

Bell adds new twist to CSA

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Stepping out of the elevator, the courthouse visitor finds the hallway uncarpeted and dimly lit. And if he didn't know better, the south side of the sixth floor of the Baltimore City Courthouse East would appear to be a storage warehouse, rather than the entrance to the chambers of the newest member of the Maryland Court of Special Appeals. Inside, the office interior is somewhat more befitting a judge: book-filled shelves, stacked files, and something the former Baltimore City Circuit Court judge might have to get used to: tranquility.

Earlier this month, Bell moved up to the State's intermediate appellate court bench, filling a vacancy that had existed since mid-October, when Judge Solomon Liss retired several months before reaching the constitutionally-mandated retirement age of 70.

Some might expect Bell's addition to the court to bring a new outlook to the thirteen member body. Those prognosticators may be both right and wrong. Bell is its only black; another black judge, David T. Mason, retired from the CSA last year. He is its youngest member too, having turned 41 in July; the average age of the CSA judges is almost 55.

However, in many ways other than his youth and his race, Bell — who moved to Baltimore from North Carolina when, as he says, he was too young to have anything to say about it — brings to the court a not dramatically different, albeit interesting and varied background.

Hooper's sit-in

Bell grew up in Baltimore in the 1940s and 1950s, the years before racial integration took root. Of the city then, Bell has "pleasant memories. Maybe," he adds somewhat jokingly, "I didn't know better."

Apparently, though, Bell was not totally oblivious to his surroundings. As a city resident, he attended Baltimore's Dunbar Junior and Senior (public) High Schools, and concedes that he was an aggressive student. "I liked school," Bell admits, adding that he did well as a student, graduating first in his class in 1961.

Bell's high school years, however, are not remembered simply by the usual activities of a student graduating at the very top of his class. In fact, one of his high school involvements will be forever imprinted in the Maryland and federal court casebooks, and earns him the clear right to call himself a civil rights activist.

In 1960, Bell organized fellow students to challenge a Baltimore restaurant's policy of not serving blacks, which, as Bell explains, was "a standard policy of many establishments" at that time.

According to court descriptions of the events, Bell and eleven other students entered Hooper's Restaurant, where they were told that they would not be served solely because they were black. The students then ignored the host's requests and went to tables and refused to leave until they were served.

The manager soon called the police

and the students were later arrested and tried under a State criminal trespass law which made it a misdemeanor to enter another's premises after being asked not to do so. When convicted of the charge, the students were given a \$10.00 fine, which was subsequently suspended.

In January 1962, the Maryland Court of Appeals affirmed the convictions, rejecting arguments put forth by the students' attorneys, including Juanita Jackson Mitchell, and Tucker R. Dearing.

After that defeat by the State's highest court, Bell's attorneys prepared a petition for a writ of certiorari to the U.S. Supreme Court. But by the time the Court issued an opinion in the case, public accommodation statutes were enacted by both the State of Maryland and the city of Baltimore. By that time, the thought may have been, the convictions would be reversed because they were now clearly violative of the federal constitution, and the State's and City's new laws. That was not, however, to be the case, at least not initially.

"The Supreme Court split in the case," Bell explains, "three judges affirming the convictions, three for reversing the convictions, and three for sending it back to the Maryland Court of Appeals." As a result, the case was sent back to the Court of Appeals, which again affirmed its earlier decision, in a decision written by Chief Judge Hall Hammond.

Writing for all but one judge in October 1964, Hammond reasoned that although the subsequently enacted pub-

lic accommodations laws made the trespass act inapplicable to public places — including the Hooper Restaurant — when they were enacted, the legislature had failed to expressly nullify the prior convictions, a procedure generally necessary for guilty findings to be erased.

In dissent was Judge Reuben Oppenheimer, who had just recently joined the Court of Appeals for his three year tenure.

He argued that looking to the nature and purpose of the public accommodations laws, it was clear that their result was the "removal of a property right which formerly existed and the substitution of an affirmative personal right." As a result of this "fundamental change in the law", the prior convictions were clearly repugnant to present legislative policy, and should be reversed.

Although Oppenheimer failed to persuade his colleagues in October 1964, by the following spring, his arguments won out. The judgments were reversed by the Court of Appeals in April 1965, on a motion for rehearing. The Court failed to give any written explanation for why it reversed itself, and Bell himself offers no suggestion. But, University of Maryland Professor of Law David Bogen notes that by 1965, the court's earlier decision was "clearly against the tenor of the times." In agreement with this assessment is Juanita Jackson Mitchell, who says the Court just realized that "it was ridiculous" by that time not to reverse the convictions.

