

# A Study of Scarlet:

Red Robes and the Maryland Court of Appeals

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In the United States today, only the Maryland Court of Appeals wears scarlet or red robes when hearing arguments. They have not always worn red. The story of those red robes has its beginnings in English history and culture, as well as in post-Revolutionary Maryland, and its culmination as part of the preparations being made in 1972 for the then-upcoming 1976 celebration of the courts' bicentennial. Between the post-Revolutionary period and the modern eras, there were times when judges sitting on the Court of Appeals wore either black robes or no robes at all.

The first statutory laws in Maryland were written down just around 1692. In 17<sup>th</sup> century Maryland, laws and judicial decisions were based on a traditional and cultural connection to England and English Common Law. Just as Maryland Law is intimately related to English Common Law, it would also seem that the scarlet robes worn today by the Maryland Court of Appeals have their own connection to the court dress commonly worn in England and Wales as early as the 14<sup>th</sup> century and which is worn in Great Britain even today.

English legal dress has a venerable and "colourful" history. According to Court Dress: A Consultation Paper Issued on Behalf of the Lord Chancellor and the Lord Chief Justice (Lord Chancellor's Department, August 1992), the robes worn by the High Court judges "are of great antiquity." It also notes that the unwritten rules, which governed the robes of earlier courts, were well established by the time of the reign of King Edward III (1327-1377).

During that era, the color of judges' robes changed with the seasons. Apparently, the medieval judge wore violet robes in the winter and robes of green in the summer while saving scarlet robes as their very best. The green summer robes fell into disuse by 1534. After 1534, only the violet and black robes were commonly worn. Scarlet robes were used only while hearing criminal cases or on certain saints' days. The type of cloth used for the basic robes and the accessories that went with them also changed with the seasons and with the centuries as well.

It seems quite possible that the first attempt at written codification of rules for English judicial livery occurred with the "Judges' Rules of 1635." By then it appears that less formal dress had come into common usage, especially when judges were hearing civil cases. It does appear, however, that the Rules of 1635 did still follow the rules from the previous century for the wearing of scarlet on "holydays" and also on November the 5<sup>th</sup> in remembrance of the thwarting of the Gunpowder Plot (the attempt in 1605 by a small group of English Roman Catholics to blow up the English Parliament using 36 barrels of gunpowder).

As the English court system changed over the next three centuries, English court dress changed with it. All black silk gowns were proposed in 1771 but were not adopted, with the result that today's English court dress, though greatly changed over the years would still be quite recognizable by the judges who sat on the bench almost seven hundred years ago in 1327.

There is some evidence that during the post-Revolutionary period (1783-), the Maryland General Court, a sort of precursor to the Maryland Court of Appeals, heard arguments while wearing scarlet cloaks. However, by 1828 and the era of Jacksonian Democracy, the wearing of judicial garb of any sort had fallen into such complete disfavor that judges wore business suits. The sartorial pendulum eventually began to swing in the other direction and by 1914 members of the Court of Appeals had once again begun to wear judicial robes.

According to information gathered during an interview with Judge Marvin H. Smith (Ret., COA 1968-1986), the first time that a change to red robes was suggested, it was by Judge W. Mitchell Digges (Ret., COA 1923-1934) in approximately 1930-31. Nothing was done about a change of robes at that time. Judge Smith had become aware of the proposal through conversations with Judge J. Dudley Digges (Ret., COA 1969-1982) the son of Judge W. Mitchell Digges.

In 1972, circumstances were once again in place to make a change back to the courts' original scarlet robes possible. Chief Judge Hall Hammond (COA 1966-1972) retired. At approximately the same time, Judge Thomas B. Finan (COA 1966-1972) died, leaving the court with but five sitting judges and no Chief Judge. Further, the 1976 Bicentennial Celebration of the court was fast approaching.

According to Judge Smith (COA 1968-1986) it was in 1972, during the regular administrative meetings of the remaining five members of the court that the suggestion was made that a return to red robes might be made. During discussion of that suggestion it was noted that there seemed to be no evidence available to verify that the court had ever worn red robes.

It was then that Judge Frederick J. Singley, Jr. (COA 1967-1977) was asked by the court to determine the historical accuracy of the wearing of red robes by the court. In the Memoir of Roger Brooke Taney by Samuel Tyler (first published in Baltimore in 1872) Justice Taney is quoted as saying "The first session of the General Court, after I went to Annapolis, made a strong impression upon me. The three judges, wearing scarlet cloaks, sat in chairs placed on an elevated platform; and all the distinguished lawyers of Maryland were assembled at the bar."

Judge Taney started his study of law in Annapolis, at the age of 19, during the Spring of 1796. He began by reading the law in the office of Jeremiah Townley Chase, then sitting as one of the three Judges of the General Court of Maryland. It is reasonable to speculate then, that Judge Taney first saw the General Court in its scarlet livery sometime in that year.

Maryland was not alone in clothing their judges in scarlet vestments during the 18<sup>th</sup> century. In Boston, the five Judges of the Massachusetts court were wearing robes of scarlet English cloth in 1761. The judges of the court in Maine wore winter robes of scarlet until 1792. Although considering the close historical ties between Massachusetts and Maine, judicial robes of similar color should come as no surprise; (Maine was originally governed by Massachusetts and did not become a state until 1820).

Based then upon Justice Taney's statement, the five sitting members of the court accepted the proposed change to red robes and the scarlet robes were adopted as the official judicial garb of the Maryland Court of Appeals during the summer of 1972. A short time later, Judge Robert C. Murphy (COA 1972-1996) was appointed Chief Judge of the Court of Appeals. In October of 1972 the modern court wore red robes; the first time Maryland's highest court had worn red robes in approximately 200 years.