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JUDGES // COURTS // Md COURT OF APPEALS

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AT A TIME WHEN
MOST JUDGES
ARE GETTING
TOUGH ON
CRIME, WHY IS
MARYLAND'S
NEW CHIEF
JUDGE GETTING
TOUGH ON
PROSECUTORS?

It's easy to mistake
Chief Judge Robert
M. Bell for a rebel.

At age 16, he helped organize the civil rights demonstration that led to Maryland's first anti-segregation ruling. At 31, as the youngest judge ever appointed in Maryland, he wore a long goatee, brightly colored clothes, and a thick gold necklace. And as the only African American on the state's highest court, he has penned an astonishing 56 dissenting opinions in less than six years, many of them controversial.

Needless to say, conservatives fairly panicked when the 53-year-old judge was selected to replace Chief Judge Robert Murphy in Maryland's highest judicial office last October. "He has the reputation of being a bleeding heart liberal," griped gubernatorial hopeful Ellen Sauerbrey to *The Sun*. "Judge Bell is frequently the lone dissenter who votes to return violent criminals to their communities."

PROOF

But beneath the surface, beyond the sheer volume of his dissents, Bob Bell may not really be a rebel obsessed with challenging the system.

He may be its last great defender.

SO THIS IS YOUR NEW CHIEF JUDGE, THE man who will guide Maryland's courts into the 21st century. The funny thing is, he wishes they would take a step back.

Over the last two decades, as our court system has been flooded with litigation, many judges have become lenient about judicial procedure. They believe that, in order to provide fair and speedy trials, they can't demand that every "i" be dotted and every "t" be crossed.

LET'S FACE IT, THE LEGAL PROFESSION isn't as wildly exciting as, say, professional bungee jumping. But even the dull sphere of jurisprudence has its share of intellectual daredevils, people whose ideas are ahead of their time.

People like Bob Bell.

Since Bell's first appointment to the District Court in 1975, many of his decisions have sparked public outrage. In August of 1975, just eight months into his first judgeship, Bell angered politicians and city police by dismissing a docket's worth of prostitution cases for insufficient evidence.

Then the judge upset police again in March, when a man killed his wife less than 24 hours after Bell ruled there was

And over lunches at the Horn & Horn cafeteria on Calvert Street, the young judge established himself as a first-rate legal thinker in the senior judges' eyes.

"I've learned a lot from him, and he's 25 years younger than me," says Judge Murphy, who sat on the District Court at its inception in 1971. "He has that rare quality of legal ability and common sense."

From Judge Murphy, Bell learned not only the nuances of law, but also the finer points of being a judge. One afternoon, early for a lunch appointment, Murphy stepped into Bell's courtroom to observe his friend in action. In his gown, wearing an afro and a large gold medallion imprinted with signs of the zodiac, Bell was listening to a police officer give testimony. When the testimony was over, Bell turned to the officer.

"You're a liar," Bell began. "I don't believe a word you've said." For several minutes, the young judge went on to challenge the officer's testimony as Bill Murphy watched, wide-eyed.

As soon as they were seated at lunch, the elder judge brought it up. "Bob," Judge Murphy said, shaking his head, "you just don't do it that way."

"What do you mean?" Bell asked, looking him in the eye.

"Never tell a police officer—or anyone else—that they lied," Murphy replied, suppressing a chuckle. "Simply say that their testimony is not *credible*."

Bell laughed and admitted his manner had been unprofessional, agreeing to moderate his temper. But he pledged *not* to moderate his ideals. By 1980, still wearing an afro, goatee, and the legendary zodiac medallion, Bell was nominated to run for the Supreme Bench, now called the Circuit Court. From a field of 10 candidates, the tall, lanky jurist was elected by city voters to fill the post. After half a decade of bad press and internal criticism, the victory was a much needed affirmation of Bell's ideals—proof that people had been paying attention and that they liked his unusual take on law.

Unfortunately, many of Bell's *colleagues* still did not. As he continued to advance through the ranks of the judiciary, entering the Court of Special Appeals in 1984 and the Court of Appeals in 1991, the judge found his opinions frequently at odds with—and overruled by—the majority opinion.

There was only one thing to do: dissent.

BOB BELL GREW UP IN AN EAST BALTIMORE GHETTO, SURROUNDED BY POVERTY AND DISCRIMINATION. HOW DID SOMEONE WITH THIS BACKGROUND DEVELOP SUCH FAITH IN THE LEGAL SYSTEM?

