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ROBERT MACK BELL: LEADERSHIP, LAW, AND PUBLIC POLICY IN MARYLAND

LENNEAL J. HENDERSON*

Chief Judge Robert Mack Bell was both a product and a driver of his times. His work, impact and legacy as Chief Judge of the Maryland Court of Appeals represent a vivid and dynamic study of the socialization, brilliance, and leadership of a scholar, jurist, policymaker, and administrator. If socialization is defined as the continuing process whereby an individual acquires a personal identity and learns the norms, values, behavior, and social skills appropriate to his or her social position,[1] then Chief Judge Bell experienced one of the most unusual, exceptional, intense, and thorough socialization experiences of anyone of his generation.

Like so many families described in Isabel Wilkerson's epic *The Warmth of Other Suns*,[2] Bell and his family moved from the South to cities in the North. His family moved from Rocky Mount, North Carolina "north" to Baltimore, Maryland when Bell was a boy. Less than 400 miles north of his birthplace, Baltimore would become Bell's educational and legal laboratory and the venue of major civil rights events, victories, and leadership that would influence and stimulate the young Bell.

Even before graduating from Dunbar High School in Baltimore on June 17, 1960, Bell and eleven other students sat-in at Hooper's Restaurant at the corner of North Charles and Fayette Streets. Despite the restaurant's policy to deny service to "negroes," the twelve high school students sat down in the restaurant resulting in their arrest in conviction for misdemeanor trespassing.[3] Bell himself indicates that he had minimal consciousness of the significance of his ac-

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1. COLLINS ENGLISH DICTIONARY (10th ed. 2009).

2. ISABEL WILKERSON, THE WARMTH OF OTHER SUNS: THE EPIC STORY OF AMERICA'S GREAT MIGRATION (2010).

3. Bell v. Maryland, 378 U.S. 226 (1964).

tions at this point in his life, but something within him recognized the injustice of this situation and the imperative of action.[4]

Bell and his brothers in protest were convicted in the Circuit Court of Baltimore City and fined $10.00 each. Eventually known as *Bell v. Maryland,*[5] Bell and his colleagues appealed the conviction to the Maryland Court of Appeals. Juanita Jackson Mitchell and Thurgood Marshall represented these young appellants who argued that use of the state's trespassing laws to enforce racial segregation in public accommodations violated the Fourteenth Amendment to the United States Constitution. On January 9, 1962, the conviction was upheld by the very same Maryland Court of Appeals Bell would lead thirty-five years later.[6]

Subsequently, Bell appealed to the Supreme Court of the United States. Bell was represented by legal legends Constance Baker Motley and Jack Greenberg. The Supreme Court pondered whether to issue a ruling in the case but, noting that in the intervening period between Bell's conviction and the Supreme Court appeal, the Maryland General Assembly had enacted a public accommodations law, the Court was silent on the matter of whether the state's trespassing laws could be invoked to exclude African Americans from public accommodations such as restaurants.[7] The Court did vacate the decision of the Court of Appeals to allow the court the opportunity to apply the state law ex post facto to Bell and, by doing so, to reverse his conviction. Bell's conviction was eventually reversed in 1965 when he was a junior in college. Ironically, the Civil Rights Act of 1964—passed the previous year—had already banned racial discrimination in public accommodations, including restaurants. The trial, however, allowed Bell to observe the actions, processes, structure, and leadership of Chief Justice Earl Warren and the work of Associate Justices Hugo Black, William O. Douglas, Tom C. Clark, John M. Harlan, Byron White, and Arthur Goldberg.[8] Thus, between ages sixteen and twenty-one, Bell had already acquired an unusual and in-depth education in the law and the reputation of an activist.

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4. McKenzie Webster, Note, *The Warren Court's Struggle With the Sit-In Cases and the Constitutionality of Segregation in Places of Public Accommodations* 17 J.L. & POL. 373 (2001).

5. 378 U.S. 226 (1964).

6. 227 Md. 302, 176 A.2d 771 (1962).

7. *Bell*, 378 U.S. at 228.

8. In Bell's case, the majority included Justices Brennan, Warren, Clark, Stewart and Goldberg with a concurrence by Justice Douglas. *Id.* at 227, 242. Dissents included Justice Black joined by Justices Harlan and White. *Id.* at 318.