Whatever the reasons, Bell jokes, as a result of the Court's final say in the

matter, "I'm no longer a convicted misdemeanor."

Given the fact that he instigated the matter, and that his name is now enshrined in a case on what was then a very timely civil rights issue, does Bell consider himself a civil rights activist?

Bell reacts to the question as if it is the first time he has ever thought about it, pauses briefly, and then characteristically responds precisely and clearly: "I guess I was one of those people in the forefront at the time. But, that is not to say that I" was one of the main activists of the time.

Bell admits that his Hooper Restaurant activities were not merely a youthful adventure undertaken on a whim. "I realized at the time what we were doing. I was quite familiar with the use of sit-ins."

But he is clearly uncomfortable being compared with the more famous activists of the 1960s. "I don't want to suggest that I was never concerned with the movement; but, I was not as deeply involved as many others around here, such as Bob Watts [Judge Robert B. Watts]."

Adds Bell, "But I have always been concerned with civil and human rights issues."

Interestingly, others involved in *Bell v. State* have been, and will continue to be, his colleagues as a State judge. Representing the State in the appeal initially was Assistant Attorney General, and now Maryland Court of Appeals Associate Judge, Lawrence F. Rodowsky. When the case was remanded to the Court of Appeals, representing the State was then Deputy Attorney General, now Chief Judge, Robert C. Murphy.

As Larry S. Gibson, another University of Maryland Law Professor, notes, "it just shows that time changes things."

Relatively speaking, Bell's subsequent activities in college and law school were not as noteworthy.

Harvard Law

Graduating from Dunbar, he enrolled at Morgan State University in 1961, but before completing his freshman year, was forced to withdraw because of a case of tuberculosis. Bell now describes his health as "good."

His health restored, Bell returned to Morgan in 1963. Declaring himself a history and political science major, he became involved in a number of campus activities, eventually serving as student government president, and chief justice of the University's dormitory court.

Graduating second in his university class, Bell next moved onto law school, something he says he had planned to do for many years. When it came time to choose where to enroll, Bell says he based his choice in good part on a conversation he had had with a then-rising Maryland political star: Paul S. Sarbanes, now a U.S. Senator.

"Sarbanes told me the best place to go to law school then was the Boston area." So, Bell applied to Harvard, Boston University and Boston College. Accepted by all three, he chose Harvard, and graduated from there with a "B" average in 1969.

After graduation, Bell returned to Baltimore to work for Piper & Marbury



David Hoffman

JUDGE ROBERT M. BELL
The newest member of the Maryland Court of Special Appeals.

(P&M), the firm that he had clerked for during the summer prior to his last year in Cambridge.

Bell remained an attorney with P&M for six years. Most of his work apparently involved general corporate matters: real estate deals, labor negotiations, and related projects for the firm's high-paying clients.

The only litigation the future judge ever handled, he says, came through P&M's neighborhood clinic, a unique outreach program the firm operated.

"Piper and Marbury has always been very progressive," Bell says. "They have always been leaders of law firms in developing an outreach for the poor and disadvantaged, and in ensuring that all persons . . . get an opportunity to have legal services."

The clinic would take cases much like the Legal Aid Bureau does today: clients might pay for the services they received, but often not as much as they would have paid other private law firms. "It was essentially pro bono work," Bell explains. Besides running the office, located near the Johns Hopkins University, Bell was exposed to many different types of litigation matters: housing, consumer, guardianships,

and to a much more limited degree, criminal matters, all of which would provide him a good base for his move from private practice to the judiciary.

Joins the court

Becoming comfortable with his life as a corporate lawyer, Bell says he did not consider applying for a State judgeship until friends and colleagues started to him ask why he had not applied. "I listened to their appeals, and then decided to make an application for a position on the district court." Bell's application was favorably reviewed, and he was appointed to the district court in 1975, where he remained until January 1980.

Before going on that bench, says Bell, "I had a pretty good idea about how that court operated." And, he adds, "I was pleased to join a court that had such an important" role to play in communicating to Maryland citizens how the State's judicial system operated.

Because most citizens' only contact with a court will be at this lowest trial level, Bell says, it is crucial that things operate smoothly and properly there. "If

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Keeping the Special Appeal 'Bells' straight

A small problem developed when Robert M. Bell was appointed to the Court of Special Appeals. Because he and fellow CSA Judge Rosalyn B. Bell share the same last name and first initial, there was some potential for confusing the two jurists.

This would particularly be the case, says CSA Clerk Howard E. Friedman, when a three-judge panel was listed on an opinion; usually the panel is referred to by the judges' last names. For example, on an opinion filed earlier this month, the panel was listed as "Wilner, Bishop and Garrity." No chance of confusing those three. But, how about "Bell, Wilner, Bishop"? Which Bell was on that panel?