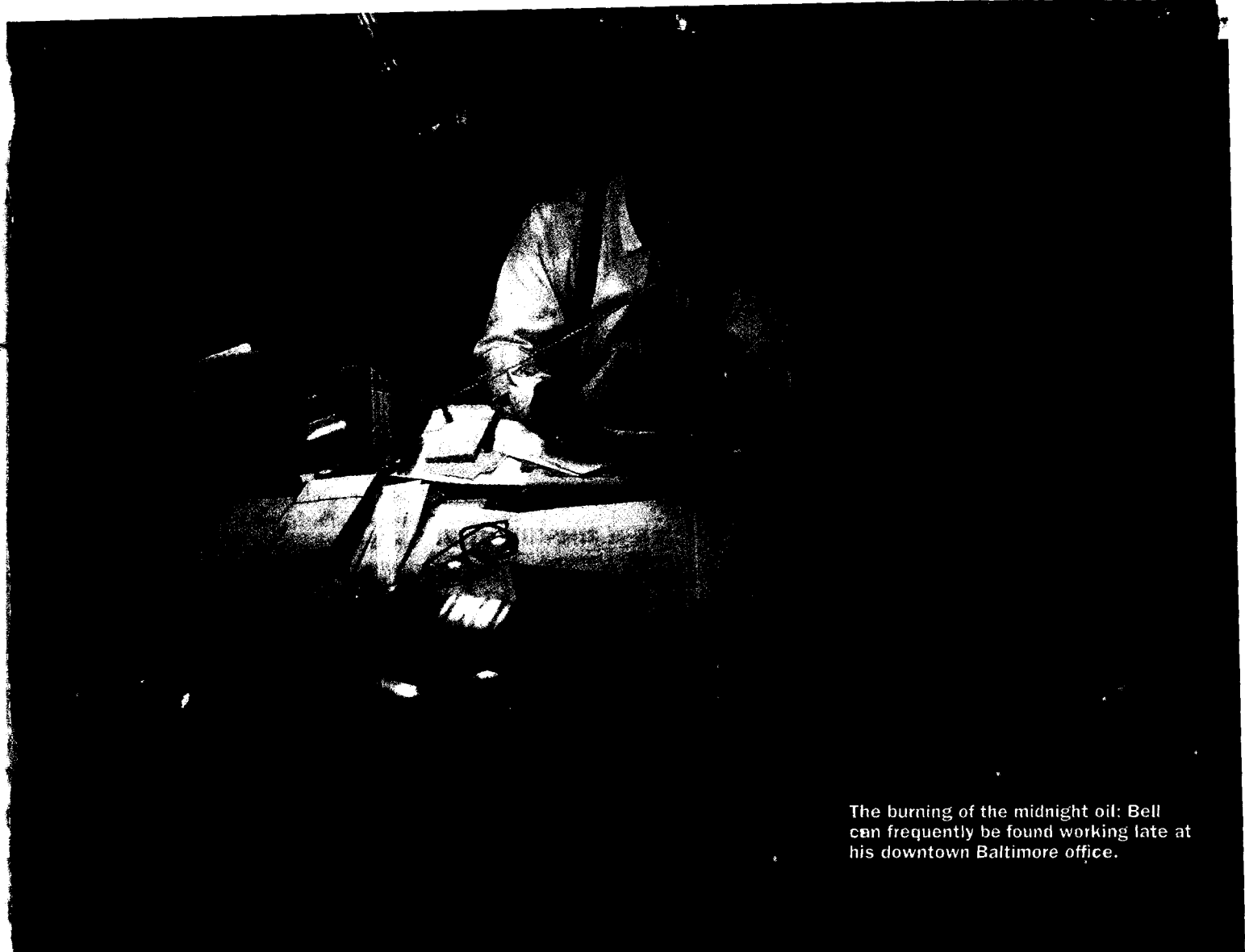
But in Bob Bell's view, judges should stick to judicial procedure no matter how busy the caseload gets. As a legal fundamentalist, he fervently believes in giving every defendant the benefit of the doubt. And that means forcing prosecutors to work within a very rigid set of guidelines. Sending someone to prison isn't *supposed* to be easy, Bell believes.

What makes this principle so sacred to Bell? And with him as the new chief judge, are Maryland prosecutors in for a long, bumpy ride?