Reminiscent of the five cases comprising the landmark *Brown v. Board of Education*,[9] decided on May 17, 1954, *Bell v. Maryland* was one of five cases involving segregation protests decided on June 22, 1964. The other four cases were *Griffin v. Maryland*,[10] *Barr v. City of Columbia*,[11] *Robinson v. Florida*,[12] and *Bouie v. City of Columbia*.[13] In none of these cases did the Supreme Court reach the merits of any argument addressing whether private actions of segregation, which are enforced by state courts, constituted a state action that violated the Equal Protection Clause of the Fourteenth Amendment. These decisions were announced two days after the Senate ended a filibuster and passed the bill that would become the Civil Rights Act of 1964,[14] which outlawed segregation in public accommodations. It has been suggested that the Supreme Court refrained from reaching the merits in these cases in consideration of the pending Civil Rights Act; had it done so, it may have eliminated the basis for passing the legislation.[15]

While *Bell v. Maryland* wound a tortuous path through the thickets of judicial and legislative process, Bell was witness to another momentous development in civil rights in Baltimore in 1963: the integration of Gwynn Oak Park.[16] This development occurred almost parallel to preparations for, and the convening of, the Great March on Washington for Civil Rights on August 28, 1963. Gwynn Oak Park was opened only to whites in 1963. On July 4, more than 300 people assembled at the Metropolitan United Methodist Church in West Baltimore under the leadership of the Congress of Racial Equality, the Maryland Council of Churches, and the New York headquarters of the Campus Americans for Democratic Action. This coalition included leaders of prominence from all faiths and from whites as well as blacks. The objective was to protest racial exclusion at Gwynn Oak Park in Woodlawn, just outside of Baltimore. Like many restaurants, parks, recreation centers, and movie theaters, Gwynn Oak Park maintained a rigid "whites only" policy. Columnist Gilbert Sandler wrote:

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9. 347 U.S. 483 (1954).

10. 378 U.S. 130 (1964).

11. 378 U.S. 146 (1964).

12. 378 U.S. 153 (1964).

13. 378 U.S. 347 (1964).

14. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (1964).

15. Lenneal J. Henderson, Brown v. Board of Education *at 50: The Multiple Legacies for Policy and Administration*, 64 PUB. ADMIN. REV. 270 (2004).

16. Gilbert Sandler, *July 4, 1963, at Gwynn Oak Park: Baltimore Glimpses*, BALT. SUN, Feb. 17, 1998, *available at* http://articles.baltimoresun.com/1998-02-17/news/1998048079_1_baltimore-county-day-in-baltimore-gwynn-oak.

> Among the protesters were the Rev. William Sloane Coffin, chaplain at Yale University; Rabbi Israel M. Goldman of Chizuk Amuno Congregation; Monsignor Austin L. Healy of the Archdiocese of Baltimore; Rabbi Morris Leiberman of the Baltimore Hebrew Congregation; the Rev. Dr. Eugene Carson Blake, stated clerk of the United Presbyterian Church; the Rev. John T. Middaugh, senior minister at Brown Memorial Presbyterian church; and representatives of the National Council of Churches. The group discussed how the protest was to be carried out peacefully, and whether participants were willing, individually and collectively, to go to jail.[17]

Met by hostile bystanders when they arrived at the gates of the park, 560 police officers, led by Baltimore County Police Chief Robert Lally, cordoned off the protesters. Lally charged the protesters with violating the Maryland Trespass Act and ordered them arrested. Embarrassed by locking up so many clergymen, he said, "'As chief of police I have no alternative. The law of Maryland says they can't trespass. I can't legislate.'"[18] They were driven in school buses to the Woodlawn police station. Fortunately, Attorney Robert Watts, who later became a judge, served as counsel for the group and, although the protest continued, the tension was diffused. After Gwynn Oak, progress was made in desegregating a number of recreational centers, amusement parks, and other venues previously denied to blacks.

In August 1963, Baltimore County Executive Spiro T. Agnew convinced the County Council to create a Human Relations Commission. One of its first actions was to declare Gwynn Oak Park open to all citizens as well as to issue rules and regulations designed to discourage racial discrimination in selected public accommodations in Baltimore County.[19] Although Gwynn Oak closed in 1974 following devastating damage from a hurricane and flood,[20] the young Robert Bell was witness to another civil rights success early in his life.

Thus, as a high school and college student, Bell was intensely exposed to grassroots local and national civil rights advocacy; to the law and ethics of social justice; and to the federal, state, and local judici-

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17. *Id.*

18. *Id.* (quoting Police Chief Lally).

