

Editorial Section

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CONCERNING THE REVIEW

The REVIEW announces the election of Mr. Robert H. Engle, of the incoming Fourth Year Evening Class, and Miss Annarose C. Sleeth, of the incoming Third Year Day Class, as Co-Chairmen of the Student Editorial Board for

1943-1944. New members of that Board, to succeed those who have graduated, will be chosen during the Summer and announced in the first issue next year.

Effective immediately, the following changes in the prices for copies, volumes, and sets of the *REVIEW* are announced.

For individual issues (whether current or back-number), One Dollar each (formerly Seventy-five Cents). For unbound annual volumes of four issues (other than by current continuing subscription), Three Dollars per volume (formerly Two Dollars). For bound annual volumes, Four Dollars (formerly \$3.50). All postage prepaid.

The yearly charge for current continuing subscriptions to the annual volumes of four issues each will remain at Two Dollars, and newly entered subscriptions may be dated back to the beginning of the then current volume at that rate. Subscriptions at that rate are taken on an indefinite basis, to continue until the subscriber gives notice of revocation, and bills are rendered annually. Members of the supporting Bar Associations will continue to receive current issues without charge.

For new subscribers and Bar Association members who may wish to have complete sets of the *REVIEW* from the beginning, substantial discounts from the above prices for complete files of back numbers can be arranged, varying according to the particular volumes and issues which may be required to fill out the sets.

NEWS OF THE LAW SCHOOL

Since the previous Annual Commencement of May 30, 1942, nineteen persons have been graduated from the Law School, fourteen at the Annual Commencement held at College Park on May 29, 1943, four at the end of the First Semester of 1942-1943, and one at the end of the 1942 Summer School. Five of these, all members of the Student Editorial Board of the *REVIEW*, were graduated with honors. These include Margaret E. Coonan, George

C. Evering, Dorothy E. Holden, F. Edward Rugemer, and Mary H. Whaley.

Professor John S. Strahorn, Jr., of the full-time faculty, has been appointed to prepare the Maryland Annotations to the American Law Institute's Restatement of Judgments. The work is being undertaken under the auspices of the Maryland State and Baltimore City Bar Associations.

THE PROPOSED COURT OF APPEALS AMENDMENT.

The 1943 General Assembly, by Chapter 772 of its enactments, has submitted to popular vote at the 1944 election a proposal to re-constitute the Court of Appeals of Maryland. With certain changes, the proposal represents that portion of the Bond Commission's recommendations which was concerned with the Court of Appeals. The details of the proposed amendment were reported in full in the February, 1943, issue of the REVIEW,¹ published shortly after the legislature passed the bill, and they will not be repeated *in extenso* at this time.

While the REVIEW favors the amendment, yet it is not proposed at this time unduly to reiterate all the arguments in favor of Court of Appeals reform which the REVIEW has previously published,² nor to advance further ones. Rather, the mentioning of further arguments and the summary of all of them can be postponed until later issues to be published closer to the time of the 1944 election. The present purpose is to elaborate a theme developed in the REVIEW's editorial of June, 1943, entitled *The Interim Report of the Commission on the Judiciary Article*,³ which theme was concerned with the geographical restrictions on the selection of members of the Court of Appeals. Whereas the editorial of a year ago was concerned with the shortcomings of the existing system in that connection, the

¹ Editorial, *Court of Appeals Amendment Passes Legislature* (1943) 7 Md. L. Rev. 143.

² Reference to all material in the REVIEW published prior thereto will be found in Editorial, *The Interim Report of the Commission on the Judiciary Article* (1942) 6 Md. L. Rev. 304, 307, ns. 4-5.

³ *Ibid.*

present one will discuss the benefits of the proposed changes as to those geographical restrictions, now that the exact details of the proposal in this regard have been arrived at.

While the proposed amendment makes other changes,⁴ incidental to the focal one of a full-time Court of Appeals, all of which are most desirable ones, yet this editorial proposes to devote itself principally to a basic argument in favor of the essential reform proposed. The essential change proposed is that the Court of Appeals shall ultimately⁵ be composed of five members, two from Baltimore City and one each from the three County "Appellate Judi-

⁴ One of these provides for the initial filling of any vacancy by appointment by the Governor, subject to the first biennial election to occur after one year's appointive service, or to the very next such election in the case of an appointment at the end of a fifteen year term. Another makes the Chief Judge of the State the administrative head of the judicial system of the State, and gives him power to require reports of work and business of the courts. He is also empowered to designate trial judges to sit with the Court of Appeals in case of temporary vacancies; to designate appellate judges to sit at nisi prius; and to designate trial judges to sit in circuits other than their own. The Court is authorized to make rules and regulations to regulate and revise the practice and procedure in all courts of the State. A minor but salutary change proposed is that no judge shall be appointed who would reach retirement age prior to the election scheduled to follow his appointment at which the office shall be voted upon, other than in the case of the reappointment of an incumbent at the end of a fifteen year term.