To ensure that there's no confusion, Friedman says, the Bell judges will be noted on an opinion by either their first name, or by both their first and middle initials. Friedman says this is the first time in his fourteen years of working for the court that something like this has happened.

And, he suggests, some jokes are sure to come out of all of this. Like this one from Friedman himself: "sitting on one panel last week were Judges Bell, Karwacki and Bell. Rings a bell, doesn't it?"

—Kenneth Karpay

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there are problems at that level," he explains, then "people leave the court with the presumption" that there are problems with the courts on all levels of the State's judiciary."

Leaving this important court in January 1980, Bell was appointed to the Circuit Court for Baltimore City by Governor Harry Hughes, and was granted a fifteen year term by the voters in a Baltimore election, running ahead of a host of other judicial incumbents during a 1980 campaign in which challenger, black lawyer William H. Murphy, Jr. reportedly urged black voters to "vote black".

Bell says the transition to the circuit court was interesting. "The people contact remained," he says, but some of the cases became more difficult due to the circuit court's different jurisdiction.

Juvenile court

For almost five years Bell sat on the circuit court, hearing a variety of cases, including criminal and civil matters. Just before he left the circuit court, he was given one last bench assignment by then-Administrative Judge Robert L. Karwacki, now Bell's colleague on the CSA: serve as the juvenile judge for the City Circuit court. It was a task Karwacki says Bell handled very well.

Bell would hear juvenile delinquency, CINA (children in need of assistance) and other juvenile matters. It was an assignment he says he took quite seriously, and an assignment for which he received high grades from the attorneys who appeared before him.

"One of the best judges I've ever seen," is how Assistant Public Defender Kent L. Greenberg, a member of the Maryland bar for three years, describes Bell. "I was appearing before him almost every day for five months," Greenberg explains, "and I would have to say that he is the epitome of what a judge should be: very intelligent, very efficient, very competent, and very fair, by which I mean he would listen."

Greenberg says that although Bell's strict approach to juvenile delinquency did not always result in his clients going free, he emphasizes that Bell "was fair." Of Bell's appointment to the CSA, Greenberg says, "it was fantastic, although I'm sad that we're losing him" in the circuit court.

Other lawyers practicing before Bell during his most recent assignment also grade Bell highly.

"Judge Bell brought more order to the juvenile court," explains Department of Social Services Staff Attorney O'melia V. James. "He was strict with attorneys, enforcing time limitations," and strived to correct at least one abuse developing in that court.

"Many of the juvenile masters," she says, began to give conflicting interpretations of relevant statutes. "For a while, there was no one opinion on some statutes, and if you could get in with one master, you could often get the result you wanted."

To stop this forum-shopping, and clarify developing ambiguities, James says Bell began rendering general opinions on many of these matters.

James too is highly complimentary of Bell's intelligence and judicial behavior. He "belongs on the appellate level, so that his talents" will be better used, she adds.

Although Bell served in the juvenile court for less than half a year, it is worth further exploring his role there.

On the bench

It is 10:00 A.M., and Judge Robert M. Bell is sitting on the circuit court bench for his last day. To his right is fellow Judge David Mitchell, who was to take over as Baltimore City juvenile judge when Bell was sworn in the next day.

The courtroom is small and crowded. Juveniles, their parents, guardians and attorneys, as well as other witnesses, wait to testify in delinquency and foster care matters. Bell spends some time reading reports given to him by a state prosecutor, a probation officer and the youth's attorney, a public defender. At least some of the materials are records on the youth's past record and on his behavior during a stay at a delinquency training school.

On one of the courtroom walls hangs a poster entitled "Children Learn What They Live", which sets the scene for what is about to happen. It reads, in part:

*"If a child lives with hostility,
He learns to fight;
If a child lives with fairness,
He learns justice;
If a child lives with approval,
He learns to like himself."*

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During one hearing, a fourteen year old white male tells Bell that he believes he should be allowed to leave training school because "I think I've learned my lesson."

Bell, however, appears unconvinced. "Didn't you say that once before to Master Grady?" he asks the teenager. "Don't you understand that you have to earn some things? I've read the report, and it doesn't indicate that you've learned some things."

Concerned that the young law offender would develop disrespect for the court system, Bell continues: "Have you ever heard about the child who called 'wolf,' and no one responded because he called it all the time," Bell asks rhetorically. "So, it had to be demonstrated to him. Actions speak much louder than words."

After being interrupted by the youth's lawyer, an Assistant Public Defender, Bell goes against the lawyer's request to release his client.

