

Top judge holds court

Bell: Known for his brilliant legal mind and his eloquence, the state's top jurist found himself at the center of a controversy over the city court system.

HIS credentials are impressive. First, he went from Harvard Law School to Piper & Marbury. Then he worked his way up through the judicial ranks from District Court to Baltimore Circuit Court to the Court of Special Appeals. Then, in 1996, he became the state's top judicial officer when he was named Chief Judge of the Court of Appeals of Maryland after sitting on the state's highest court for about five years.

Meet Robert M. Bell, a civil rights pioneer who in 1960, when he was just 16 years old, struck a blow at segregation by walking into a Baltimore restaurant and asking to be served. Bell's conviction for trespassing sparked a legal battle that went all the way to the U.S. Supreme Court.

Bell's friends say he has a brilliant legal mind and a silver tongue. But, recently the state's top judge has found himself in much the same fix as Albert Belle, the Orioles' mercurial slugger, who draws boos from some fans no matter what he does.

Bell and Chief District Judge Martha Rasin drew heat after they resisted a push to have a full-time district judge assigned to the city's Central Booking and Intake Center. Baltimore Mayor Martin O'Malley maintains that the judge is a necessary "reform" that will prevent clogging in the courts.

Bell says the plan needed study by the Criminal Justice Coordi-

nating Council, which forged an agreement that could put a judge in place by July 1. Bell says the process worked just as it should have, and he doesn't understand why he was cast as an "ogre." Reforms? Actually, none was made, Bell says. The Circuit Court's problems were being addressed, and the District Court was working fine. Bell shared his views during an interview with Perspective Editor Mike Adams.

Baltimore's court system has been stung by disclosures that cases were bungled, defendants in murder cases walked free because they didn't get speedy trials, and the mandatory sentence law was not being enforced for gun crimes. Have these problems been fixed?

A number of those problems are not really judicial issues. We are a part of the criminal justice system, we're not the head of it; we don't con-

trol every aspect of it.

Let me go back to 1998 when there were revelations about the dismissal of cases for the lack of a speedy trial, and there was an issue about how backlogged the system was. And there *was* a problem.

In my Jan. 26, 1999, State of the Judiciary Address, I spoke about the backlog and the the speedy trial situation in Baltimore City. I outlined what was going to be done to correct that situation. Judge [David B.] Mitchell, chief of the criminal docket, had a very definite plan to change the culture that created the postponement problem. It had to do with re-instituting the move list, it had to do with putting into play four retired judges who would work on the oldest cases first to reduce the backlog. It had to do with centralizing the arraignment process because one of

the problems was that we had decentralized it. Every court was doing arraignments, as opposed to one or two, which had been the way it was done in the past. We got a handle on that situation very quickly. I thought it was necessary that there be cooperation and coordination among the various members and aspects of the criminal justice system. That gave rise to the reinstatement of that coordinating council which has been in place since February or March of last year.

The backlog situation is well in check. The postponements were dramatically down. The cases in the system had been reduced tremendously. We were able to dispose of more cases in 1999 that had been filed by the prosecutor. That was the first time that had been done since 1995 or 1996.

Is there room for improvement? Of course. But we're trying to do justice and not just dispose of cases arbitrarily just to get rid of them. We've got to make sure that the process is not just fair, but it appears to be fair as well.

Charging is not a judicial function, that is a prosecutorial function. You will not find any case where a judge has refused to impose a mandatory sentence that has been properly requested and notice given of. If a judge doesn't do that, that judge is subject to having that decision reversed.

On Wednesday, a jury acquitted three men whose murder case came to symbolize all that's wrong with the city Circuit Court. The case was dismissed last year when a judge ruled that three years of postponements had denied the defendants a right to a speedy trial under state law. Then the decision was reversed, and they were retried, but one witness recanted, one died and evidence got lost. What would you say to the family of the victim, Shawn L. Suggs?

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First, my heart goes out to the family of Mr. Suggs. I am impressed with the reaction of Mr. Suggs' father; it is a very healthy one, indeed. To him, I reiterate that the Circuit Court has done much already to ensure that cases proceed to trial more quickly, that the requirements of the rule and statute governing the speedy trial of cases are met. Having said that, we must be careful not to condemn the entire criminal justice system, or characterize its health, on the basis of the outcome of one case.

