The Courage of Their Convictions

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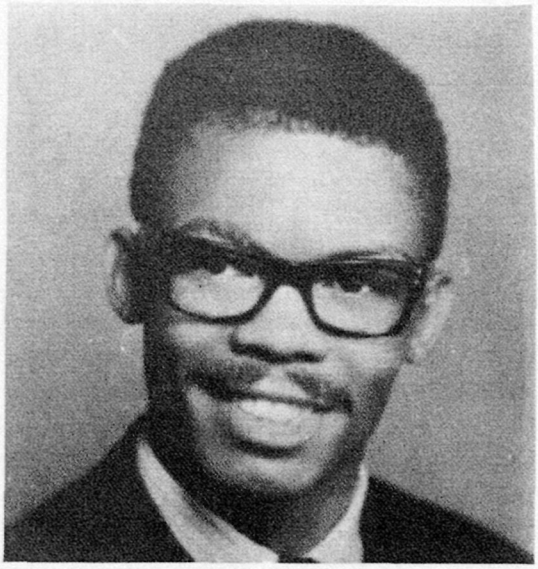
Robert Mack Bell v. Maryland



Robert Mack Bell was a high-school class president in Baltimore when he was arrested during the 1960 "sit-in" movement to protest lunch-counter segregation. *Courtesy of Morgan State University*

I.
"I'm at the Mercy of My Customers"

At 4:15 on the afternoon of Friday, June 17, 1960, a group of neatly dressed black students entered the lobby of Hooper's restaurant in downtown Baltimore, Maryland. Located one block from the city courthouse, Hooper's had a large dining room and a lounge that was popular with lawyers and judges. Rather, it was popular with *white* lawyers and judges, because Hooper's, along with 90 percent of Baltimore restaurants at the time, refused to serve black patrons. A century after the Civil War, Baltimore remained Southern in atmosphere and attitude, with Jim Crow schools, colleges, hospitals, and restaurants.

The black youngsters who entered Hooper's lobby, about eighteen in number, were met by the hostess on duty, Ella Mae Dunlop. Apprehensive but still polite, she asked the first person who approached her, "May I help you?" The answer was also polite: "Yes, I'd like to be seated." The hostess was prepared for this request. "I'm sorry, but we haven't integrated yet." This exchange turned from civility to confrontation as the youngster replied, "Well, aren't you ashamed of yourselves!" Ella Mae Dunlop was unfazed by this retort: "Well, no, I'm not. That's Mr. Hooper's orders. It's the preference of the customers." She obviously did not mean the prospective customers who crowded into the lobby. "Well, you mean you're not going to seat us?" one student asked. "That's right," she answered.

Attracted by the commotion, the restaurant manager, Albert Warfel, hastened to the lobby and confronted John R. Quarles, who stood out from the group as older and more assertive. Quarles was twenty-eight years old, a student at all-black Morgan State College and a leader in the Civic Action Group, which spearheaded the "sit-in" movement against segregation in Baltimore. "We have not integrated the restaurant," Warfel informed Quarles, blocking his path to the dining area. His words had no effect, as the students pushed past Warfel and spread out through the restaurant, each one occupying a separate table. The handful of white diners watched as the students opened books and began to study, while waitresses huddled in nervous groups.

Within minutes, the restaurant's owner, G. Carroll Hooper, came into the dining area from the lounge. After a quick conference with Warfel, Hooper approached John Quarles and sat down at the table he occupied. Informing Quarles for a third time that the restaurant did not serve blacks, Hooper appealed for sympathy. He personally considered segregation "an insult to human dignity" and sympathized with the goals of the black students, he said. But he could not change his policy. "I'm at the mercy of my customers," Hooper explained to Quarles. "I'm trying to do what they want. If they fail to come in, these people are not paying my expenses, and my bills." Hooper said that he employed one hundred black workers in his kitchens. "Go back and talk to them," Hooper urged Quarles, to discover that they were "in sympathy with me" on the segregation policy. Quarles answered that the black students had not entered Hooper's restaurant to "destroy his business" but were "simply there seeking service as humans and also as citizens of the United States of America."

During this diningroom debate over property rights and human rights, Warfel hustled outside the restaurant and found two Baltimore police officers, Sgt. Sauer and Lt. Redding. With the officers in tow, Warfel returned to the dining room and recited the Maryland trespass law to the unwanted patrons: "Any person or persons who shall enter upon or cross over the land, premises or private property of any person or persons in this State after having been duly notified by the owner or his agent not to do so shall be deemed guilty of a misdemeanor," Warfel read from the statute, which he kept handy for just such an occasion. After this warning, about six of the students left the restaurant, picking up picket

signs outside and conducting a sidewalk vigil. Among the twelve who refused to leave was Robert Mack Bell, the sixteen-year-old student-body president at all-black Dunbar High School. Bell had recruited a busload of Dunbar students to join the sit-in with students from Morgan State.