⁵ "Ultimately" refers to the fact that, for a period after the adoption of the proposal the Court will be larger than five. This results from the provision that the members of the newly constituted Court shall be chosen by the Governor from the incumbent elected (if any) members of the Court of Appeals from the respective "Appellate Judicial Circuits", and that any other already elected members of the Court shall serve as "additional" judges of the Court until their terms expire or until they succeed earlier retiring full-time judges from the particular areas. As it will work out, there will be only two possible "additional" judges, both from the Second Appellate Circuit, which includes the residences of the present Chief Judges of the Third, Fifth, and Seventh Circuits. In the First Appellate Judicial Circuit there will be only one elected Chief Judge, from the Second (trial) Circuit, inasmuch as a successor to Judge Johnson as Chief Judge of the First Circuit will then be serving by appointment. So it will be with the Third Appellate Judicial Circuit. The only elected Chief Judge therein will be that of the Sixth Circuit, inasmuch as a successor to Judge Sloan will then be serving by appointment as Chief Judge of the Fourth Circuit.

It will not be until 1952 (barring deaths or resignations) that the first new appointment (other than of the additional judge from Baltimore City, to be made immediately) can be made to the newly constituted Court, and this will be in the Second Appellate Judicial Circuit. Information indicates that the three present Chief Judges therein residing will retire for age respectively in 1947, 1951, and 1952. The elected incumbents from the proposed First and Third Appellate Judicial Circuits are both serving terms expiring in 1957, and will be eligible for reappointment and ensuing re-election as far as age is concerned.

cial Circuits" into which the proposal divides the Counties outside of Baltimore City. Under it the judges are to have no nisi prius duties other than occasional temporary assignment to relieve congestion or to sit in important cases.

As presently constituted under the 1867 Constitution, the Court consists of one (full-time) member from Baltimore City and the Chief Judges of the seven nisi prius Circuits into which the Counties of the State are divided. The County Court of Appeals judges thus perform both trial and appellate duties and share with their Associate Judges the nisi prius work which, of course, detracts from their appellate work.

Aside from this last named feature of the present system, which the proposal purports to do away with, another unfortunate result of the existing Circuit set-up is the one pointed out by the REVIEW's editorial of a year ago. This is that it has come to pass under the existing system that, whenever a County Chief Judge goes out of office, various considerations make it almost mandatory that his successor shall come from the same County as he did. Thus it is that the Court of Appeals judgeships have come to represent not even the small trial circuits which they are supposed to, but to be monopolies, in several instances, of single counties in the particular Circuits. The proposed amendment not only increases by over twice the average size of the areas to be represented by County appellate judges, but it makes it possible for the incumbents to be truly representative of the entire areas, chosen from anywhere therein, rather than from one county alone.

As the REVIEW pointed out a year ago, the existing provision, in the light of constitutional, geographical, political, and population considerations, has had the effect that the Chief Judge must in any event come from a certain county alone in two of the Circuits; that a successor can come only from the bar of the predecessor's County or from the Associate Judges in two more; or from the bar of two counties and the Associate Judges in the remaining three. At any given time, members of the bar of thirteen

Maryland counties are thus precluded from appointment or election to any local vacancy on the Court of Appeals, as matters stand.

That is the principal vice of the present system. Over and above the inequitable representation of Baltimore City, the interference of nisi prius work with appellate work, and the smallness of the areas from which the County appellate judges are (supposedly) chosen, is the fact that, in choosing them, first attention has to be given to insuring a proper distribution of residences of trial judges, including the Chief Judges, within the Circuits. If the man appointed or elected as Chief Judge happens to be gifted for appellate work, so much the better, but that is accidental. Not only do the County Chief Judges, after taking office, comport themselves primarily as trial judges, but they are selected in the first instance, and have to be selected, under the 1867 system, principally as trial judges. The REVIEW reiterates its statement of two years ago that the County Court of Appeals judges "are primarily trial judges, and only secondarily, or *ex officio*, appellate ones."⁶ That statement, intended as a description of the impact of nisi prius work on the proper conduct of appellate duties, equally can refer to the improper considerations that have to be paramount in the selection of our County appellate judges under the present system.