Cases like this case occur every so often, unfortunately, and when they do, they provide wake-up calls, a point of assessment, requiring us to rethink our approach. That is exactly what happened in this case. The result in this case at the trial level, whether right or wrong, focused our attention on whether there was a need for a different approach, and perhaps additional resources, to be devoted to the resolution of criminal cases in the city courts.

It appears that Mayor O'Malley has been successful in his campaign to get a full-time judge in central booking. Will that help the situation in Circuit Court?

I can only tell you what I've been told and what I've read. And the theory is that you get rid of "minor cases," however you define those, and that then frees up judges to try the more serious cases and give more time and attention. I don't know what the impact will be at the circuit level.

I do know that the issue of whether the judge ought to be there is an issue that was determined by a process that we have always favored, that we've always asked to be followed. Well, that process is the coordinating council process.

From its inception, a Circuit Court judge has been assigned to [Central Booking]. In March of 1999, we agreed to put a District Court judge there two days. Now, they handled some very limited matters at Central Booking. There were some pleas, but not a whole lot of them. But during that year, that [District Court judge's] presence expanded to four days. ... The judge was not there eight hours a day, of course, because there was not a caseload to keep the judge there. ...

The first reason a [District Court judge] was put in Central Booking was to reduce bed days [incarceration time]. Reducing bed days saves the corrections sys-

tem money. ... [O'Malley's plan] does not relate to reducing bed days as much as disposing of cases. There's been a shift, and that's all the more reason why you have to think about what you're doing.

Speed is fine, but that's not all there is to a process. There has to be *due process*. ... We cannot be perceived as being a part of any other part of the system other than the judiciary. And the judiciary is an independent branch of government. Our purpose is to ensure that the process is fair, that the people receive what the Constitution promises. So to the extent that anybody says we are obstructionists, it's because we have a constitutional imperative to do what we do. We cannot just jump on the bandwagon or do what is politically expedient.

If this expedited process is to work efficiently, it almost certainly means that many defendants will have to plead guilty in return for plea bargains. Do you see that as a potential threat to the due process you want to protect?

Judges have a responsibility to ensure that what they do or the decisions they make don't shock their own consciences. I'm satisfied that our judges will accept only those agreements that they feel comport with... and they're going to do it in such a way to ensure that the person is not being pressured, that the person is acting voluntarily, and that's what the Constitution provides for.

Is there a chance that people might be enticed, rather than pressured, into taking a plea bargain? It might make sense for them to plead guilty in exchange for a slap on the wrist for something they didn't do rather than fighting the charge.

That's a danger. But that's what the process of qualifying that person is all about, making sure that the person's plea is freely and voluntarily given. That's the purpose of making sure that there is some statement that justifies the plea itself. You can't just say, "I plead guilty." There must be some dialogue between the judge and this person, or the lawyer and this person, which demonstrates to the judge that this person is acting freely and voluntarily without being coerced. In addition, you must have a factual basis for the plea. Only if those things coalesce will

the judge accept the plea. ... I know our judges won't feel pressured into making a deal simply because, at the end of the day, you're going to end up with X amount of people released.

The public perception is that there was foot-dragging concerning the decision to put a District Court judge in Central Booking five days a week. True?

I cannot and will not, nor will [Judge Rasin] or any other judge, have someone put on the table an outline, and say, "we ought to do thus and so," and then we will just accept that without looking into it, without investigating it, without thinking about it, without looking at it in its fuller context and its impact on what we do, how we do it and why we do it. That's what we were doing.

I don't think anybody can legitimately accuse the judiciary of being uncooperative. We are extremely cooperative. ... But we will not accept blindly an idea, called "reform" or called anything else, until we are satisfied that it does, in fact, fit within the construct which is our justice system, and it is something we can legitimately do and still fulfill the obligations placed upon us by the Constitution.

Yes, the process worked, because what happened was, the point that was made was, send this idea through the coordinating council. That's what I told Mayor O'Malley from the very beginning, that's what Judge Rasin said to him and that's what has happened. When the issue was presented to the coordinating council, a subcommittee was set up to look at this idea, and despite the fact that we never really received any detailed plans, that subcommittee was able to look at what was intended and come up with something that makes some sense.

When somebody says, "I've got a plan, accept it," that's not cooperation. That's called mandating something. And the judiciary cannot be mandated to do things when it has not been demonstrated to be the appropriate thing to do consistent with our mission.