The police made no move to arrest the remaining students or drag them out of the restaurant. This was a civil sit-in, with both sides anxious to avoid violence. Baltimore was not part of the Deep South, where hostile crowds often poured catsup on sit-in students, spit on them, or burned them with cigarettes. Albert Warfel simply took down the names and addresses of those who refused to leave, while Carroll Hooper went down the block to the courthouse and swore out warrants in the magistrate's office against the twelve who remained. Robert Mack Bell was first on the alphabetical list, and thus lent his name to the case that later reached the Supreme Court. Monday morning, Bell and the other students returned to the downtown police station, where they were fingerprinted, photographed, booked, and released to their parents' custody until their trial for trespass.

Robert Mack Bell was only one of thousands of students, black and white, who joined the sit-in movement to end segregation in public accommodations. The campaign began on February 1, 1960, when four freshmen at a black college in Greensboro, North Carolina, sat down at a Woolworth's lunch-counter and asked for service. They were refused and the counter was closed. The students returned the next day and were again denied service. On the third day, they were arrested for trespass. Within weeks, the sit-in movement swept across the South and enlisted an army of northern supporters, who picketed Woolworth's and other drug-store chains which refused to serve blacks in their Dixie outlets. Religious, civic, and political leaders rushed to join the students. Eleanor Roosevelt defended the sit-ins against former President Harry Truman's charges of Communist instigation, and jazz great Duke Ellington marched on a Baltimore picket line. Daisy Bates, who headed the Arkansas NAACP and battled school segregation in Little Rock, organized black students to protest lunch-counter discrimination.

The Greensboro students who sat down at the Woolworth's counter were not the first to use the sit-in tactic. Sit-ins actually began in May 1942, at Jack Spratt's restaurant in Chicago, organized by members of the Congress of Racial Equality, an interracial group which followed the Gandhian principle of nonviolent action against oppression. During the late 1940s, CORE activists began the first Freedom Rides in the South, which ended with arrests at bus stations in North Carolina. Fear of violent reaction in the Deep South, and the lack of federal support and protection, cut short this early civil-rights campaign. During the early 1950s, CORE activists in Baltimore launched a sit-in campaign which ended lunch-counter segregation in several drugstore chains, and began an effort to integrate the popular Gwynn Oak Amusement Park which lasted another decade.

None of these earlier actions generated the resulting mass movement that began in Greensboro and quickly led to formation of the Student Nonviolent Coordinating Committee. Several factors help to explain this new militance and its popular support. For one, students were attacking segregation in its Deep South bastion, as sit-ins spread to states like Alabama and Mississippi. Millions of Americans viewed on television the violent attacks on peaceful students by mobs which local police and FBI agents often did nothing to restrain. The independence struggles of black Africans, and shock at the Sharpeville massacre in March 1960, in which South African police killed hundreds of demonstrators against apartheid, also fueled the fervor of students who risked arrest and expulsion from school to join the movement.

By the end of 1960, close to 5,000 students had been jailed in sit-in demonstrations. Most often based on local trespass laws, these arrests swamped the jails and courts. Virtually all the demonstrators were convicted in summary trials, and dozens of appeals from these convictions began the slow journey through the judicial system. Early in the sit-in movement, experienced lawyers of the NAACP Legal Defense and Education Fund took the lead in guiding these appeals from state courts to the Supreme Court in Washington, D.C. Thurgood Marshall, the NAACP legal director, was a courtroom veteran of landmark civil-rights litigation.

Six weeks after the initial Greensboro sit-in, Marshall convened a meeting of civil-rights lawyers in Washington. Linking the sit-in movement and the struggle "against apartheid in South Africa"

to "the cry for freedom" around the world, Marshall said that American students "are just simply sick and tired of waiting patiently without protest for the rights they know to be theirs." The lawyers at the meeting, he reported, were "handling the sit-in cases from Delaware to the Gulf of Mexico. We have compared notes. We have shared our legal thoughts, our legal briefs and legal procedures. We are going to give to those young people the best legal defense available to them." Marshall noted that the Southern strategy of mass arrests and trials was designed "in the hope our wearing our legal staff and our pocketbook down." Marshall promised his adversaries a protracted struggle. "We are prepared to stay in court after court, in city after city and state after state as long as they can stay there."

Among the hundreds of sit-in cases that came before judges in 1960 was the trial of Robert Mack Bell and eleven other black students in Baltimore. Judge Joseph R. Byrnes heard the case in criminal court without a jury on November 10. James W. Murphy, who prosecuted the students, first called Ella Mae Dunlop, the Hooper's restaurant hostess. She recounted her refusal to seat the black students, who then "broke through the line and seated themselves." The students' lawyer, Robert Watts, asked the hostess if the students had behaved in an orderly manner. "Well, I wouldn't say they were mannerly," she responded. Good manners were important in Baltimore. Watts continued his questions. "Had they been white people they would have been seated, is that correct?" The hostess agreed. Skin color was more important than manners in Baltimore, it seemed. Watts had one last important question. "Now, you refused them admission to this restaurant solely on the basis of their color, is that correct?" "Yes, sir."

