

## Editorial Section

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## CHARLES McHENRY HOWARD 1870-1942

The REVIEW notes with sorrow the death of Charles McHenry Howard, which occurred on May 19, 1942. Mr. Howard, a prominent member of the Baltimore City Bar, was a member of the Faculty Council of the University of

Maryland School of Law at the time of his death, and had earlier served as Lecturer on Equity on the part-time faculty, although he had given up active teaching some time ago.

Mr. Howard was born in 1870, the descendant both of Col. John Eager Howard, of Revolutionary fame, and of Francis Scott Key, author of "The Star Spangled Banner". He was graduated A.B., Johns Hopkins University, 1891; and LL.B., University of Maryland, 1893, and was engaged in the active practice from the latter date until the time of his death. He had served as President both of the Bar Association of Baltimore City and the Maryland State Bar Association, and was a member of the American Bar Association.

Mr. Howard was very active in the work of the American Law Institute. At the time of his death he was its Second Vice-President and a member of the Council. He had been for several years Chairman of the Maryland State Bar Association's Committee on the American Law Institute and, in that capacity, had overseen the preparation of the Maryland Annotations to the various Restatements, several of which have been done by members of the Law School faculty.

Mr. Howard never held elective office, but served his City and State well through constructive service on various commissions appointed to improve civic affairs, and on boards of trustees of local institutions. His participation in the affairs of the Law School and the American Law Institute entitles him to be remembered as one who contributed to the common causes of legal education and legal scholarship, as do his writings in the pages of this REVIEW and his services on the Advisory Editorial Board thereof.

Mr. Howard was not only locally, but nationally prominent as a lawyer. His way of comporting himself in the practice of the profession may well serve as a model to those now beginning who aspire to success and respect.

### CONCERNING THE REVIEW

The REVIEW announces the election of Miss Dorothy E. Holden, of next year's Third Year Day Class, as Chairman of the Student Editorial Board for 1942-1943. 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.

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### NEWS OF THE LAW SCHOOL

Professor Bridgewater M. Arnold, of the full-time faculty, has been granted leave of absence to serve as Price Attorney for Maryland, Office of Price Administration.

Professor Russell R. Reno, of the full-time faculty, was granted leave of absence upon his recent call to active service as Captain, Field Artillery, United States Army.

Mr. George Gump, of the part-time faculty and Lecturer on Taxation and Future Interests, was granted leave of absence upon his recent call to active service as Lieutenant (J. G.), United States Navy.

Arrangements are now being made for offering the courses customarily taught by the instructors on leave, and announcement concerning them will be made later.

At the Annual Commencement of the University, held at College Park on Saturday, May 30, a class of thirty-one was graduated from the Law School. Five members of the class, all members of the Student Editorial Board of the REVIEW, were graduated with honors. These include Richard W. Case, Joseph H. Grady, William W. Mahoney, William B. Oswald, and John R. Royster.

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### THE INTERIM REPORT OF THE COMMISSION ON THE JUDICIARY ARTICLE

The Commission on the Judiciary Article of the Constitution of Maryland, which had been appointed by Governor O'Connor in late 1941 to serve under the Chairmanship of Chief Judge Carroll T. Bond, filed an Interim Re-

port<sup>1</sup> on June 1, 1942. The Interim Report, which visualizes further labors by the Commission and later recommendations, was submitted at this time for expedient reasons set forth in it.

The Report was subscribed in full by thirteen of the fifteen members of the Commission. Hon. Hammond Urner concurred except as to a minor factual statement; and Hon. F. Neal Parke submitted a dissenting statement.

On June 26, 1942, during the Annual Meeting of the Maryland State Bar Association, at Atlantic City, N. J., the Association, after debate concerning the recommendations of the Interim Report, approved the recommendations by a vote of over two-thirds of the members present and voting.<sup>2</sup>

The recommendations of the Commission, stated in reverse order, were concerned with the Juvenile Court of Baltimore City, the trial courts of Baltimore City, and the re-constituting of the Court of Appeals of Maryland.

The Commission recommended the rejection of the pending amendment to the State Constitution<sup>3</sup> concerning Juvenile Courts. Its opinion was that any necessary reform could be accomplished by statute, and it recommended that a Juvenile Court be established as a branch of the Supreme Bench of Baltimore City, to be staffed by one of the judges thereof who should serve without rotation.

With reference to the trial courts of Baltimore City, it was recommended that they be consolidated into a single court with but one clerk, instead of the six different constituent courts now functioning, and that the number of judges in Baltimore City be reduced by one.