When Mayor O'Malley presented his proposal that included stick figures, was the problem that it lacked details?

That was the issue. I understand what the concept is, but how does it work was really the key piece of it. So, we were looking for something more than a concept; we were looking for a plan.

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What was your reaction to the stick figures?

I'm not going to get into that. I'm not going to get into that. I'm really not going to get into that. You will recall I never commented on it one way or another, and I'm not going to start commenting on it now.

You say the judiciary was always willing to cooperate, and you made that known. Yet, on Feb. 11 O'Malley asked state legislators to withhold money for the city courts because they were "dysfunctional" and the system was clogged, it just didn't work. What was your reaction to that? Did you have any idea that was coming?

No. In fact, I was there that day, having been called to report on the progress we'd made on the backlog, the trial delay issue. ... And we did that, and those reports showed tremendous progress. In fact, that's what I reported to them, and I pointed out some of the progress that was made.

So, we were very happy with the progress that had been made. And then to hear that was a little bit disconcerting, particularly because this concept had been presented to the council for discussion two days before. And at that point, a subcommittee had already been appointed. So, it was never our decision not to consider the concept.

I was a little bit disappointed that [O'Malley's call to withhold money from the city courts] happened within that time frame without there having been an opportunity for the process to work. What I got was the impression that cooperation is not what was being asked for; it was something else. We were supposed to blindly adopt something.

What was there to adopt if the mayor did not have a plan, just a concept?

That's my point. We were supposed to go on board without knowing how this concept would work, or even having the details of how it would work. ... I guess when you get right down to it, this last episode demonstrates the danger of politicizing an issue.

Nobody wants the process to work less than efficiently, but the people who can make it work are those people who are on the ground, who work with it every day, and if they are allowed to address their own problems without the glare of the media or without having politicians looking over

their shoulders, I think we would see a lot more progress being made. We won't hear about it, but we don't need to hear about it. If progress is being made and the system is more efficient, I think we're all better off.

Does the move to expedite cases at Central Booking have more to do with the zero tolerance policing that Mayor O'Malley favors than addressing an existing problem? The police will be making more arrests, and those cases will need to be moved through the court quickly.

I can't say that. I don't know ... nor is that really important to me. The truth of the matter is that the judiciary has got to respond to whatever the executive does in terms of creating the cases. The philosophy that underlies it is not something that I feel equipped at this point to talk about.

Is the system dysfunctional?

The fact that somebody can talk about dysfunctional systems doesn't do very much to change the system. It is what you do once you sit down and focus in on it that makes the difference.

I haven't seen any figures showing a dysfunctional system yet. I haven't seen the figures that show the clogged system. I can appreciate that there is a way to improve the processing of cases, but I am not prepared to admit that we have a dysfunctional system. I have never been prepared to admit that we have a dysfunctional system, particularly since we've been able to put together, at the Circuit Court level, where the real focus was, we were able to put together a course of action that resulted in dramatic decreases in those problem areas.

I have heard a lot of people say "dysfunction." I've heard a lot of folks talk about clogged, but I haven't seen any cases or any demonstration, by those folks who say it's dysfunctional, why it's dysfunctional.

But you conceded earlier that there were problems in the Circuit Court.

Oh, sure, I have no trouble with that. In fact, we can always improve the system. Every case that's in your system does not make it a backlog. There are a certain number of cases that you must have; that's your inventory. And only at some level do you meet the clogged

level. We have been reducing the cases awaiting trial. We have reduced the postponements, we've got a handle on our caseload. Now that's at the circuit level. The district level is now what's being focused on as being clogged, being dysfunctional, I assume.

I don't have any statistics showing that the District Court is not disposing of their cases in a reasonably timely fashion. We've had some problems with traffic cases years ago, but that's been dealt with. But I hear "dysfunction" and I hear "clogged," but I have not seen the statistics that show me where the dysfunction is and where the clogging is.

How did the problem in Circuit Court arise?

Mismanagement. ... We had slipped into a situation where postponements were being granted almost for any cause. ... When I was on the Circuit Court, we had a move list. Instead of granting a postponement in cases that were older, you put the case on the move list so it could move to the courts right away. But in order to be effective, you had to have a move list that was manageable, 10 or 15 cases. We'd gotten to the point where the move list had huge numbers. It really did not mean anything.