After restaurant manager Albert Warfel testified that he contacted the police and read the trespass act to the students, owner Carroll Hooper took the stand and recalled his debate with John Quarles. "I set at the table with him," Hooper said, "and talked to him why my policy was not yet one of integration." Hooper tried to convince the students that his policy was simply a business decision. "I wanted to prove to them it wasn't *my* policy, my personal prejudice. I told them that as long as my customers were deciding who they want to eat with, I'm at the mercy of my customers." Caught between sympathy and segregation, Hooper lashed out at the teen-age defendants: "They are trying to legislate by

terror, going to force me to either serve or close." Judge Byrnes admonished Hooper that "it would be more helpful if you didn't get too emotional."

Robert Mack Bell did not take the stand, and John Quarles testified as the group's leader, dressed in his college ROTC uniform. The Hooper's sit-in began, Quarles said, when Bell approached him at a civil-rights meeting and volunteered to recruit Dunbar students to join those from Morgan State College. Asked by prosecutor Murphy why the students refused to leave Hooper's, Quarles answered that "we were in hopes that Mr. Hooper would change his policy and serve us." Robert Watts asked why the students risked arrest when their appeal to conscience failed. "I think arrest is a small price to pay for your freedom as a human being," Quarles responded.

Robert Watts and the other lawyers who represented the students, Tucker Dearing and Juanita Jackson Mitchell, filed with Judge Byrnes a motion asking for dismissal of the trespass charges. State support of private segregation through enforcement of trespass laws violated the Fourteenth Amendment guarantee of "equal protection of the laws," they argued. Judge Byrnes denied the motion, found Robert Mack Bell and the other students guilty, fined them $10 each, and suspended the fine. The lack of penalty reflected Byrnes' belief that the students "are not law-breaking people." Their protest "was one of principle rather than any intentional attempt to violate the law," he wrote in his opinion.

Maryland's highest court, upholding the convictions in January 1962, stated the legal question as whether the state could "use its judicial process to enforce the racially discriminatory practices of a private owner, once that owner has opened his property to the general public." Because the law in Maryland did not either require or prohibit restaurant segregation, enforcement of trespass laws was neutral and did not constitute "state action" that took sides between Carroll Hooper and the black students. Protesters could not "invade or remain upon the property of private citizens, so long as private citizens retain the right to choose their guests or customers," the judges concluded.

The appeal from this decision reached the Supreme Court for argument on October 14, 1963, along with sit-in cases from four

other states. During the past three years, the civil-rights struggle had convulsed the Deep South and challenged a reluctant federal government to act. The Freedom Riders of 1961, organized by CORE to challenge bus-station segregation, drove past North Carolina, where they ended in 1947, into Alabama and Mississippi. A mob in Anniston, Alabama, set a bus afire, dragged its occupants out, and beat them with iron bars while police and FBI agents stood by. Police chief "Bull" Connor answered mass rallies and marches of Birmingham blacks in 1963 with dogs, tear gas, and high-powered fire hoses.

Responding to police terrorism with peaceful resolve, more than 200,000 Americans, black and white, gathered in Washington in August 1963 before the Lincoln monument and stirred to Martin Luther King's "dream" that his children would grow up in a nation free of racism. Eighteen days later, this dream became a nightmare in Birmingham when four little black girls died in their Sunday-school dresses, victims of a church bombing by Klansmen.

Heavy curtains keep the noise of the outside world from the Supreme Court chamber, but the cries of pain from Birmingham found echoes in lawyerly language during the sit-in arguments. Congress had been considering a civil-rights bill which would outlaw segregation in public accommodations, and the church bombing spurred lawmakers to overcome Dixiecrat delaying tactics. Jack Greenberg of the NAACP legal staff appeared for Robert Mack Bell. His argument was rooted in the Supreme Court's 1948 decision in *Shelley* v. *Kraemer,* striking down judicial enforcement of racial covenants as "state action" that violated the Fourteenth Amendment's "equal protection" clause. The *Shelley* case meant that "property rights must be created and enforced subject to the Fourteenth Amendment," Greenberg stated. Hooper's restaurant was not a private club for white members but a place of public accommodation. The issue before the Supreme Court was whether Carroll Hooper could "invoke the full machinery of the state police, the prosecutor, the courts and so forth, to impose criminal sanctions on the Negro citizens who seek services in places of public accommodation open to all except Negroes." State enforcement of trespass laws to protect vestiges of the "slave system" could not be squared with the Constitution, Greenberg concluded.

Maryland's lawyer, Loring Hawes, claimed that the state remained neutral in the dispute between Carroll Hooper and the students. Hawes reminded the justices that the police "took no

part whatsoever in the goings-on in the restaurant itself." The state's brief also argued that the *Shelley* decision "has no application" to the sit-in case; J.D. and Ethel Shelley had a "property right" in their home but the students had no such right to service at Hooper's. State enforcement of trespass laws was available to every property owner, Hawes concluded.

Ralph Spritzer, appearing for the federal government as "friend of the court," brought the outside world into the Court's chamber. He asked the justices to recognize that "the Congress is considering legislation" which would prohibit restaurant segregation throughout the nation. Spritzer also noted that the students had engaged in a "peaceful and orderly protest against discrimination" and were protected by the First Amendment. Looking beyond the dry words of the trespass law, Spritzer urged that "something should depend on the moral quality of the conduct."

