Maryland Law Review

Volume 72 | Issue 4 Article 10

Reflections on a Great Dissenter

Tanya Washington

Follow this and additional works at: http://digitalcommons.law.umaryland.edu/mlr



Part of the Biography Commons

Recommended Citation

Tanya Washington, Reflections on a Great Dissenter, 72 Md. L. Rev. 1141 (2013) $A vailable\ at:\ http://digitalcommons.law.umaryland.edu/mlr/vol72/iss4/10$

This Conference is brought to you for free and open access by the Academic Journals at DigitalCommons@UM Carey Law. It has been accepted for inclusion in Maryland Law Review by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact smccarty@law.umaryland.edu.

REFLECTIONS ON A GREAT DISSENTER

TANYA WASHINGTON*

In an essay by Ronald B. Standler the significance of dissent is described thusly,

Progress is made, *not* by comfortably agreeing with... conventional wisdom, but by having the courage to say what no one else is saying and to say it with clearly articulated reasons that motivate people to change their opinions.¹

This quote captures the essence of Chief Judge Bell's important contributions to the evolution of law in Maryland and explains why his dissenting opinions have cast him as a jurisprudential visionary. I clerked for then-Judge Bell during the 1995–1996 term of the Maryland Court of Appeals, the year before his ascension to Chief Judge of the court. He was known for writing unanimous opinions as well as dissents. His impressive record of 7-0 decisions demonstrated his ability to cultivate consensus on the court. His record of dissents reflected an unwillingness to compromise justice to achieve consensus.

I interviewed for the clerkship with Judge Bell two months before graduating from the University of Maryland School of Law, and immediately following an interview with then-Chief Judge Robert C. Murphy. I was prepared. I had extra copies of my resume, a writing sample, and a prepared speech explaining why he should hire me as his clerk. At the beginning of the interview he folded his hands and leaned back in his chair and said, "I understand you've interviewed with the Chief Judge." "Yes," I replied, unsure about the direction the interview was taking. He smiled and asked, "So if both of us offer you the job which offer will you accept?" I was slightly stunned by the query, but I knew I wanted to clerk for Judge Bell. Having read some of his dissents in law school, I was excited about the prospect of spending a year working for a judge with whom I shared a common perspective on the capacity of law to improve the human condition. I answered his question honestly, and I assumed that my admission

Copyright © 2013 by Tanya Washington.

^{*} Associate Professor of Law, Georgia State University; LL.M. Harvard Law School; J.D. University of Maryland School of Law.

^{1.} Ronald B. Standler, Value of Dissent (2001), available at http://www.rbs0.com/dissent.htm.

would shorten the interview and he would immediately offer me the job. He did not. For the next 1.5 hours, Judge Bell introduced fact pattern after fact pattern, asking how I would rule in each case. After each response he would say, "Yes, that is probably how I would rule but the court might hold otherwise." I left the interview elated and exhausted. Two days later I was offered, and accepted, the position.

Though my professors had equipped me with knowledge of the purposes, utility, and importance of law, I was more than a little intimidated by the prospect of clerking for a judge who had served on Maryland courts for longer than I had been alive. I knew that it would be a memorable experience. I could not have known that my clerkship would serve as a touchstone for my career and provide the rare opportunity to work for a man who remains one of my personal heroes. On the last day of my clerkship, I was inspired to write a quote that remains on my desk and describes what I learned in my clerkship with Judge Bell: "Logic makes the law work; passion makes it beautiful; justice makes it relevant." I often reflect back on this quote and recall my clerkship. I remember that the Judge's chambers were warm and comfortable. The walls were decorated with African American artwork and pictures of family and friends, including an amazing photograph of Judge Bell in the 1970s flaunting a fierce afro and a black robe, presiding over a case in one of Maryland's trial courts. The judge's large desk was crowded with plaques and awards honoring him and thanking him for his service in the community. He regularly attended programs at schools in Baltimore and generously devoted his time to organizations focused on public service. Judge Bell was kind and respectful to everyone, without regard for their "status." Everyone was welcome in his chambers and people from all walks of life visited frequently. It was an inspiring and nurturing place to work.