19. *Id.*

20. Linell Smith, *Tourched* [sic] *by the Spirit Their Lives Converged at an Amusement Park, at an Historic Moment in the Civil Rights Movement. And 35 Years Later, Each Continues to Make a Stand*, BALT. SUN, Aug. 24, 1998, *available at* http://articles.baltimoresun.com/1998-08-24/features/1998236019_1_charles-langley-gwynn-oak-wickwire.

ary and legislative processes. As part of his education, as well as his socialization, he would learn from experience the meaning of federalism in public policymaking, judicial review, legislative action, and the varied and diverse ways law enforcement and social institutions interpret and use the law. Through his experience with Juanita Jackson Mitchell, Vernon Dobson, Thurgood Marshall, Clarence Mitchell, Jr., Constance Baker Motley, and Jack Greenberg, he would also learn the meaning of courageous, interracial, interdenominational, and interfaith leadership. Aside from his parents, there is little doubt that these leaders and activists were collective mentors to the young Robert Bell. Mentoring is a vital aspect of socialization. As Professor Larry S. Gibson indicates in his book, *Young Thurgood*, mentoring, particularly in an environment of intense challenges, is fundamental to the development of talent, activism, and constructive change.[21]

In addition, as a scholar, he studied history and political science at Morgan State University (formerly College) under such academic luminaries as Benjamin Quarles, Robert Gill, and James Fleming. His studies in history would make him keenly aware of the tragedies, travails, triumphs, and trials of the African American odyssey in America, in Maryland, and in Baltimore. His studies in political science would introduce him to the dynamics of political power and the potentialities of public policy for social change and racial justice. Today, he remains an ardent and meticulous student of history and a keen observer of the use and abuse of political and legal authority. But his experience in civil rights advocacy, with local, state, and federal law, and his primary knowledge of emerging statutory and constitutional developments between 1960 and his graduation from Morgan State University in 1966, would provide a unique preparation for his legal studies at Harvard University. As the first African American from Morgan State University to attend the Harvard Law School, he would immerse himself in the study of the law and the diverse and intense intellectual and international activities of Harvard University. He brought to Harvard a unique experience and perspective. He obtained from Harvard rigorous and extensive preparation in legal scholarship and practice.

In addition to his parents, his high school, his activist and legal experience, his college, and his law school, Bell's socialization was also emotional and spiritual. He acquired the values of calm and strategic acuity in difficult situations and a penchant for evidence and da-

21. LARRY S. GIBSON, YOUNG THURGOOD: THE MAKING OF A SUPREME COURT JUSTICE (2012).

ta. He learned to communicate at levels of eloquence and impact rarely seen in any generation. He learned an axiology of fairness and decency, and a respect for appropriate process and decorum. He would acquire exceptional interpersonal skills and a talent for direct but respectful communication. And he would become a dapper dresser, not just to make a statement but to create an appropriate and unique ambience. His legal and judicial acumen certainly includes an outstanding experience in legal matters pertinent to race but extends to many other specialties in criminal and civil law.

His baptism and socialization in the politics and legalities of civil rights occurred between 1960 as a Dunbar High School student and 1969 when he completed his legal studies at Harvard. In that nine-year period, the Supreme Court would rule on *Boynton v. Virginia*,[22] a race and interstate commerce case; *Gomillion v. Lightfoot*,[23] a gerrymandering case in Tuskegee, Alabama; *Baker v. Carr*,[24] the "one man, one vote" case in Tennessee; *Engel v. Vitale*,[25] the school prayer case; *Schneider v. Rusk*,[26] a case on the rights of naturalized U.S. citizens; *Griffin v. County School Board of Prince Edward County*,[27] on the closing of the public schools to avoid integration; *Reynolds v. Sims*,[28] on one-man-one-vote in state senate elections; *Malloy v. Hogan*,[29] applying the Fifth Amendment right against self-incrimination to state as well as federal courts; *Escobedo v. Illinois*,[30] on the right to remain silent following arrest; *Cooper v. Pate*,[31] on the rights of prisoners to have standing to sue in federal courts to address grievances under the 1871 Civil Rights Act; *Beck v. Ohio*,[32] on the issues of probable cause and searches incident to lawful arrest; *McLaughlin v. Florida*,[33] striking down anti-miscegenation laws aimed at preventing cohabitation of interracial couples; *Heart of Atlanta Motel, Inc. v. United States*[34] and *Katzenbach v. McClung*,[35] both on violations of civil rights in interstate commerce;

22. 364 U.S. 454 (1960).
23. 364 U.S. 339 (1960).
24. 369 U.S. 186 (1962).
25. 370 U.S. 421 (1962).
26. 377 U.S. 163 (1964).
27. 377 U.S. 218 (1964).
28. 377 U.S. 533 (1964).
29. 378 U.S. 1 (1964).
30. 378 U.S. 478 (1964).
31. 378 U.S. 546 (1964).
32. 379 U.S. 89 (1964).
33. 379 U.S. 184 (1964).
34. 379 U.S. 241 (1964).
35. 379 U.S. 294 (1964).