Moral issues took a back seat to politics when the justices met to decide the sit-in cases on October 18, 1963. During the previous year the Court had reversed convictions in several sit-in cases on narrow grounds, unwilling to deal with difficult constitutional issues. The justices again reversed three of the pending cases at their conference, but found no narrow path through the Bell case and another from Florida. In most previous civil-rights cases, including *Shelley*, *Brown*, and *Bates*, the Court had issued unanimous decisions. Confronted with private property rights and claims of state neutrality, divisions among the justices now surfaced in heated debate.

Chief Justice Earl Warren, always sensitive to moral claims, urged his colleagues to "get to the 'raw' of the problem and reach the basic questions." The owner of a public restaurant "abandons private choice" in selecting customers, Warren said. Citing the *Shelley* case, he added that as long as prospective patrons "behave themselves, the owner can't have police to help to throw them out. The state then unconstitutionally enforces discrimination." Justice Hugo Black presented the case for property rights. Speaking emotionally of his "Pappy," who ran a rural Alabama general store, Black said "I don't think the Constitution forbids the owner of a store to keep people out."

During the conference debate, Chief Justice Warren and Justice William J. Brennan stressed that Congress was then considering a civil-rights bill with a strong public accommodations section.

Voting to uphold the sit-in convictions, they argued, might cripple the bill's chances to survive a Southern filibuster. Several justices vowed to delay the sit-in decisions as long as possible, hoping that Congress would pass the bill before the Court ruled. Persuasion and threat both failed. When the debate ended, Black prevailed by a one-vote margin and the Court voted to uphold Robert Mack Bell's conviction.

The Court's minority refused to concede and finally convinced Justice Potter Stewart to join in asking the U.S. Solicitor General to file an additional brief expressing the government's views of "the broader constitutional issues" in the cases. This delaying tactic outraged Black, but it put off final decision for several months. During this time, the assassination of President John F. Kennedy shocked the nation and placed Lyndon B. Johnson in the White House. Johnson adopted the civil-rights slogan of "We Shall Overcome" in asking Congress to pass the bill. While lawmakers debated, slowed by Southern tactics, members of the Supreme Court traded draft opinions in the sit-in cases and thought about the broader issues. The Court's delicate balance was upset on May 15, 1964, when Justice Tom C. Clark, like President Johnson a Texan, told an "exceedingly tense" conference that his mind had changed.

Clark's defection from the majority not only changed the vote; it also disrupted the alignment of justices on the legal issues before the Court. Justice Brennan, hoping to add Justice Stewart to the new majority, proposed that the Court base its decision on a recently enacted Maryland law which banned restaurant discrimination in Baltimore. Brennan wanted to return the Bell case to the Maryland courts for decision under the new state law. Chief Justice Warren and Justices Douglas and Goldberg considered this tactic an evasion of basic issues and refused to agree. But Brennan's invitation to Stewart worked. On June 15, five days after the Senate ended the Southern filibuster against the civil-rights bill, Stewart joined Brennan. Justice Black, now supported only by Justices Harlan and White, stubbornly defended the sit-in convictions.

Eight months after the cases were argued, the Court was split into three equal factions. Six members agreed that the trespass convictions should be reversed, but they differed on the legal grounds. With this patched-together majority in control, the Court

finally issued its decision on June 22, 1964, three days after the Senate passed the civil-rights bill and sent it to President Johnson. Brennan wrote the "opinion of the Court" and noted that Maryland had substituted "a right for a crime" in the Bell case. Speaking only for Clark and Stewart, Brennan reversed the convictions and returned the case to the state court.

In his angry opinion, Justice Douglas accused his colleagues of cowardice. Congress and the nation were consumed by the civil-rights question, "Yet we stand mute, avoiding decision of the basic issue by an obvious pretense." The basic issue to Douglas was "apartheid" in America, a "relic of slavery" and "badge of second-class citizenship." The property rights of corporations could not prevail over the Constitution, Douglas concluded. Justice Black's dissent, first drafted as a majority opinion, was equally angry. The Fourteenth Amendment "does not prohibit privately owned restaurants from choosing their own customers," Black asserted. Writing that the Court's decision would "destroy" the "right of a man who owns a business to run the business in his own way," Black must have had his "Pappy" in mind.

The Supreme Court waited too long to decide whether Robert Mack Bell and other black Americans had a constitutional right to sit with whites at restaurants. Congress answered the question for the Court, while the civil-rights struggle moved from lunch counters to voting booths. The most significant footnote to the sit-in decisions was written in Philadelphia, Mississippi, on the day they were issued: Three SNCC workers in a voting-rights campaign—Michael Schwerner, James Chaney, and Andrew Goodman—were murdered by Klansmen, their bodies buried under an earthen dam.

Their struggle continues to this day.

II.
"Baptism by Fire"

I was born in North Carolina back in 1943, one of three boys, to Thomas Bell and Rosa Lee Bell. I was the youngest of the three boys. I was born in Edgecomb County, in the northeastern part of the state, in a place called Rocky Mount. Didn't stay there very long. My mother moved with the three boys to Baltimore when I was about two years old, after my parents separated. So I was raised by my mother, and all of my schooling occurred here in Baltimore.