At that time, the judge was still writing drafts of his opinions long hand, and I loved reading them—his beautiful handwriting and brilliant legal acumen filling page after page. In the case meetings, which were held in his office, he seemed to think and speak in paragraphs. I marveled at the encyclopedic quality of his mind—the way he recounted case names, referenced legal principles, and explained nuanced legal analysis with such ease and accuracy. He encouraged my co-clerk and me to debate with him about legal issues and judicial holdings, and solicited and valued our opinions. He was the best kind of mentor, one who invested in and expanded our intellect and our consciousness. During our conversations with the judge, no question was off the table and his answers were always full of wit and wisdom.

What I remember most about those exchanges was Judge Bell's preoccupation with the people at the heart of the cases before the court. He was passionate about how law affects real people in real ways and about its capacity to effectuate meaningful change. He focused on each decision's impact on both the jurisprudential landscape and the individuals involved, and when he believed a majority opinion distorted legal precedence or produced an unjust result, he would say, "I'm going to have to dissent in this case." Justice often requires a representative and Judge Bell frequently volunteered for the job.

The workload was heavy because, in addition to the opinions Judge Bell was assigned to write, there were those cases in which he had to dissent. His dissenting opinions clarified interpretations of the law, documented misapplications of the law, and provided a vision for what the law could and should be. These eloquent and often wounding dissents challenged his colleagues to acknowledge and address deficiencies in the law, and have inspired lawyers to craft legal arguments designed to achieve justice and equality.

Judge Bell was a taskmaster and a perfectionist. He worked hard and expected his clerks to do the same. Being assigned to his dissenting opinions was an honor and a labor of love because I understood and valued the moral and legal imperatives that motivated him to write them. One of the most memorable exchanges I had with Judge Bell was when I asked him whether we were off for Martin Luther King's Birthday. His response, which he delivered in a serious tone, was, "The best thing you can do to honor Dr. King is to come to work for me!" The courthouse was closed on MLK Day, but my co-clerk and I were in chambers at 8:30 AM, and so was Judge Bell.

In the same way his dissents distinguished him among his colleagues on the bench, so too did his style of dress. His legendary love of colorful attire destined him to sit on a court where the judges don red robes! He was always fashionably dressed in a bright yellow, blue, orange, or purple designer double-breasted suit, and I enjoyed asking him for the time just to watch him pull out the handsome, gold pocket watch he wore tucked inside his breast pocket. His generous spirit expressed through his delightful sense of humor, and his disarming and infectious laugh filled his chambers and spilled out into the hallways of the courthouse. On several occasions a fellow Harvard Law School graduate would say, "Judge Bell, I didn't know we were alumni," and he would reply with twinkling eyes and a smile, "I didn't know you attended Morgan State University." He was proud of his first alma mater and the strong educational foundation it provided

him. He would frequently remark, "Intelligence is not about how much you know. It's about how much you can learn, and you can learn anything."

Two weeks before the end of my clerkship, I attended Judge Bell's investiture and I watched with pride as he was sworn in as Chief Judge of the Maryland Court of Appeals. It was an historic moment, and it was an honor to witness it. A small part of me wondered what it would have been like to clerk for him while he was Chief Judge. In retrospect, I realize that the demands of leading the Maryland judiciary would not have allowed him to mentor me as he did. I am so grateful to have experienced Judge Bell's wisdom, compassion, activism, and passion for justice. Through his example, I learned the importance of speaking and writing the Truth as one sees it, even, and perhaps especially, when its expression is antithetical to popular viewpoints. This lesson inspires my teaching and scholarship as a law professor, and it is one that I endeavor to instill in my students and to share with my community. I congratulate Chief Judge Bell on a brilliant, accomplished, and meaningful career. Justice, Justice did he pursue!