

Editorial Section

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NEWS OF THE BAR ASSOCIATIONS

Volume Forty-five of the Transactions of the Maryland State Bar Association was recently published. It reports the proceedings of the Special Mid-Winter Session held in Baltimore on January 20, 1940, and of the Forty-fifth

Annual Meeting, held at Atlantic City, N. J., on June 27, 28, and 29, 1940.

Arthur W. Machen, Esq., who was the retiring President, presided at the Annual Meeting and addressed the convention on "Dissent and Stare Decisis in the Supreme Court." Other principal addresses were by Hon. Emory H. Niles, on "Contempt of Court by Publication"; by Hon. Hammond Urner, on "Reminiscences"; and by Hon. Thomas B. Gay, on "The Value of Organization in the Legal Profession."

Officers for the ensuing year were elected as follows: President, Walter C. Capper, Esq.; Secretary, James W. Chapman, Jr., Esq., re-elected; Treasurer, Robertson Griswold, Esq., re-elected. The nine Vice-Presidents elected were: Hon. Benjamin A. Johnson, James W. Hughes, Milton R. Smith, F. Brooke Whiting, James E. Boylan, Clinton McSherry, Adrian P. Fisher, Joseph Bernstein, and John Holt Richardson. The Executive Council will consist of Messrs. James C. L. Anderson, W. Hampton Magruder, Walter L. Clark, and Raymond S. Williams.

A special mid-Winter meeting of the Association was held in Baltimore on January 11, 1941. The meeting was principally devoted to matters concerning the judiciary of the State.

Officers of the Bar Association of Baltimore City, elected for the current year at a meeting held in December last, are: President, Samuel J. Fisher, Esq.; First Vice-President, Frederick J. Singley, Esq.; Second Vice-President, S. Ralph Warnken, Esq.; Treasurer, J. Kemp Bartlett, Jr., Esq., re-elected; and Secretary, G. C. A. Anderson, Esq., re-elected.

Officers of the Junior Bar Association of Baltimore City, elected for the current year at a meeting held in the Fall, are: President, J. Gilbert Prendergast, Esq.; Vice-President, G. Van Velsor Wolf, Esq.; Secretary, Risque W. Plummer, Esq.; Treasurer, Alvin Katzenstein, Esq.; and Member-at-Large of the Executive Committee, J. Royall Tippet, Jr., Esq.

NEWS OF THE LAW SCHOOL

Dean Howell, and Messrs. Reiblich, Reno, and Strahorn, of the full-time faculty, attended the Thirty-eighth Annual Meeting of the Association of American Law Schools, held in Chicago, Illinois, in late December, 1940. Professor Strahorn is serving as a member for 1941 of the Association's Round Table Council on Crimes.

Gerald Monsman, Esq., Supervisor of Legal Aid work at the Law School, and Acting Counsel of the Legal Aid Bureau, has been elected to membership on the Executive Committee of the National Association of Legal Aid Organizations.

THE PENDING PROPOSAL TO REORGANIZE THE COURT OF APPEALS OF MARYLAND*

As this number of the REVIEW goes to press, there is pending before the General Assembly a proposal to submit to the voters of the State an amendment to the State Constitution to re-constitute the Court of Appeals of Maryland in a fashion entirely different from that by which its

*The proposed amendment (House Bill No. 347) is sponsored by the Maryland State Bar Association, which approved it at its Mid-Winter meeting in early January, 1941. The motion for its adoption was introduced in the Association's meeting by Hon. William C. Walsh, of Cumberland, the Attorney General of Maryland, and a former member of the Court of Appeals. President Walter C. Capper, of the Association, appointed a Committee composed of Judge Walsh; Walter L. Clark, Esq., of Baltimore City; Hon. John A. Robinson, of Bel Air; R. Bennett Darnall, Esq., of Anne Arundel County; and Frederick W. C. Webb, Esq., of Salisbury, Chairman, empowered to draft the proposal and to sponsor it before the 1941 Legislature on behalf of the Association.

The present Chief Judge of the Court of Appeals, Hon. Carroll T. Bond, expressed his support of the measure before the meeting of the Association; and Governor Herbert R. O'Connor has since announced his advocacy of it, Baltimore Sun, March 3, 1941.

All statements of fact in this editorial, whether concerning the present business and methods of the Court of Appeals, or other facts, are based either on Judge Walsh's address before the State Bar Association when he introduced the proposal, Baltimore Daily Record, January 13, 1941, or on the two articles published in the REVIEW in the June, 1940 number: Bond, *An Introductory Description of the Court of Appeals of Maryland* (1940) 4 Md. L. Rev. 333; and Brune and Strahorn, *The Court of Appeals of Maryland—A Five-Year Case Study* (1940) 4 Md. L. Rev. 343. It is not planned herein to make any further detailed citation of authority for factual statements.

members are now chosen, and to have it function in a somewhat different manner from the present one.

Under the present provision, the Court of Appeals consists of one full-time judge from Baltimore City, and the seven Chief Judges of the *nisi prius* Circuit benches in the Counties of the State outside of Baltimore City. These seven also exercise trial functions which occupy a considerable part of their time. As a result, they are present at the State Capital at Annapolis only for the meetings of the Court, and so they are primarily trial judges, and only secondarily, or *ex officio*, appellate ones.