My mother was from the old school. In those days everybody in the rural South got married early and had as many children as they could, to work on the farm. My mother was really uneducated. Back in those days they didn't do much in the way of schooling for blacks in North Carolina. Having married early and begun a family early, she had to leave school. I think the farthest she went was to the third grade, and even then it was on a part-time basis. My mother's prime occupation was housework; she was a domestic. She was, however, very interested in the three boys' getting an education and she pushed with strength and vigor our getting into school and staying in school and finishing school. Finishing school, to her, meant finishing high school. She was very strong about that. She didn't have formal education herself, but she knew the ABCs and she taught me the ABCs before I went to school and she taught me how to write my name.

My mother was a very strong individual who had a firm set of ideals. She knew what was right and wrong; she told us about

that, and if you didn't toe the line you heard about it and felt it as well. She was an active church person, sometimes a bit too active for my taste. She made certain that we were off to Sunday school, and when we began to read well enough, part of our chores was to read segments of the Bible to her. She listened very actively to the Sunday church services on the radio and she went herself. She also went to the evangelism meetings. Her primary interest in religion was on the hereafter, as opposed to the here-and-now. She was not herself an activist, in the sense of church people who marched in demonstrations. But that's not to say she was not interested in progress or wasn't happy to see it come.

I had no difficulties throughout my early years, except that I used to fight a lot. We lived in a ghetto-type neighborhood in Baltimore. Going to school, coming from school, I used to fight virtually every day. It was just a macho kind of thing. You'd run into somebody and get into a little fight with these kids. Nothing serious. We'd wait for each other every day. I thought I was being picked on, but I wouldn't pass up the challenge and neither would anybody else. All the way through school, from kindergarten to high school, I didn't encounter any problems. In fact, I rather enjoyed school. I was rather active in school, from safety patrol to yard patrol, and I got involved in various clubs. I was interested in history and the newspaper and that kind of thing.

My experience in the sit-ins began just after I was elected student-government president at the end of my junior year at Dunbar High School. I was still sixteen, just about to turn seventeen. This was the spring of 1960. At about that time, the big civil-rights push was going around Baltimore, headed up by the Civic Interest Group. The NAACP and Student Nonviolent Coordinating Committee were involved as well in the civil-rights movement in Baltimore, but the group I was involved in was the CIG. Sometime in the early part of June, someone contacted me from CIG and asked me, as president of the student government, if I would be interested in organizing a group of Dunbar students to participate in sit-in demonstrations downtown. They would supply the buses; they would have one of their members on the bus who would be more or less the leader for that bus, to keep us primed as to what would be done, who would make sure we got to the places we were supposed to be. In other words, he would give overall direction. My job was to put together the group.

I was able to get together enough Dunbar students to fill a bus and go downtown for the sit-ins. We didn't know where we were going at the time we got on the bus. We knew we were going downtown and we were going to do some picketing and possibly some sit-ins. I had no idea about the targets. One of my responsibilities was to tell everyone that wanted to go and signed up what the drill was, and that was that we were *not* to be talking back, yelling and screaming at folks, spitting back, or hitting people. I was told to make sure that they all understood that. I knew something about nonviolence from reading about some of the things that had already occurred, but I had never been involved in it and certainly had no idea what it was like in actual practice. I was also told to have the students from Dunbar get permission from their parents before signing up to go on the bus. This was not done with the cooperation of the school administration at all. This was the last day of school, so we didn't have to get their permission. So I got a list together and we filled the bus, although we split up once we got downtown.

This was my first sit-in, my first involvement with civil rights as an activist. I guess it was baptism by fire. Not only for me, but for everybody from my high school that went. And Baltimore was just getting started around that time. So we got on the bus and went downtown. The first thing that we did was to picket the Reed's Drug Store, and we did that for a time. Quite frankly, it was an amazing experience. You never really can understand, from having somebody tell you, exactly what it's like, people looking at you with open and overt hatred. People were spitting and yelling and screaming at us; the epithets were ones that you would imagine they would be in the context of that situation. Some people on the picket line were hit, although there was not as much physical violence as I thought there might be. The police were standing about, watching, but they didn't intervene to protect us from getting hit and they didn't arrest anyone.

I don't know how long we stayed on the picket line at Reed's, but some of us then moved down the street to Hooper's Restaurant, where we went in. Hooper's was a fairly large place, with a lobby and a main dining room up some steps and a cafeteria on the lower level. There must have been sixteen or seventeen of us that went in. Before going in, we were briefed that we were to go in, sit at the tables, and demand to be served. The person who was our adult leader from the Civic Interest Group was named

John Quarles. He was a veteran of these demonstrations, although I didn't know him before he got on our bus that morning. Part of our drill was that everyone who went had to have some money. If we were served, it would be rather embarrassing not to be able to pay. Nobody expected that we *would* be served, but we had money just in case.