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<sup>1</sup> The Interim Report of the Commission was published in the *Baltimore Daily Record*, June 2, 1942. It was also published in pamphlet form and circulated to members of the Maryland State and Baltimore City Bar Associations. See Editorial (1941) 6 Md. L. Rev. 75 for mention of the appointment of the Commission and a list of its members. For a description of the working of the Commission, see Bond, *The Work of the Commission on the Judiciary Article of the Constitution of Maryland*, *Baltimore Daily Record*, June 27, 1942. This latter paper, which was read before the annual meeting of the Maryland State Bar Association, will appear in the 1942 Proceedings of that organization.

<sup>2</sup> *Baltimore Daily Record*, June 27, 1942.

<sup>3</sup> Md. Laws 1941, Ch. 824, to be voted on at the 1942 election.

The recommendations concerning the Court of Appeals were the most numerous. It was recommended that the Court should consist of five members, two from Baltimore City, and three from the Counties of the State at large, with no nisi prius duties other than occasional assignment by the Chief Judge to relieve congestion where it arises. It was also recommended that the Chief Judge should have the power to assign trial judges from one Circuit to another for the same purpose and to assign trial judges to sit with the Court of Appeals in the event of temporary vacancies in its membership for any reason.

It was proposed to preserve the seats of all County Court of Appeals members to be regularly elected thereto prior to the taking effect of the recommended plan as follows. It was recommended that the Governor should appoint three of such theretofore regularly elected members as "regular" Court of Appeals judges under the new plan, without nisi prius duties, and the remaining elected incumbents should serve as "additional" Court of Appeals judges, also serving as Chief Judges of their Circuits. Vacancies in the "regular" seats would be filled from the "additional" panel until such time as the size of the Court should be reduced to the permanent five.

A novel mode for the selection of future Court of Appeals judges was proposed. This would involve appointment by the Governor in the first instance, subject to the first *biennial* election to occur after the expiration of one full year's appointive service. Opposition at such election would come only from persons nominated by petitions signed by at least 5,000 voters. It was believed that this system would combine the best elements of the appointive and the elective systems, and, at the same time, approximate what has already come to be the local practice.

This editorial proposes to comment on the proposals of the Interim Report, although more extensively about some of the recommendations than about the others. With reference to the Juvenile Court problem, little if anything will be said. That the jurisdiction of the Juvenile Court

of Baltimore City needs clarification is a notorious fact. Whether the better way to do it is the way the Commission recommends, or the way proposed by the pending Constitutional amendment is the debatable issue. The REVIEW would be happier about the recommendation to reject the amendment if it were sure that the opposition to it which developed outside the Commission during the Winter of 1941-1942 were truly motivated by a desire for an intelligent solution of the juvenile delinquency problem, rather than by a nostalgia for the ante-bellum way of doing things.

The recommendation to consolidate the nisi prius courts of Baltimore City is too obviously sound to call for more than a repetition of the proposal itself.

The recommendations about the Court of Appeals call for more attention herein, particularly in view of the REVIEW's earlier editorial<sup>4</sup> favoring the unsuccessful legislative proposal of 1941 which sought a somewhat similar reform, and the earlier publication herein of factual and argumentative material relevant to the issue.<sup>5</sup> But it is not proposed unduly to reiterate the arguments for Court of Appeals reform of the sort proposed by the Commission, which were also involved in the proposed Constitutional amendment of 1941, most of which arguments have been set out in the material referred to. Let it suffice, in general, to quote from the REVIEW's earlier editorial:<sup>6</sup>

"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

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<sup>4</sup> Editorial, *The Pending Proposal to Reorganize the Court of Appeals of Maryland* (1941) 5 Md. L. Rev. 203.

<sup>5</sup> Other material in the REVIEW on the problem includes Bond, *An Introductory Description of the Court of Appeals of Maryland* (1940) 4 Md. L. Rev. 333; Brune (Herbert M., Jr.) and Strahorn, *The Court of Appeals of Maryland, A Five Year Case Study* (1940) 4 Md. L. Rev. 343; Walsh, *The Movement to Reorganize the Court of Appeals of Maryland* (1942) 6 Md. L. Rev. 119; and Buck, *Proposals to Change the Maryland Appellate Court System* (1942) 6 Md. L. Rev. 148. See also Brune (Frederick W.), *Revision of the State Judicial System*, Baltimore Daily Record, May 25, 1942.

<sup>6</sup> Editorial, *supra*, n. 4, 204.

nisi prius duties, so that their entire attentions may be devoted to consideration of cases appealed and to preparing opinions . . .”

