

TESTIMONY OF STEVEN VAN GRACK

JUDGES SHOULD NOT BE ELECTED

A significant goal for the Maryland legislature should be a change in the method of selecting Circuit judges from an elective to an appointive process. Removing the judges from the elective process can only serve to upgrade the selection of judges and to reduce any appearance of impropriety on the part of potential judges.

Since 1966 I have been actively involved in politics. As a candidate, I have campaigned for and served as Mayor of the City of Rockville. In three (3) instances, I served as Campaign Chairman or Manager, with a recent experience in 1982 as the Campaign Manager of the Committee to Retain the Sitting Judges. Based on this experience, I feel strongly that judges should not be a part of contested elections. That is, they should not seek office in the same manner as other candidates.

Most, if not all, candidates for elective office have two major potential obstacles to overcome if they want to have a reasonable chance of winning. The obstacles are (1) how to raise enough MONEY to finance an effective campaign, and (2) how to wage an effective CAMPAIGN. Each of these items - MONEY and CAMPAIGN - presents a dangerous environment in which to place a prospective judge. The appearance of impropriety is enough to taint a judge's impartiality and reduce his effectiveness as a jurist.

Any candidate who seeks to be elected must develop a means by which the voter learns the identity and character and why that candidate is deserving of that voter's support. This process of getting one's message across to the voter usually takes the form of bumper stickers, mailing of literature, distribution of literature to homes, lawn signs, car tops, newspapers, radio, coffees, headquarters and rallies. While this list seems long, the truth of the matter is that several items were not mentioned, including the use of television, which is the most expensive form of advertising.

Therefore, any judicial candidate in a contested election for the Circuit Court, as a practical necessity, will have to receive substantial sums of money for donations or otherwise. It is an unhealthy concept to require our judges to solicit and/or accept money.

First, let us distinguish the judicial candidate from the legislative and executive candidate. Legislators and executives are frequently perceived as representing special

interests. It is common for a labor union, business organization, builder, medical group, or environmental club (just to name a few) to make a substantial financial contribution to a legislative or executive candidate.

However, for a judge to receive a large monetary contribution from any special interest group presents a perception that justice might not be blind. A legislator and an executive are not expected to be impartial, but in order to be effective, a judge must be without partiality and without the perception of partiality. The taint is enough to lower the judge from the pedestal on which the public has previously placed him.

Second, the lawyer-judge relationship should not be muddied with money. A good and honest lawyer would not want his client's cases to be decided on the basis of whether or not the lawyer contributed to a campaign. Likewise, a good and honest judge would not conceive of any decision having anything whatsoever to do with a lawyer's financial contributions.

Unfortunately, there remains the potential that some lawyer will have expectations of favorable treatment by a judge should he make a substantial contribution to a successful judicial campaign. Or even worse, some lawyer might fear that if he fails to make a contribution, then he will be thought of as an unfriendly lawyer. This is not a healthy climate.

Third, self-financing is a difficult burden to place on a judge. Many judges presently sitting on the Circuit Court could not only be earning far greater sums from the private practice of law, but also took substantial pay cuts in becoming judges. When they take this financial loss, it seems unfair to ask them to additionally help finance their own campaign.

Assuming that one can accept the concept of judges soliciting the necessary financing, we come to a more fundamental problem of the type of campaign to be run.

Most campaigns are based in large part on how to convey a political philosophy to the voter, somehow forecasting their decisions on issues to come before them in the future. It is an unwise idea to place judicial candidates in an arena in which they are called upon to take prior stands on specific issues. Each decision by a judge should be based on the law and facts of the individual case.

First, it is very easy and beneficial for a candidate to adopt a slogan on which to run. For instance, in order to get elected, a judicial candidate might support "more money to victims of auto accidents" or "more convictions for criminals." Although these specific positions might appear to attract votes, a judge should not be preconceived to a disposition. Judges must work with the specific facts and law of the specific case before them. It would be a tragic occurrence if those in the system

knew the outcome of a case, not based on the facts, but rather based on the predisposition of the judge.

