

# The Bell appointment: A political decision, as it should be

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By SARA ENGRAM

**P**OLITICS IN THE selection of the state's chief judge? Of course. Give a governor or any other elected official appointment power over another branch of government, and politics will be part of the equation.

And why not? Politics is a way of weighing competing interests, and winning an election gives a governor the right to weigh it his way — or hers. So any carping that Gov. Parris N. Glendening may have factored his political interests into the appointment of the state's first African-American chief judge is beside the point.

After all, who is surprised when a Republican president appoints a conservative to the Supreme Court? Or a Democrat appoints a liberal? That's one reason elections are important.

The carping also overlooks a couple of salient points. For one, Maryland is luckier than some states in shielding judges from raw politics. Once on the bench, judges at three of the four levels of the judiciary are not subject to

contested elections.

Judges on the state's two appellate courts appear on the ballot at the end of their terms, but no one can challenge them. Voters can retain them for another 10-year term or vote them off the bench. District Court judges are subject to reappointment.

The Circuit Courts are the exception — and the nasty contest

going on in Howard County is a good example of why contested elections are a bad idea. Who wants to go before a judge knowing that the opposing lawyer contributed to the judge's re-election campaign? National studies have found that corruption charges and scandals occur more frequently in states where judges are subject to contested elections.

A second point: Although it's obvious that the appointment of Robert M. Bell to head the state's judiciary helped a politically vulnerable governor shore up the support of a constituency crucial to his re-election in 1998, it's also true that no one can say Judge Bell is unqualified for the job.

**A judge who will grow**

True, he does not bring the

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strong administrative experience of Judge Alan M. Wilner, whose ability to run a busy and complex appellate court has become legendary. But Judge Bell brings other strengths. And he can grow into a first-rate administrator.

Filling a job that calls on him to be a working member of the state's highest court and head of the judicial branch is no easy matter. During his 24 years in office, Chief Judge Robert C. Murphy often spent the night in his Annapolis chambers to save the two hours it would take him to drive home to Baltimore and back. His successor will develop his own style.

If the governor has pleased one interest group, has he alienated others? Ellen Sauerbrey, his likely opponent in 1998, has already

jumped on Judge Bell's liberal record on the Court of Appeals. But the Bell appointment does not change the ideological make-up of the court, since Judge Wilner, elevated to the vacant seat on the Court of Appeals, has a centrist judicial record much like Judge Murphy's. Moreover, the Court of Appeals has many unanimous opinions, and few cases decided by narrow majorities.

If anything, the Bell appointment may decrease the number of times he dissents from majority opinions. Just as on the U.S. Supreme Court, Maryland's chief judge has power to decide who writes opinions, but only when he is part of the majority. His new role may moderate his positions.

Judge Bell has already noted that his appointment as chief puts different responsibilities on his shoulders. As head of the judiciary, he will reconsider his position on several issues, including his support for contested elections for Circuit Court judges.

The African-American community remembers when the ability to challenge a sitting judge was the only hope blacks had of getting on the bench. Even though the current governor has made judicial diversity something of a mantra, many African Americans see contested elections as an insurance policy against the day when a conservative governor might take a significantly different view. Curiously enough, conservatives are clinging to contested elections as protection against the

appointments of liberal governors.

If Judge Bell adopts the long-held views of the legal establishment and most court observers, legislators could see the state's first African-American chief judge arguing for abolishing contested elections for Circuit Court judges. Stranger things have happened.

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