on the part of the clerk to advise the election board, and no duty or authority of the election board to question the name under which Mary Stuart sought to register to vote.

If Maryland's law required a false registration by Mary Stuart, it would be unconstitutional. As the Amicus ACLU has argued, sex like race and alienage is an immutable trait, a status into which class members are locked by the accident of birth. The requirement that a married woman assume her husband's name to register to vote is not reasonable, but places her in equal status with infants, lunatics and convicted felons. By whatever name the Board of Elections calls its practice - administrative convenience, necessary procedure, mandatory requirement, it is discrimination and discrimination based solely on sex. In its simplest terms, a married woman is denied the statutory right to contract with her husband or she is denied her constitutional right to vote.

Assistant Attorney General E. Stephen Derby for Appellees: Today it is almost a universal rule in this country that upon marriage, as a matter of law, a wife's surname becomes that of her husband. While a wife may continue to use her maiden name for professional and other purposes, her name as a matter of public record is that of her husband.

The provisions of § 3-18 on their face are premised upon an assumption by the legislature that a woman's name does change when she marries, in accordance with the common law rule. Any other conclusion would deprive the provisions of meaning because the only information possessed by the clerk of court is the fact of the marriage. The administrative application of the statute to require every woman voter who has married to change her name on the registration books gives the section meaning. If a married woman could elect whether to adopt her married name for voting, then the purpose of the statute in furthering the State's interests in preventing voter fraud, in providing an accurate trail of identification, and in uniform record keeping would not be served.

The State Elections Administrator testified that there are approximately 1,762,000 registered voters in

[99] *See id.* at 441, 295 A.2d at 223.

[100] *See id.* at 441, 295 A.2d at 223-24.

[101] 266 Md. 440, 295 A.2d 223 (1972).

Maryland. Assuming one half are female and the majority of them are or will be at some time married, it will be necessary to have a trail to identify persons and to prevent voter fraud. If a married woman could register under different names, the identification trail would be lost. As a practical matter, the election boards of the State are not in a position to make complicated factual determinations as to whether a married woman voter is not and has never been known by her married surname. Therefore, it is reasonable for the boards, to insist always upon use of the surname adopted by marriage unless a married woman has taken the relatively easy step of changing her name legally for all purposes by a court order.

There is simply no constitutional issue in this case involving a denial of the right to vote because appellant has not been denied that right. It is completely within her power and discretion to register to vote. She is required to do so in her legal name, whether by common law or custom, but no burden is imposed upon her which impinges upon her right to vote.

To the extent that the court may find that a discrimination does exist, it is one based on sex and marriage because of the automatic consequent that, absent a legal change of name, a woman's surname becomes that of her husband upon marriage. If it exists, the discrimination is one caused by the uniform common law rule or custom, applicable to married women, and it is not one involving the elective franchise. The right involved is the right to assume any name a person wishes. However, the right to assume a name of one's choice does not have constitutional status. Rather it is based on common law. Furthermore, the Supreme Court has yet to hold that discriminations based on sex are inherently suspect.

Whatever inconvenience the State rule may cause Appellant is slight when weighed against the interests of the State in uniform recordkeeping, in accurate identification of voters, and in preventing voter fraud.

• •

Narrator: A month before state voters approved an Equal Rights Amendment, and on October 9, 1972, in his first opinion of his 24-year career on the court, Chief Judge Robert C. Murphy, concluded that Maryland common law permits a Maryland woman to retain her birth name and to use it nonfraudulently after her marriage.[102] The majority, over one dissent, also found that state election laws did not forbid such use because Stuart did not undergo a "change in name by marriage."[103]

The very next day, the judges dedicated a new courthouse on Rowe Boulevard — the court's present location.[104] At the same time, the court adopted distinctive new judicial garb — actually a return to the dress worn by members immediately after the Revolutionary War: scarlet rather than black robes and a stock with tabs.[105] More than location and robes would change, as within a few short years, the court would have its first woman and African-American members. Now more than 223 years old, the Court of Appeals of Maryland remains a progressive and respected institution, with much of its glorious history remaining to unfold.

Visit the Maryland Archives website at mdarchives.state.md.us for more information on this article and the State of Maryland in general.

[102] *See id* at 455, 295 A.2d at 231.

[103] *See id.* at 443, 295 A.2d at 225.

[104] *See generally* Opening of the Court, *supra* note 1.

[105] *See* Opening of the Court, *supra* note 1, at xxii.

The University of Baltimore Law Forum
Articles Solicitation

The University of Baltimore Law Forum is currently requesting articles for submission relating to issues of importance in Maryland and/or Federal law.

Please contact or submit materials to:

Articles Editor
University of Baltimore Law Forum
The John and Frances Angelos Law Center
1420 North Charles Street
Baltimore, Maryland 21201
(410) 837-4493

E-Mail: UBaltLF@hotmail.com