This was my first experience, and I was not particularly brave at that point. I knew I would be faced with the prospect of someone ordering me out of there and eventually the police ordering me out. I was not the bravest of persons, but I was also pretty secure in knowing that I would do exactly what they had instructed me to do. I was *not* going to get up and leave, I was going to sit there. The only thing I had to say was that I want to be served. And when they asked me to leave, I would refuse. That's exactly what I did. I was a little bit nervous; I think all the youngsters were nervous, particularly when the policemen came in and read us the trespass ordinance and demanded that we leave.

The people at Hooper's were trying to get us to leave, and telling us that they didn't serve blacks. They shut off all of the services and indicated that they couldn't serve us, and then they told us they were going to call the police. John Quarles was the one who talked with the hostess and the restaurant manager and told them that we just wanted to be served like anyone else. While he was talking with them, the rest of us went in and sat at the tables in the dining room and cafeteria. And then the police came and read us the trespass ordinance and we all refused. A few of the students left the restaurant and went outside to picket with signs that told people why we were there—to be treated just like any other American.

Actually, nobody really got arrested at Hooper's. John Quarles worked out a deal with the police. It was clear that we were going to be quote arrested unquote, but they arranged that we wouldn't be arrested on the spot. We would have to report the next morning for processing at the police station. They did not cart us away in the paddy wagons and take us to jail. I think part of that was that we were high-school students. In Baltimore City at that time, if you were sixteen you were treated as an adult. I suspect that because of our age they decided they would not take us down in the paddy wagon; they would process us later. Once that arrangement was made, we were told to go home and report to

the old Central District station the next morning. Everybody went down and we were all fingerprinted and processed, charges were lodged against us for trespass, and we were allowed to leave. We did not actually spend any time in jail. We *saw* the jail—we were right back there where everybody was—but we never had to stay there. Then pictures were taken on the Central District steps and there were stories in the paper about us. For a day or so, I was a celebrity.

We had already arranged through CIG for counsel, and we had Juanita Jackson Mitchell, Tucker Dearing, and Robert Watts; those were the three lawyers. Tucker Dearing did the bulk of the work on the case. Our trial took place in the old courthouse, on the second floor. It's sort of interesting that I later sat on the bench as a judge with a lot of the folk that were involved in my case in some way or another. Robert Watts became a judge on the municipal court and later on the supreme bench, which is the court in which I was convicted. The prosecutor was a gentleman by the name of James Murphy. He later was elected a judge of the supreme bench. When I came to the supreme bench, Murphy and Watts were both judges on the court.

There were twelve of us that were tried for trespass at Hooper's restaurant. And we lost. Interestingly, they kept us outside during most of the trial. Only about three or four of us were called to testify. I was not one. I don't know why. The lawyers were handling it, and they weren't discussing much with us. The police testified, the people from the restaurant testified, some of us testified. The judge, whose name was Byrnes, found us all guilty and imposed a fine of $10, which he suspended. Judge Byrnes made this little statement when we were sentenced, saying that he recognized we were not lawbreakers and that we had acted on principle.

Interestingly, I was never involved in another sit-in or any kind of demonstration. This one experience had a lasting effect on me. I made up my mind after that day that I just didn't have that business in me. I couldn't go through that same kind of situation again. I was convinced that I could not walk a picket line and have this kind of yelling and screaming and spitting and hitting occur to me or around me without some kind of response that I would want to make. So I made up my mind immediately thereafter that I would not participate actively in another one. I *knew* that I was not a good candidate for nonvio-

lence. One thing I did know was that I would never jeopardize the effort of those who did take part in sit-ins and pickets. But I also knew that if I went back again it would become more and more difficult. It was my impression that my best bet was just not to do it on an active basis. Now I would do anything else that I could do, but I would never walk another picket line again.

I finished high school in '61, and I entered Morgan State College in Baltimore that fall. During my first year at Morgan State, there was a long effort to integrate the Gwynn Oaks amusement park near Baltimore. Hundreds of people took part in pickets and sit-ins at Gwynn Oaks and there was a lot of violence directed at them, and hundreds of arrests. A lot of Morgan State students were involved at Gwynn Oaks, but I *never* walked the picket line out there. I never went out and I never went near it. I lent whatever other support I could, helping them write things, but never did I go anywhere near Gwynn Oaks.

We lost our case in the state court of appeals and then we appealed to the Supreme Court. I wasn't really involved in the case after the trial. Once we lost, the lawyers were more concerned with the case rather than the individuals involved. They took it to the Supreme Court; I don't even know that we were asked about the appeal. I remember right after the decision being announced at our trial, and despite the fact that the $10 fine was suspended, I recall Tucker Dearing saying that he was going to take an appeal. After that, there was no contact, nobody called us up and said, Do you want us to appeal the case any further? It was just done.

I suppose it sounds odd that I didn't attend the Supreme Court hearing in my case. It's interesting that I didn't even know when it was. Nobody kept us posted on it or anything else. And I didn't inquire about it, either. Kind of strange behavior for someone who wanted to become a lawyer, but that's just the way it happened. I *was* aware when the case was decided, and I even read the decisions, as long as the damn things were. I was disappointed in the Supreme Court, quite frankly. I would have been more satisfied had they gone one way or the other. They did reverse our convictions, but they didn't rule on any of the constitutional issues. What they did was to send the case back to the Maryland court of appeals, which is our highest court, with instructions to decide whether the public-accommodations law that was enacted

in Baltimore after our convictions was a ground for reversal. I didn't realize at the time what was going on, but it was clearly a political decision.