The proposed amendment departs from this unfortunate system in two ways, first, by broadening the size of the County areas to be represented on the Court of Appeals; and, second, by providing against any regular nisi prius duties for the appellate judges selected. Thus, under it, County appellate judges may be selected by the Governor or the voters from *anywhere* in the area (itself over twice as large on the average as the existing areas, thus insuring better choices from larger areas), without regard to distributing trial judgeships. As a result of depriving the appellate judges of regular nisi prius duties, consideration of where the selectee can best serve as trial judge departs

⁶ Editorial, *The Pending Proposal to Reorganize the Court of Appeals of Maryland* (1941) 5 Md. L. Rev. 203, 204.

from the picture. In fact, the proposal guarantees each circuit three trial judges and, as a result, there will be only one more county (than as presently constituted) which cannot have a resident trial judge.

The proposal to split the Counties of the State into three areas, each to have one appellate judge, was a compromise in the legislature with the Bond Commission proposal, which had called for selection of the County appellate judges without geographical restriction other than residence outside Baltimore City, itself to have two full-time judges. The Bond Commission had recognized that the ideal approach would have been to have all five judges selected without regard to residence. But it felt that the local situation called for demarcating Baltimore City from the rural counties, so as to guard against selection of all the judges either from the City or under the domination of its political elements.

The compromise in the legislature was, therefore, but an extension of the compromise which the Bond Commission had already arrived at. Both were intelligent compromises, ones which, it is to be hoped, will sufficiently subdue narrow, local opposition to this much needed reform as to guarantee its adoption. The REVIEW recognizes that, in the best of all possible worlds, appellate judges should be chosen on a State-wide basis. But, considering Maryland history, politics, and geography, the plan projected by the legislature is the one best calculated to satisfy the people and, at the same time, to give the State an appellate Court so constituted as to do the best possible job.

Maryland has its Baltimore City, and its Counties.⁷ The Counties break down into the Eastern Shore, Western Maryland, and the Central portion.⁸ Each of these four

⁷ In the 1930 Census, the population of the State was almost equally divided between Baltimore City and the Counties, each area having just over 800,000 people. In the 1940 Census the population of the State had increased, and the proportion within Baltimore City was slightly under fifty per cent. When it is remembered, however, that considerable of the populace appertaining to Baltimore City actually resides in the suburbs beyond the City line, it is still a safe statement that the Baltimore metropolitan population constitutes at least half that of the State.

⁸ Under the proposal, the First Appellate Judicial Circuit will include the existing First and Second (trial) Circuits and the Counties of Cecil, Kent, Queen Anne's, Caroline, Talbot, Dorchester, Wicomico, Somerset, and

areas has its own characteristics, has made and will make its own unique contribution to Maryland's culture. Baltimore City can always produce two, the others one apiece, of excellent Court of Appeals material, to the end that that Court may be of the best. The County "Appellate Judicial Circuits" which the amendment proposes are well arranged, both with respect to the utmost possible homogeneity and to the avoidance of domination by any one County within any area.

Over and above the other improvements which can result from the adoption of the proposal is the one which has been here discussed. Under the proposal it will be possible, as it now is not, to appoint or elect County appellate judges solely with reference to their qualifications for that important service, and without regard to what should be an irrelevant consideration, the spreading of trial judgments among the Counties of the circuit. This will be the more important result of divorcing the trial and appellate courts. It can contribute more to a more competent Court of Appeals even than relieving the judges, howsoever chosen, of the interference of nisi prius work with their appellate duties, although that benefit, also, will follow.

Conceding, as the REVIEW does, the desirability under local conditions of selecting appellate judges from individual districts rather than from the whole State, it is submitted that such a system should so be organized that the best possible person from any given area may be selected to represent it. That is not now possible under the existing Circuit system. It will be possible under the arrangement proposed by the pending amendment.

Worcester, which together comprise the Eastern Shore. The Second Appellate Judicial Circuit will include the Third, Seventh, and part of the Fifth Judicial Circuits and the Counties of Harford, Baltimore, Anne Arundel, Prince George's, Charles, Calvert, and St. Mary's, these being the Counties on the Western Shore of the Chesapeake Bay which are in the Central portion of the State. The Third Appellate Judicial Circuit will include the Fourth, Sixth, and the remaining part of the Fifth Judicial Circuits, and the Counties of Garrett, Allegany, Washington, Frederick, Montgomery, Howard, and Carroll, these being the Counties in the Western part of the State. The Fourth Appellate Judicial Circuit will consist of Baltimore City, which is also the Eighth (trial) Circuit.