This latter fact is almost unique, for although a few states assign occasional, emergency, or very specialized trial functions to their appellate judges, there is only one other state—Delaware—which now has a highest court composed of judges who are primarily trial judges.

The pending proposal calls for an entirely new Court of Appeals of six members, two from Baltimore City, and four from the Counties, all of whom shall have appellate functions only. It preserves the present trial circuit benches intact, but relieves the County Chief Judges of their membership on the Court of Appeals.

The proposal represents a much-needed reform, and is one which most certainly ought to be passed by the General Assembly and approved by the voters of the State, if the Court of Appeals of Maryland is to maintain its high position among the country's appellate courts.

The three salient and desirable features of the proposal, in an ascending scale of importance, are: (1) More equitable representation of Baltimore City on the Court; (2) a broadening of the areas from which the individual County appellate judges are to be chosen; and, (3) release of the appellate judges from *nisi prius* duties, so that their entire attentions may be devoted to consideration of cases appealed and to preparing opinions. These points will be discussed in that order.

Under the existing provisions of the Constitution of 1867, Baltimore City has but one judge of the eight members of the present Court. At present writing it has prac-

tically one-half the population of the State, over three-fifths of the cases that are appealed to the Court of Appeals, and approximately 78% of the lawyers of the State. The City, with 2,350 lawyers, has one appellate judge; the seven County Circuits, with an average of 93 lawyers each, have one judge apiece. It should be obvious that the proposal to give Baltimore City one-third of the judges is but fair and relatively very modest.

The second advantage of the proposal is the broadening of the areas from which the individual County judges are to be chosen. Under the present constitutional provision, each County judge of the Court is chosen from a single circuit (two of which have only two counties), and the seven circuits have an average of but 7% each of the State's population, and an average of only 93 practicing lawyers (some of whom are either too young or too old for Court eligibility). This considerably restricts the choice among the County Bars, and lessens the chances of continuing to secure able Court of Appeals candidates from the Counties. The proposed plan ameliorates this condition by broadening the areas, so that either two or parts of two of the present circuits shall constitute each of the respective Court of Appeals districts, and thus four, five, five, and nine counties, respectively, make up the proposed areas. From the standpoint of the method of choice of the County judges, the proposal is also commendable.

While the increase for Baltimore City, and the broadening of the County areas are, by themselves, decided advantages under the proposed amendment, yet the most desirable feature is the third one—that the Court of Appeals judges shall exercise appellate functions only. In this aspect of the proposal lies most of the hope for the Court's continuance to maintain its traditional prestige.

Under the existing system, the County members of the Court customarily write their opinions in their various circuits (in none of which, save at Annapolis, is there an adequate law library), without law clerk assistance (or even sufficient stenographic service), and without any regular circulation of copies of their opinions, or discussion

of the contents thereof to or with their fellow members of the Court, prior to submission. The conduct of trial cases further distracts their attention from their appellate work.

This is not a system conducive to the production of the most capable judicial opinions, nor to enabling the incumbents of the Court to manifest fully the capacities they possess. As any one knows who has ever done any of it, legal writing takes time and study, and requires access to an adequate collection of law books. Research assistance and stenographic service also contribute to creditable results. Discussion of subject matter with one's colleagues, and submission of preliminary drafts to them for criticism both lead to improvement in execution.

These are advantages that can be present in a full-time appellate court, and which are absent in a part-time one. There are benefits to the judges themselves in such full-time appellate work—the educational influence of devoting all working time to the study of cases argued and to writing the opinions therein leads to self-improvement. A good judge stands a chance of becoming a much better one if he has only appellate functions. This chance is lacking under the present system.

It is to be hoped that City-County antagonism will not stand in the way of the adoption of this vital reform. Even under the proposed changes, the County lawyers are favored more than the City ones. Under the existing plan, the 2,350 City lawyers have but 12 judgeships to aspire to, and the new proposal adds but one. Presently the 650 County lawyers have 25 judgeships to aspire to, and the new proposal increases this number by four. This factor should weigh heavily against any County opposition to the new plan which, while it increases the City representation, yet still does not approach the proportion which would be indicated if population, appellate business, and number of lawyers were the guiding factors.

It is further to be hoped that local, petty jealousies within existing circuits or counties will not provide an obstacle. Fear of upsetting existing alignments, or a belief

in a better chance to secure a Court of Appeals seat for a particular individual, or from a particular Bar, under the existing system, should not be allowed to stand in the way of a reform which vitally affects the juridical welfare of the State as a whole.

Procedural reform is currently in the wind in Maryland. Within the past two years the Justice of the Peace system in the Counties and the comparable People's Court in Baltimore City have both been drastically re-shaped and improved. There is now pending a movement to modernize the procedure in the Law and Equity Courts, where the current need for improvement lies in detail of procedure, rather than in the method of choosing the judges. There remains but to improve the system at the very top, where the path lies along the lines of re-constituting the Court of Appeals itself to the end that the ablest men may be secured for its members, and that these men, when and how secured, may perform with maximum efficiency for the good of the State. This may be expected only by re-distributing the representation of the State's areas on the Court, and by assigning only appellate tasks to the judges thereof. The pending proposal is admirably suited to accomplish this pressing reform. It should be adopted.