While all judges are human and their life experiences and legal philosophies might lead them to be a more stringent sentencer or to have greater sensitivities to the needs of victims, it would taint the judicial system to believe that judges do not evaluate each and every case solely on the evidence before them and the law as it applies thereto.

Second, there is a tendency for a judicial campaign to be sensationalized. For instance, a candidate for Circuit Court could run on the basis that he or she is for the death penalty. While this might capture the mood of the electorate at the time of the election, the truth of the matter is that a Circuit Court Judge is duty bound to follow the law as established by the legislature and the appellate courts of the State of Maryland. For a judge to say that he would take a popular position which would or could be against the laws of the State could lead to dangerous precedent. The balancing of the political needs of the judge to espouse popular position for votes against the professional needs of the judge to maintain an unprejudiced viewpoint creates conflicts which should be avoided, and can be avoided by eliminating the election of judges.

Third, political candidates are recognized as much for their ability to create good public impressions by their looks, smiles and handshakes as they are for their abilities or positions on the issues. Are the people of Maryland really interested in a popular, good-looking judicial candidate or a poised, intelligent, impartial decision-maker as a judge? I must assume the latter, who is the one who is less likely to be perceived as an effective candidate and yet more likely to be perceived as an effective judge.

Conclusion

Many politicians are elected as much for their ability to smile, shake hands, kiss babies, as well as for a good-sounding name that begins with the letter A or B. Such elections are without a thorough discussion of stands on the issues. Do we really want to promote a system where the good-looking, smooth-speaking, great back-slapping lawyer has a better chance of becoming our judge? Or do we want to stay away from politics in hopes that the individual with a firm legal education, good experience, and sound judgment is to make the crucial decisions that a judge is called upon to make every day.

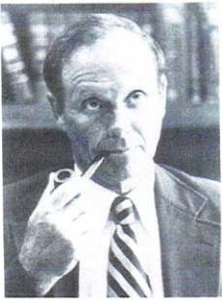
However, remember that our initial premise was that judges should not be elected in the same manner as other candidates. This does not alleviate the need for judicial

accountability. In fact, it is important for judges to be accountable to the people. Further, it is not unwise to make judges accountable through the elective process.

An important distinction between making judges accountable through elections and making judges candidates is an important one. The process of requiring judges to be on the ballot without opposition, subject to being "retained" or "rejected", provides judicial accountability without the tragic flaws of being involved in a contested election.

In summary, there is too much bad and not enough good in making our judges become politicians.

Courthouse



STATE'S ATTORNEY
Andrew L. Sonner

State's Attorney since 1970 • Progressive administrator, proven prosecutor, 16 years in criminal prosecution • Formerly Chief Trial Counsel, State's Attorney's Office • Past President, Md. State's Attorneys' Association; Member, Md. Criminal Justice Coordinating Council • Graduate, Federal Executive Institute; Juris Doctor, American University • Part-time professor of law; former high school teacher •



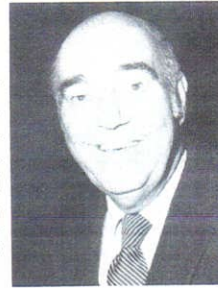
CLERK OF THE CIRCUIT COURT
Howard M. Smith

Clerk of the Circuit Court since 1966 • Served as: Director of Administrative Office, Assignment Commissioner, Parole Officer, Investigator, and Agent of Maryland Alcohol Tax Unit • Author of "Arrest, Search and Seizure" • Attended Law Enforcement Institute, U.S. Treasury School and Course in Court Administration, National Judicial College • Married, 5 children; Veteran WWII •



REGISTER OF WILLS
Rosalie A. Reilly*

Register of Wills since 1978: Initiated programs for expeditious and simplified administration of estates • President, Maryland Register of Wills Association • Former Executive Director, Wheaton/Kensington Chamber of Commerce; Member, Fairhill Riggs and GLAYCA Civic Associations; Member, Gaelic League • Former Democratic National Committee woman; Member, Montgomery County Press Association •