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insufficient evidence to hold him in custody. And later that year, when Bell dismissed 12 arrests made by unlicensed security officers, he cemented his reputation as a different kind of judge—one who would be tougher on prosecutors.

It was during those years that Bell befriended judges William Murphy Sr., Solomon Baylor, and John Hargrove, all African-American judges a generation older than he. Influenced by these mentors, Bell refined his legal opinions and learned to defend them with bullet-proof clarity. Sharing chambers with Judge Murphy at the crowded District Court building downtown, Bell's judicial style was always under scrutiny.



The burning of the midnight oil: Bell can frequently be found working late at his downtown Baltimore office.

UNIQUE TO AMERICAN LAW, THE written dissent has a long history of ruffling political feathers. Since the practice began in the early 1800s, some have argued that dissenting opinions take credibility away from the court's final ruling. Besides, they say, how can a court pass more than one official judgment?

But advocates call the practice essential to democracy. They want judges who disagree with the majority's ruling to voice their opinions so that future generations can understand how an issue was decided.

For instance, Justice John Marshall Harlan's dissent in *Plessy v. Ferguson* challenged the doctrine of "separate but equal" over half a century before the rest of the bench overturned the doctrine in *Brown v. Board of Education*. And Justice Joseph Story's dissent in *Cary v. Curtis*, arguing that citizens have the right to challenge customs taxes in court, was adopted by Con-

gress and written into law just 36 days after its publication.

Bob Bell's dissents may also become mainstream one day. Though controversial, his challenge to prosecutors traces straight to the lawbooks. Criminal defendants have always been protected by stringent rules of judicial procedure. Those are the rules of the game.

And appeals judges are not expected to determine whether or not a defendant is guilty; their job is to make sure all the procedural rules were followed at the original trial. If they were not, the appeals judge is supposed to decide in favor of the defendant.

Sometimes that's hard to do. Consider the case of Michael Whittlesey: Everybody knew he was guilty. In 1982, he dragged his friend Jamie Griffin to Gunpowder State Park, smashed Griffin's head into a tree, and laughed while the 17-year-old bled to death. Police had the confession on tape.

The problem was, nobody could find

Griffin's body. So when the case went to court in 1984, prosecutors charged Whittlesey with what they knew they could prove: assault and robbery. He got 25 years in prison.

But when police uncovered Griffin's body six years later, prosecutors hauled Whittlesey back to the Circuit Court for the murder charge. And they got it. When the Court of Appeals reviewed the case, every judge on the bench affirmed the conviction. Except Judge Bell, who filed a dissent.

How could Bell vote to let the murderer off? According to Bell, he *had* to. In his dissent, Bell argued that Maryland law specifies that a murder committed during a robbery must be tried in the same case as the robbery. Since Whittlesey had already been convicted of the robbery, Bell wrote, he could not be tried again for the murder. In his dissent, Bell criticized the prosecutors responsible for the case, but he also

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criticized the majority decision, saying, "The majority does what unfortunately is done too often in heart-rending cases: It bends the rules and makes bad law."

Even Bell's closest friends sometimes question dissents like these. "He's a

case and reversed the decision.

But that experience did not turn Bell away from law; it whetted his appetite. As the case made its way through the system, the young student received a sophisticated first-hand study of the mechanics of American law. His contact with Marshall would become one of the most significant

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"I LOVE HIM."

stickler to the rules, sometimes to the extreme," says Bell's mentor, U.S. District Judge John Hargrove Sr. "I think it's a waste of prosecutors' time and money. No one should lose or win a case simply on the rules. In the interest of justice, sometimes you have to do what you're not supposed to do."

And Bell himself grapples with the moral consequences of making decisions like the Whittlesey case. "Sometimes you have a case you *want* to decide a certain way," he admits. "But you still have to follow the law. I'm not supposed to determine what the law *ought* to say. I'm stuck with it."

BOB BELL GREW UP IN AN EAST BALTIMORE ghetto, surrounded by poverty and discrimination. How did someone with this background develop such faith in the legal system?

Ironically, Bell's first encounter with Maryland courts was as a defendant. As president of the student body at Dunbar High School in 1960, he helped organize a sit-in at Hooper's Restaurant, a segregated cafeteria. Tried and convicted of trespassing, Bell and the demonstrators turned to the Court of Appeals for protection, but were denied.