"I continue to feel that there are times when you have to do more than speak. . . . I could do more harm than good if I released you now. . . . The burden is on you to *earn* your release," Bell says in a slow but emphatic manner, directing his comments to the youth.

In a second case that morning, Bell does allow a seventeen year old youth to remain out of the training school, but only after issuing characteristically strong words.

"Why should we continue probation," Bell asks the youth's attorney, "when he hasn't complied with probation? What kind of message am I sending? My point is that I've told him the consequences, and he continues to violate the conditions of probation."

"But, Judge," the Public Defender lawyer responds, and goes on to argue the special circumstances of this case: the youth's mother is partially incapacitated, so he not only helps her take care of his younger brothers and sisters, but also works on Saturdays and for four hours after school. In fact, three days of his school absence was due to his mother's illness. "I kept him home," she says to Bell.

Bell eventually allows this breach of probation to go unpunished, but not before issuing this stern lesson:

"I said probation means 100% compliance," Bell says, staring seriously down from the bench. "Did you think I was just talking to hear myself talk? Why should I now go back on my word?" Bell appears to cast aside the public defender's argument for leniency, an argument built around the idea that her client is but a child: "You are seventeen. You're not far from being an adult. . . . Why should someone hold your hand and walk you through life?"

Then, perhaps directing his comment to the attorneys who have appeared before him many times over the past months, Bell thoughtfully notes, "the problem I often have with these cases is that we make excuses for these kids." In the end, Bell says, by doing that, "we are really *not* doing them a favor."

A FEW DAYS LATER, during a *Daily Record* interview, Bell emphatically rejects a suggestion that much of what goes on in the juvenile court is theater for the sake of the offending juvenile.



Bell's (L) selection as a CSA judge by Governor Harry Hughes (R) was one appointment many court observers expected.

"No, I honestly believe that what is necessary is for them to understand that there are rules and they must be complied with."

Bell agrees that there is a national problem with juvenile delinquency, and that it apparently is getting worse. How to mitigate the situation? Bell, like many others involved in the juvenile system, does not know. But, many different factors Bell points to may shed light on an answer.

Many of the juveniles he has seen cannot read or write, but their test scores indicate they are smart — street smart. And, he says, the families these juveniles come from "have an inability to understand how to control their child's behavior." Finally, he says, many of these young adults are poor, and also lack adequate role models.

"Sad and frustrating" is the way he describes the C.I.N.A. cases he heard for almost six months. "These cases are very difficult, because there is a very difficult balance between keeping these families together" and dealing with the problems that brought the family into court in the first place.

Does Bell think today's C.I.N.A. is tomorrow's delinquent? "Some kids are abused and become abusers," he says. But others come out of it very well. "The connection is not yet all that clear."

To his successor on the juvenile bench, Bell offers straight-forward words of advice: develop a particular approach to matters before him, and be consistent with it. "That's very important for the juvenile court. . . . Let the juvenile know that the court is going to hold them accountable for their actions. That if they don't do what they are

suggested to do, then the court will have something to say about it."

Now for his own transition to appellate court judge, after almost ten years in the trenches of the State's trial courts, Bell has been offered this advice by other judges: don't get behind, and don't hesitate to ask other judges when you have a particularly difficult case. "But," he says, "as to specific suggestions, no, they haven't told me anything."

He acknowledges that he is excited about going from the game referee to someone who will resolve conflicts that have already been fought out.

November '86 election

Bell will spend most of his time still in Baltimore, traveling to Annapolis for CSA conferences about four to five times per month. Besides his court work, the judge occupies some of his time doing light reading — mainly mysteries — and watching sports on T.V., although he says he does not like to attend many games. "I used to like the Bullets," but says he won't travel to the Capital Centre, "as a matter of principle since they moved from Baltimore, and because I don't like the ride to Largo."

When in Annapolis, Bell might be more easily discernible than most of the other judges. This past June, he was listed among the "Best Dressed" in Baltimore by *Baltimore Magazine*. Of that honor, Bell, who is unmarried, jokingly says, "I didn't really think it was a big deal. You'll never see it on my resume."

Bell's appointment to the court by Governor Harry Hughes was less than a surprise among many court observers. He had been one of two black applicants for Mason's seat, an at large position on the court; instead that appointment went to Judge Rosalyn B. Bell (see sidebar for related story). When Bell applied again for the Liss vacancy, representing the Baltimore City Appellate Judicial Circuit, many lawyers believed the accomplished and respected judge's selection was an almost fait accompli.

As a newly appointed appellate court judge (subject to advice and consent of the State Senate), Bell must run for a full ten year term of office in 1986. Among those who know him, there is little doubt that by then his reputation as a firm, intelligent and fair judge will be entrenched on the CSA.

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