SHERIFF
James A. Young

Sheriff since 1976; Chief Deputy Sheriff, 1969-76; 20 years' experience Montgomery County Sheriff Department • Sheriff of the Year, 1979; Three-time President, Maryland State Sheriffs' Assoc.; Initiated legislation for statewide mandated training for deputy sheriffs • Member, American Legion Post 171 • Governor's Citation for Outstanding Service to the Citizens of Maryland • Married 36 years, 3 children •

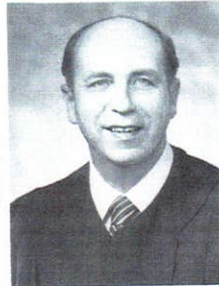
Judges Sixth Judicial Circuit Court

The Montgomery Democrats for '82 have endorsed these circuit court judges. The sitting judges cannot and do not endorse any candidates for non-judicial office.



JUDGE
Rosalyn B. Bell

Circuit Court Judge since 1980 • District Court, 1978-80 • General law practice 1951-78; Active in State, County, and D.C. Bar Associations • J.D., George Washington University, 1951 • Trustee, lecturer: Montgomery-Prince George's Continuing Legal Education Institute and Maryland Institute for Continuing Professional Education for Lawyers •



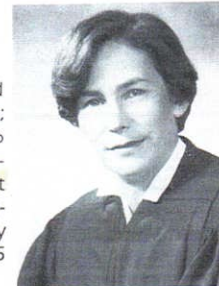
JUDGE
James S. McAuliffe, Jr.

Circuit Court Judge since March, 1981; District Court Judge 1978-81; Fellow, American College of Trial Lawyers • Former State Senator, Delegate, and Assistant State's Attorney • Former Chair, Montgomery County Ethics Commission; Former Vice-Chair, Board of Trustees, Montgomery College • Community Leader • Former member, Board of Governors, Md. State Bar Association • Married, 4 children; St. Raphael's Catholic Church •



JUDGE
William C. Miller

Circuit Court Judge since May 1982: Recommended as "highly qualified" by Maryland Bar Committee; Montgomery County Bar recommendation (96% approval); "Most fully professionally qualified"—Judicial Nominating Commission • District Court Judge 1980-82 • 22 years law practice in Montgomery County • George Washington University [LL.B., J.D. 1957]; U. of Md. (B.A. 1953); • Married, 5 children •



JUDGE
Irma S. Raker

Judge, Circuit Court, District Court, following nomination Judicial Selection Commissions, recommendation State and County Bar Associations • Graduate and Adjunct Faculty, Washington College of Law; Attended Hague Acad. of Int'l. Law, Am. Acad. of Judicial Education • Assist. State's Attorney; Board of Governors, State Bar Assoc. • County Advisory Committees: Sexual Offenses, Child Abuse, Environmental Protection • Life Member, Hadassah •

Citizens to Elect Peter Messitte Circuit Court Judge of Montgomery County

Advisory Committee

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Kathleen V. Buffon, Esquire
William A. Butler, Esquire
Helga Butler
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Prof. William W. Greenhalgh
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Marna S. Tucker, Esquire
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B. Jean Wastler
Philip F. Welsh, Esquire
Shirley Weiss
Jerry Wiener, M.D.
Louise Wiener
Hon. Eugene M. Zuckert
Prof. Harvey Zuckman

P.O. Box 9961
Chevy Chase, MD 20815
301-652-7826

Dear Fellow Montgomery Countians:

In the past you may have taken little notice of how your general Trial Court Judges in Montgomery County are selected, who they are, and why they qualify. Yet this should be a matter of concern to you.

The process works as follows: Interim appointments are made when a vacancy arises, and vacancies arise usually before the expiration of a Judge's term. Thus, when Circuit Court Judges face the electorate - as they ordinarily must at the first opportunity after their interim appointment - they tend to run as "sitting judges" wrapped in the mantle of experience.