With the help of attorneys Juanita Jackson Mitchell and Thurgood Marshall, the group brought the case to the United States Supreme Court, but again they were denied. It wasn't until the Maryland General Assembly passed anti-segregation legislation in 1963 that the Court of Appeals reconsidered the

experiences of his life, sparking such fascination that, while in college at Morgan State, Bell sat on the disciplinary committee and became chief justice of his dormitory court.

"Thurgood Marshall has been a hero of mine over the years," says Bell. "He's the guy who did what I always wanted to do: make an impact on the law."

In his private life, Bell looks up to his mother, Rosa Lee Bell, who raised all three of her sons singlehandedly. "Even though my mother was never highly educated, she's taught me a lot," says Bell. Even when he was arrested for the 1960 sit-in, his mother stood behind him. "She was worried," Bell says with a laugh. "Very worried, but she tried to understand."

Sadly, Bell's commitment to the courts and the African-American community virtually eclipses his private life, making his visits to his mother's home

in New York rare. In fact, Bell spends most of his free time maintaining the mind-boggling speaking schedule he has kept for over 20 years. As early as 6:30 a.m. and as late as midnight, the judge can be found speaking at schools and community groups.

"I think the reason he hasn't been married is probably because he's so busy," says Hargrove. In fact, Bell lives alone and has only had a few serious girlfriends.

Perhaps the family he *has* built for himself in Baltimore is among his mentors like Hargrove and Judge Murphy, whom he frequently visits on weekends and holidays. "He's as close to me as any of my sons," says Murphy. "I love him."

But the handsome, jovial jazz aficionado undoubtedly draws his share of romantic admirers as well. Over the years, Bell's style of dress has always been impeccable, bordering on extravagant. Although he no longer wears the long hair or gold medallion, his collection of colorful ties and socks, bracelets, pocket watches, handbags, and cufflinks makes him easily the dandiest judge on the bench.

It also makes him the butt of more than a few jokes. Judge Alan Wilner remembers a case when Bell was on the Court of Special Appeals. While discussing the case, judges noted that police had targeted a specific group of people as suspects. "The record reflected that police used a profile of a black young man, wearing jewelry and colorful clothes," Wilner remembers. "After some discussion, we looked at Judge Bell and said, 'Uh, Bob, how are you getting home from here?'"

But underneath his glamorous clothes, Bell remains a conservative thinker, a fundamentalist of the law. "He believes in the system," says Hargrove, with a hint of astonishment in his voice. "People today don't believe in the system."

CONTROVERSIAL JURISTS DON'T OFTEN become chief judge. "When you get a brilliant or progressive judge, it's by coincidence, not by design," says Bill Murphy. "We're all political animals."

Which may help explain why so few judges write dissents. After all, appointments on all Maryland courts except the Circuit Court are made by the governor, and most are given to politically safe candidates. So when former Chief Judge Robert Murphy retired last October, how did Judge Bell get the nod?

It certainly wasn't because he was politically safe. For starters, he had an



COURTESY OF WILLIAM MURPHY SR.

annoying tendency to vote for the individual over the state. When a legislative redistricting plan initiated by former governor William Donald Schaefer met public opposition in 1993, only two judges ruled against it: Judge John Eldridge and Bell. And as a vocal opponent of the death penalty, Bell's opinions also conflicted with Glendening's.

But Bell had friends like nobody else. As early as March, the stream of support started rolling into Glendening's office. Dozens of phone calls and letters made their way to the governor's desk. "Judge Bell had supporters as diverse as Judge [Harry] Cole and Peter Angelos," Glendening marvels. "And within the legislature, there was great diversity in his supporters."

Many of those supporters were leaders in the African-American community. In fact, virtually the entire superstructure of black Baltimore spoke up for Bell, including Kurt Schmoke, Kweisi Mfume, Elijah Cummings, Walter Amprey, Howard P. Rawlings, Larry Young, and the Interdenominational Ministerial Alliance.

Were these leaders great admirers of the judge's impeccable judicial record and his interesting interpretation of law? Maybe. But many of them also wanted to see the race barrier broken in the chief judgeship and felt that the governor had a great opportunity to make Judge Bell a role model for African-American children.

"For those of us who are African Americans, it gives us a sense of pride," says city schools superintendent Dr. Walter Amprey.

"He's the only African American on the bench," adds Rawlings. "I think he brings something to the court just by being an African American."

But not all Bell's support in the African-American community was political; many of his supporters had also known him personally for years. As a young lawyer, Elijah Cummings tried cases before Judge Bell in the District Court. "When you went before Judge Bell, you had better be prepared, or he'd tear you to shreds!" Cummings remembers. "But then he'd pull you into his chambers to help you and tell you how to do better next time."