Miranda v. Arizona,[36] on the right to remain silent and self-incrimination; *Whitus v. Georgia*,[37] on racial discrimination in jury selection; and *Loving v. Virginia*,[38] prohibiting state statutes banning interracial marriage. In this same nine-year period, the vigorous civil rights protests and strategies, the lobbying of Clarence Mitchell, Jr.,[39] and the leadership of President John F. Kennedy, President Lyndon Baines Johnson, and Congressman Adam Clayton Powell as Chair of the powerful House Education and Labor Committee,[40] produced a torrent of unprecedented statutory activity on or related to the civil rights of citizens. These included the Civil Rights Act of 1960,[41] on voting rights in the South; the 1962 Manpower Development and Training Act;[42] the 1963 Equal Pay Act,[43] aimed at abolishing wage disparity based on gender; the 1964 Civil Rights Act;[44] the Economic Opportunity Act of 1964[45] (the poverty program); the Voting Rights Act of 1965;[46] the Housing and Urban Development Act of 1965;[47] the Demonstration Cities and Metropolitan Development Act of 1966;[48] two civil rights acts in 1968, one on fair housing[49] and the other protecting the rights of American Indians not residing on reservations.[50]

By 1969, when Robert M. Bell received his law degree from Harvard, passed the Maryland bar, and began his career at the Baltimore firm Piper and Marbury, he was twenty-six years old and thoroughly familiar with these complex and far-reaching legislative and judicial developments.[51] As a result, he was educated and trained in civil and criminal law and was familiar with the issues of administrative law so essential to the implementation of both statutes and court decisions. Even in the early 1970s, considered by many historians and legal scholars to represent a kind of backlash to the momentous and tu-

36. 384 U.S. 436 (1966).
37. 385 U.S. 545 (1967).
38. 388 U.S. 1 (1967).
39. For more information on Clarence Mitchell, Jr., see DENTON L. WATSON, LION IN THE LOBBY 88 (1990).
40. *See id.* (describing the role of Congressman Powell).
41. Pub. L. No. 86-449, 74 Stat. 89 (1960).
42. Pub. L. No. 87-415, 76 Stat. 23 (1962).
43. Pub. L. No. 88-39, 77 Stat. 56 (1963).
44. Pub. L. No. 88-352, 78 Stat. 241 (1964).
45. Pub. L. No. 88-452, 78 Stat. 508 (1964).
46. Pub. L. No. 89-110, 79 Stat. 437 (1965).
47. Pub. L. No. 89-117, 79 Stat. 451 (1965).
48. Pub. L. No. 89-754, 80 Stat. 1255 (1966).
49. Pub. L. No. 90-284, § 801, 82 Stat. 81 (1968).
50. Pub. L. No. 90-284, § 201, 82 Stat. 77 (1968).
51. *Chief Judge Bell Retires*, BALT. AFRO AM., Apr. 3, 2013.

multuous 1960s,[52] Chief Judge Bell understood that the law carried forward in such statutes as the Native Claims Settlement Act of 1971,[53] the Equal Employment Opportunity Act of 1972,[54] the first renewal of the Voting Rights Act,[55] and the efforts of newly elected Baltimore Congressman Parren Mitchell to incorporate a "minority business set-aside" provision into the Public Works Act.[56] By 1975, when Governor Marvin Mandel appointed Bell to the District Court in Baltimore at age thirty-one as the youngest district judge,[57] his socialization, activism, education, exposure, experience, and acuity were those of a much older and wiser jurist. He appreciated Baltimore's unique role in the struggle for these political, statutory, and judicial developments—exceptional preparation for his eventual role of Chief Judge of the Maryland Court of Appeals.

52. F. MICHAEL HIGGINBOTHAM, THE GHOSTS OF JIM CROW (2013).

53. Pub. L. No. 92-203, 85 Stat. 688 (1971).

54. Pub. L. No. 92-261, 86 Stat. 103 (1972) (amending section 701 of the 1964 Civil Rights Act, 78 Stat. 253 (codified as amended at 42 U.S.C. § 2000e (2006))).

55. Pub. L. No. 89-110, 79 Stat. 437 (1965) (renewed in 1970, Pub. L. No. 91-285 (1970); in 1975, Pub. L. No. 94-73 (1975); in 1982, Pub. L. No. 97-205 (1982); and in 2006, Pub. L. No. 108-246 (2006)).

56. Pub. L. No. 95-28, 91 Stat. 116 (1977) (including the Minority Business Enterprise provision, Pub. L. No. 95-28, § 103(f)); *see also* Fullilove v. Klutznick, 448 U.S. 448 (1980).

57. *Judge Robert Bell: Timeline*, BALT. SUN, Apr. 13, 2013.