Two points concerned with Court of Appeals reform, wherein the Commission recommendations go beyond the plan of the 1941 legislative proposal, will, perhaps, justify more extensive treatment in this editorial. One concerns the proposal to save the seats of the regularly elected County members of the Court. The other is the proposal that the County members shall be ultimately chosen from the Counties at large without reference to residence. This latter proposal focuses attention on an unfortunate sequel of the present plan of selecting the County judges from the Circuits of their residence.

The proposal to preserve the seats of the regularly elected members of the Court serving under the old plan is eminently sound, both as a matter of fairness to the sitting judges, and as a matter of general policy. It involves a gradual shifting over from the old plan to the new, without the shock attendant upon an entirely new Court both as to membership and methods. In view of the fact that seven of the eight judgeships are to be voted on at the 1942 election, if the proposed plan be promptly adopted the longest possible period will be provided for the gradual shading off from the old plan to the new one. The State will not be deprived of the benefit of the experience of veteran appellate judges and, at the same time, County Chief Judges who have successfully run for office in a desire to have appellate service will not be disappointed by any change in the system.

The proposal that the County members (that is, those new members to be chosen to fill vacancies after the size of the Court shall ultimately be reduced to five) shall be selected from the Counties at large without regard to their place of residence is not only a departure from the existing system of choosing them, but it particularly calls attention to a very unfortunate aspect of the present arrangement of constituting the Court of Appeals by having the County members also serve as Chief Judges of their trial Circuits.

Under the existing Judiciary Article,<sup>7</sup> appointment or election to County Court of Appeals judgeships, i. e., Chief Judgeships of the Circuits, is not only localized to small areas of a few Counties each and with but few lawyers to choose from, but, because of a combination of constitutional, political, and geographical factors, in several Circuit situations *the choice is practically restricted to but one County out of the Circuit and no other County*. Thus, a majority of our County Court of Appeals judgeships are really not even fairly representative of the respective Circuits, but rather only of the few fortunate Counties which, under the existing system, have come to have monopolies of the judgeships.

In the Sixth Circuit (Frederick and Montgomery Counties), under the Constitutional requirement,<sup>8</sup> when a vacancy develops in the Chief Judgeship it may be filled only from the group of Associate Judges or from the bar of the County from which the retiring Chief Judge came. In the Fifth Circuit (Anne Arundel, Howard, and Carroll Counties) the same thing is so, although this is not compulsory by the Constitutional requirement, but follows from the immemorial custom that each of the three Counties shall have a resident judge.

In the Third Circuit (Baltimore and Harford Counties), the predominance of population in Baltimore County has always given that County a monopoly of the Chief Judgeship. In the Fourth Circuit (Allegany, Washington, and Garrett Counties) both population and geography have tended to give Allegany County a similar monopoly. Garrett County has relatively few people. Allegany County has the most, and more than Washington County, and hence the greater business makes it plausible that Allegany County shall have the two judges (one of whom has

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<sup>7</sup> Md. Const., Art. IV. Section 21 thereof, as most recently amended, Md. Laws 1939, Ch. 200, approved November, 1940, specifically provides for the residences of the Chief and Associate Judges.

<sup>8</sup> This follows from the Constitutional requirement that the Chief and one Associate Judge shall reside in one County and the other two Associate Judges in the other. Of course, if at the same time there should be vacancies both in the Chief Judgeship and an Associate Judgeship from the *other* County, then (but this happens so rarely as to be out of the picture) the new Chief Judge may be chosen from the bar of either County.

to be the Chief Judge) and Washington County the one, an Associate.

In the First and Second Circuits (which together comprise the nine Eastern Shore Counties) and in the Seventh Circuit (including the Southern Maryland Counties of Prince George's, Calvert, Charles, and St. Mary's), the choice of a new Chief Judge is practically restricted to the extant Associate Judges and to the bars of *two* Counties each. This is because each Circuit has, at any time, at least one judgeless county, so that the choice of a new Chief Judge (in addition to the extant Associate Judges) may go to the bar either of the retiring incumbent's County, or to that of the theretofore judgeless County, without disturbing the tradition of spreading the judgeships over the Circuits as far as possible. But these Circuits are the ones with the relatively smaller population and lawyer density and while the choice goes to two Counties instead of but one as in the others, yet it is still a very narrow one.

The existing situation is actually worse than it looks at first glance. It sounds bad enough to localize appellate judgeships to small, rural Circuit areas at a time when abler men are being drawn off to the City practice. But scrutiny discloses that, as the system works, the eligible appellate material remaining within the Circuits is frequently unavailable because of the accident that the best man for the position happens to be practicing in the wrong County of the Circuit. This is one of the unfortunate sequelae of trying to tie together the nisi prius bench and the appellate one. Obtaining a truly fair representation of all parts of the State, and a recruiting of the ablest men for appellate service are both severely hampered under the existing system.