Bell had also been classmates with Amprey at Morgan State, where the two stood together in line at their graduation. The judge had been sponsored early in his career by businessman Willie Adams, and he had remained friends with Charlie Tildon, a teacher from Dunbar High School who initiated a grass-roots letter campaign to the governor to help get Bell appointed.

But Bell still wasn't a sure shot for the appointment. Judge Alan Wilner, then head of the Court of Special Appeals, had always been the heir apparent to the chief judge's chair. To many, it seemed that Robert Murphy had even been grooming Wilner as his successor. After all, Wilner had been chairman of the Rules Committee, had a background working with other branches of government, and as chief judge of the second-highest court, was often privy to Murphy's budget decisions before they were made public. And one other candidate on the Court of Special Appeals, Joe Murphy, had also been recommended by several high-ranking judges.

The race was on. As Glendening began a series of interviews with the candidates, Bell's supporters continued to flood the governor's office with letters. "The governor had a difficult decision," says Delegate Howard Rawlings. "But to have appointed Wilner, he would have had to make a strong case to the public—and especially African Americans—why he had to do that."

By Friday, October 18, Bell was beginning to feel anxious but hopeful. His five interviews with the governor had gone extremely well. He had been forthcoming about his political views, and the governor had seemed surprisingly supportive of them. And with the chief judge position unfilled for two weeks, he knew the announcement was likely to be made during the coming week. Over the weekend, his excitement grew.

And on Monday, Glendening invited him to the governor's mansion for lunch. When Bell arrived, the governor gave him the good news. Judge Bell was to become the new chief judge, the first African-American chief judge, the head of the entire judiciary. Of course, Bell was jubilant, nearly bursting to tell someone the secret. But that night, at his home in downtown Baltimore, Bob Bell sat thinking in his easy chair, haunted by the vaguely uneasy feeling of a man who knows his life is about to change forever. One phrase kept running through his mind: *Be careful what you wish for, because you just might get it.*

"By the time I arrived Wednesday morning," Bell admits, remembering the announcement ceremony in Annapolis, "my smile was still there, but I was also beginning to feel the pressure."

THAT FEELING OF PRESSURE IS WELL founded. As head of the judicial branch of government, Bell's responsibilities parallel the governor's. "He has

achieved perhaps the highest position in the state," says Glendening. "Governors come and go. The Chief Judge is a life position."

As chief judge of the Court of Appeals, in addition to his regular duties on the seven-judge bench, Bell is now responsible for managing over 3,000 employees and determining the annual budget. It's a two-for-the-price-of-one deal to taxpayers, but it keeps him busy from sunup to sundown.

And on top of those duties, he continues to maintain the kind of public speaking schedule normally associated with a presidential candidate.

But perhaps his biggest challenge over the next several years will be convincing his colleagues that his strict adherence to judicial procedure isn't crazy. Especially over the past year, some judges on the Court of Appeals have begun coming around on their own. But as chief judge, Bell will likely wield even greater convincing power. And if anyone has the heart and guts to turn a system around, it's Robert M. Bell.

UNDER THE LOW, INCANDESCENT lighting of the local talk show "The Ro Show," Bell's purple shirt with white pinstripes takes on an almost supernatural glow. Impeccably dressed in a charcoal suit with a red, white, and blue patterned tie, a pink handkerchief, and a pocketwatch, Bell flips through a magazine as he waits for taping to begin. Off camera, his black leather handbag and dark overcoat are folded carefully together on a chair.

"Your Honor," a young cameraman suddenly barks. "If I could just ask you to sit up a little in your chair."

Both Bell and his host, Dr. Rosetta Stith, look up from where they are sitting. "Sit up?" the judge asks.

"Yeah," the cameraman replies, his voice less sure. "So you're not slouching on TV."

"But that's the way I am," Bell replies.

The cameraman hesitates. "Well, could you take out the handkerchief?"

Bell raises his voice. "Take it out!?" "Yeah."

"But it's part of my outfit."

Dr. Stith giggles. "Now wait one minute. This man looks good."

But the cameraman still hasn't given up. "Well, could you straighten it?"

Bell looks over to Stith, who shakes her head. Turning back to the cameraman, Bell smiles.

"No."

Perhaps he's more interested in straightening out Maryland prosecutors.