Justice Brennan, who wrote the opinion for the Supreme Court, probably recognized that he couldn't get a majority for reversal on the constitutional issues. This is hindsight, but I now realize that he was trying to obtain a result that would not set an adverse precedent by sending the case back and letting the state court of appeals take him off the hook. I rather liked the view of Justice Goldberg, who wrote an opinion that *did* reach the constitutional issues; and I was totally disappointed in Black, who wrote a dissent that defended the right to discriminate. I recall having gone through constitutional law in college and talking about how forward-looking Black was, and I was surprised that Black took the position he did. I would have assumed that Black would have gone the other way. At that time, I had not yet learned to appreciate Brennan.

I had decided to go to law school years before I decided to get involved in sit-ins. This is going to sound strange, but I used to read a lot of Perry Mason novels and I became very interested in the law. The whole point was that you can help people—a very simplified view, but it turns out that I think that's probably correct. What I was doing at Morgan was basically preparing myself to become a lawyer. I was a history major in college, and I took enough courses in political science to have a major in that as well. I was also very active in campus politics at Morgan: faculty–student committees and student organizations. I was out for a year with tuberculosis, and I stayed for an extra year, taking courses in English and philosophy, courses which I find now were of inestimable value to me.

The truth of the matter is that I had always entertained the idea that *maybe* I could attend Harvard Law School, but I had also been somewhat realistic about having to go someplace else. One factor was that I didn't have any money at that time. During my junior year at Morgan I met Senator Paul Sarbanes, who was at that time running for House of Delegates from my district. So I helped him and we had a discussion about law school. It was he who told me about how good Harvard was, from his perspective of having gone himself. So I credit him with my going to Harvard. Harvard accepted me; I got a full scholarship for

the first year and I was on part-loan, part-scholarship for the rest of the time.

I became a little bit concerned about having a conviction, the closer it got to the time I applied to law school. In fact, when I applied I wrote a rather long essay about this experience with the idea of finding out whether it would affect my going to law school. The second rationale was to explain what the situation was. I realized after I had written this thing that I needn't have bothered, because nobody was concerned about it at all. In fact, one of my professors in constitutional law thought it was the greatest thing in the world and spent some time talking about the case. That was Dean Sacks. In fact, the whole hour was devoted to my case and I carried most of it. He called on me and asked me to give the background information. We discussed the merits of the case to some extent, and I don't remember anybody who supported the dissenting opinion. This was a rather small seminar, and I suspect that if anybody felt the dissent was correct they were a little too nice to take that position.

The question of what to do after law school was always a problem for most black students coming out when I did, which was '69. What I really wanted to do was to become involved, quote-unquote, go back to the community, and help folk. I was leaning toward legal aid, public-interest types of law, having volunteered with Community Legal Services in Boston, having worked on the Civil Rights–Civil Liberties Law Review. I always had this thing about coming back to Baltimore and trying to improve the lot of the black community.

As it turns out, I ended up going to work for Piper & Marbury, the biggest firm in Baltimore. But you can probably understand what followed. Piper had at that time begun a neighborhood legal office in the black ghetto, and they staffed it with two lawyers. I knew from having worked at Piper during the summer, while I was in law school, that they encouraged volunteer hours being given for poor people. So, coming to Piper, I could kill two birds with one stone. I would have the opportunity to do the volunteer legal work and help folk that way, and I'd also be able to obtain the experience and grounding in the law that one can get from a large law firm if one handles it correctly. So that was my motivation. And I became the first black associate they hired at Piper.

I did a lot of things when I first got to Piper. I started in

public and municipal financing, and I ended up in real-estate financing and development. This was during the time when the new-town craze was on. I was doing some union work for Provident Hospital and I worked for the Salvation Army. Eventually I spent a year heading up the community legal office, just before I went on the bench in 1975. We would be available to provide legal services to people who had need of them but who didn't have the money to pay. I had a varied practice down there. Aside from that office, I was doing volunteer work at the Echo House Foundation, which was a multipurpose center in West Baltimore that had a drug rehabilitation component, a housing component, all kinds of things.

I can tell you unequivocally that I never wanted to be a judge. But Baltimore has a population of close to 60 percent black, and it turned the corner back in 1974. Unfortunately, we had maybe four black judges on the circuit court and we had three or four on the district court, out of twenty-two on each bench. But we also had a situation wherein we had black people who were interested in becoming judges but we didn't have anybody who the powers-that-be thought could achieve it. Most of the people had applied before and had been turned down. We wanted to increase the number of blacks on the bench but, being realistic, we knew there would be some difficulties with some people who aspired.