However, a small group of lawyers in this county has virtually absolute control over whom the Governor may appoint as temporary judge. They tend to nominate one of their own, and since those who receive temporary appointments often run for election unopposed, that small group of lawyers has effectively controlled who our Circuit Court Judges are.

Members of the local Bar have long known this for a long time.

A number of concerned citizens feel that the judiciary belongs to all of Montgomery County and needs to better reflect the geographic and philosophical diversity that is characteristic of our community.

PETER MESSITTE, a distinguished Chevy Chase attorney, is a candidate for one of four Circuit Court seats that voters will select this fall. Cross-filing in both the Democratic and Republican primaries, PETER MESSITTE presents for the first time in years a strong non-partisan candidacy from outside the "courthouse crowd."

Peter's accomplishments are set forth on the enclosed flyer. The many eminent Montgomery Countians who support PETER MESSITTE for Circuit Court Judge do so not only because they feel he would add distinction to the Montgomery County bench, but because they believe it is vitally important to open up the judicial selection process in this County.

Marna S. Tucker, Esquire
George Tydings
B. Jean Wastler
Philip F. Welsh, Esquire
Shirley Weiss
Jerry Wiener, M.D.
Louise Wiener
Hon. Eugene M. Zuckert
Prof. Harvey Zuckman

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Maryland Attorney General STEVE SACHS has said that, in his opinion, "Peter Messitte would be one of the finest judges of our generation." Peter's friends and supporters agree, but it will take considerable effort to get him elected this fall.

The Citizens to Elect PETER MESSITTE Circuit Court Judge ask for your support.

By Authority of Eva Whitten, Treasurer

Committee To Retain Sitting Judges

Rosalyn B. Bell, James S. McAuliffe, Jr., William C. Miller and Irma S. Raker
107 North Adams Street, Rockville, Maryland 20850
301 251-9770

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Robert R. Michael, Esq.
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Theodore A. Miller, Esq.
Anthony C. Morella, Esq.
J. Willard Nalls, Jr., Esq.
Michael T. Nalls, Esq.
John W. Neuman, Esq.
Carren S. Oler, Esq.
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Jerrold B. Pinsker, Esq.
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Ivan J. Shefferman, Esq.
Lawrence A. Shulman, Esq.
Deane A. Shure, Esq.
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Harvey B. Steinberg, Esq.
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Floyd Willis, III, Esq.
Joanne Willis, Esq.
Charles E. Wilson, Jr., Esq.
John F. Wolf, Jr., Esq.
William T. Wood, Esq.

Dear Precinct Chair:

As you are among the most concerned citizens of our County, we solicit your support to retain our Sitting Judges.

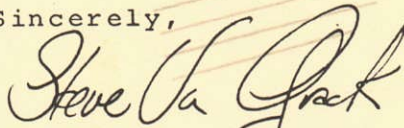
Judges Rosalyn B. Bell, James S. McAuliffe, William C. Miller and Irma S. Raker are our Sitting Judges on the Circuit Court for Montgomery County standing for retention after having demonstrated the highest standards of judicial ethics and legal competence on both the Circuit Court and District Court. Prior to their appointments, the Judges had highly successful careers in private practice.

Because the office of Circuit Court Judge is bi-partisan, all four judges will be on the Republican and Democratic ballots. You might be aware that all four have received the endorsement of the Montgomery Democrats for '82, as well as the Montgomery County Republican Central Committee. You also should know that unless all four judges are the top four vote getters on both ballots, they will be forced to run in the November election.

Judges Bell, McAuliffe, Miller and Raker each have been carefully evaluated and approved by the Judicial Nominating Commission and appointed by the Governor. They went through this process in their selection as District Court Judges and again as Circuit Court Judges.

They are doing their jobs exceptionally well and should be retained. Please help us on Election Day and urge the voters in your precinct to vote for these distinguished jurists. They have proven that they merit the nominations of both political parties on Tuesday, September 14.

Sincerely,



Steve Van Grack, Esq.
Campaign Manager

Enc.