So I had a discussion with a couple of judges who, recognizing from my background that I could possibly make the list and be appointed, suggested that maybe I should apply. This was rather an unusual situation, since at that time I was only thirty-one. But I took up the challenge and I applied, although I did not make the list the first time because they told me I was a bit too young. The second time I did make the list and I was appointed by the governor. I had some help in that regard because my former college history teacher was married to one of the judges, who was rather influential. And I had been representing a drug program for youth and we were trying to relocate the facility from one place to another place within the council district of Victorine Adams, who happens to be the wife of one of the more influential political figures in Baltimore, Little Willie Adams. So I had to go through her as a councilperson to get her to introduce an ordinance, and we had a set-to about that and she refused to do it. She didn't want her people giving her a hard time about

putting a drug program in their midst, but she could understand what I was trying to do. I didn't yell and scream and make a big issue out of it, so I made a friend and she also went to bat for me, because she was impressed by the fact that I was able to disagree with her and do my job without being disagreeable. Also Piper helped. I had explained to the managing partner early on that I wasn't really interested in becoming a partner. He told me that whatever I wanted to do he would help. That's how I got started.

I'm on my third court now. I started on the district court, then I went to the circuit court, and now I'm on the court of special appeals. This is the intermediate appellate court in Maryland. I would prefer, as I always did, being involved in the fight itself, rather than refereeing. But the longer I've stayed the more I've become convinced that the role I play is a worthwhile one. The toughest job I have had is sending folk to jail, but I've always liked the challenge of being able to resolve tough issues. The toughest decision I ever had to make was a death penalty case, when I was on the circuit court. The sentence in that case was life in prison. I don't like playing God. I can do it much more easily if it stops short of the ultimate; the closer it gets to the ultimate the more difficult it becomes. Right now, I don't have to worry about that, because all the death penalty cases go to another court.

Intellectually, this job is probably more challenging than any of the other courts I've been on. I write roughly a hundred opinions a year, of which a certain percentage are published. The numbers up here are a little more than on lower courts and make it a little more difficult. And the issues now can be somewhat taxing and tough. But I enjoy something that you can get your teeth into. I've found myself really interested in subject matter I had really never thought about before, if the cases raise interesting issues. I don't mind zoning cases any more, which are rather tough cases. I don't mind the domestic equity cases, child custody, and the new Maryland Marital Property Act. You can get your teeth into those things.

I also find that I do a lot of dissenting on this court, particularly in criminal cases, where civil liberties are an issue—Fourth Amendment primarily in search-and-seizure cases. I see a retrenchment in that area and it really troubles me. I think the principle that

courts should follow precedent is something we have all got to respect and you have to apply. Otherwise you have no way of predicting what's going to happen from one case to the next. But when you get to a case where the rationale just doesn't make *any* sense whatsoever, I feel less inclined to pay deference to precedent. And in the Fourth Amendment area, it's hard to find a case on all fours with precedent. The closer the facts are to the case I have before me, you can really box me in with precedent.

Fortunately, I can also argue from the standpoint of the Maryland constitution as opposed to the federal constitution. This is something that I think lawyers should start to focus on, because state constitutions can be construed more liberally than can the federal constitution. This is where the action is, meaning if properly used we can be assured of greater protection. Our problem is that lawyers have not yet picked this up, so when you get a case which presents a Fourth Amendment issue, rather than presenting the question in terms of the federal constitution *and* the state constitution, they generally limit their argument to the former. And we're constrained only to decide questions raised and decided below. Consequently, if the feds don't help them, that's the end of the case.

I think the courts are really at the heart of this whole thing. In this arena the focus may be on schools or housing or economic issues, but the courts are going to continue to play a great role in it. And the courts on the state level are going to have to be brought into the process, because that's where it's going to happen.

Looking back on my case and the experience of the civil-rights movement since that time, I think it had to change from demonstrations to litigation and legislation, simply because you can only appeal to conscience so often. That can only work so long. That's what the sit-in movement was intended to do: to work on the conscience of the country. Having done that, I think it was time to move to another vehicle. And the civil-rights movement was more than the sit-ins. Rap Brown, Stokely Carmichael, Roy Wilkins, Martin Luther King—it took all kinds of people and all kinds of approaches to make the gains we have seen in civil rights.

How did my case and that experience affect me? I suspect that without it I would not have become as involved in certain community activities as I did. I try to keep myself very much involved and I try to keep my thinking fresh on issues. I tell young people

as often as I can not only about what things *used* to be like but how they can ensure that things never get back to that position again. Moving into the area of excellence is what I'm focusing on.

I spoke last year to the bar association, on the one-hundredth anniversary of the admission of the first black lawyer in Maryland, and I recalled in that speech what it must have been like to be the first black lawyer in an all-white society. I tried to say to them that while we have made some progress, we certainly have not reached the point where it is secondary that this person is black, or that we can take it for granted that I can do the exact same things you can do. But that progress gives us something to build on and it also gives us a point of reference so that we can avoid ever returning to where we used to be.

I think my case has given me that point of reference, and it also makes me appreciate the extent of progress that has been made. And it also made me able to gauge the extent of the progress which has yet to be made. I think, not just about that case, but about that era in that fashion. The unfortunate thing is that younger people don't remember it. They don't *know* what happened. And therefore you're finding a different kind of attitude and a complacency which I think is more dangerous than anything else. So our job is pretty hard.