Cole found common ground

As Md.'s first black state senator and the Court of Appeals' first black judge, Harry A. Cole used high intelligence and his charm to defuse the opposition.

By MICHAEL A. MILLEMANN

THE NOV. 27, 1954, *Afro-American* trumpeted the news: Harry A. Cole would be the first black state senator in Maryland history. In the photograph, the 33-year-old Cole wore horn-rimmed glasses and a conservative suit, white shirt and tightly knotted tie. He was tall and handsome, and he radiated intensity.

It was a stunning upset. Cole had defeated Jack Pollack's Democratic machine. He ran as a Republican on a racially integrated ticket. In his later years, he said that the creation of integrated tickets was more important than his election.

The times were tumultuous. The Supreme Court had just outlawed school segregation. The resistance was widespread, often nasty and sometimes violent.

Early in his first session, Cole introduced a strong civil rights bill. Remarkably, he persuaded the Senate committee on which he served to approve the bill (by a 7-6 vote). But the General Assembly rejected it.

However, that was not the end. Cole persuaded key senators to quietly add several of the bill's provisions as riders to appropriation bills or amendments to administrative policies.

The General Assembly subsequently enacted major provisions of Cole's bill. They remain the core of Maryland's civil rights laws today.

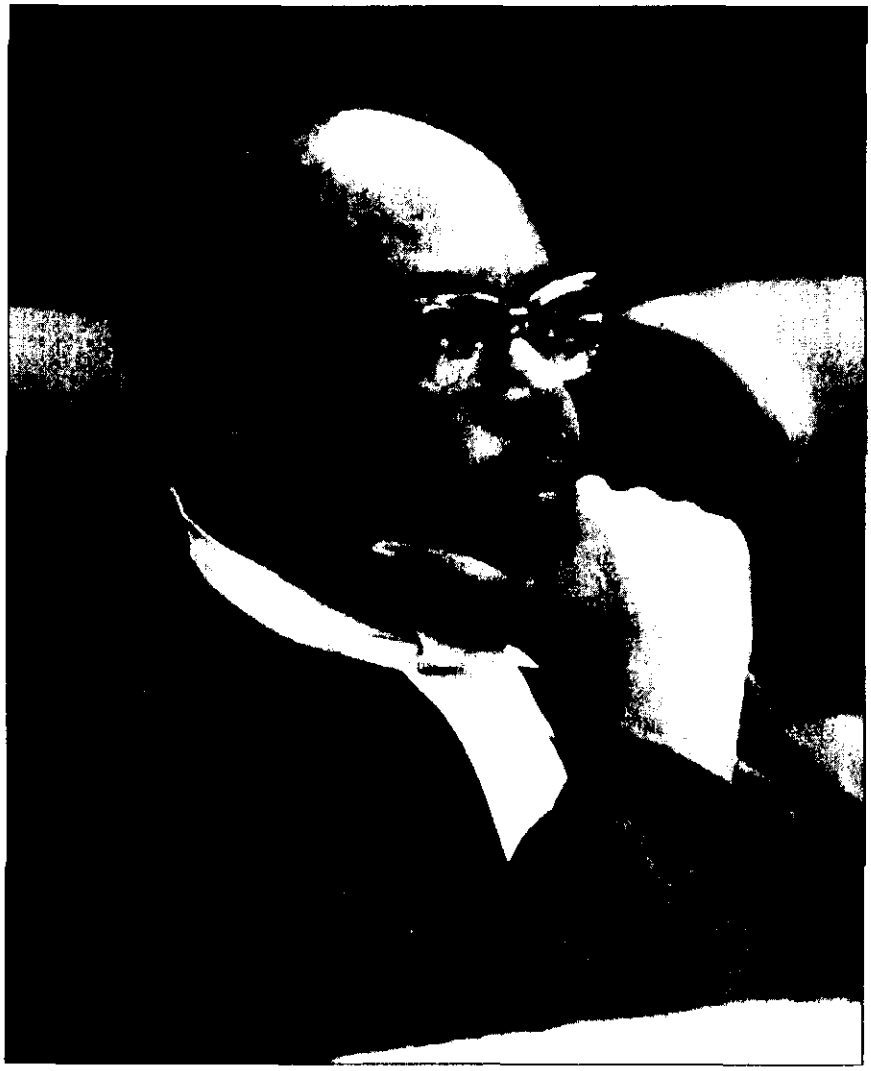
Harry Cole had exhibited the ability to swim upstream against even the strongest current. This would become a hallmark of his distinguished career.

Make no mistake, the popular current against the early demands for equal rights was strong. Two weeks before the final vote on Cole's bill, a Harford County prosecutor charged a white mother with "permit[ing] herself to [be] begot with child by a colored person or mulatto." She was jailed when she could not post bail, and, if convicted, faced up to 18 years imprisonment.

Cole had a special talent for quickly learning the unwritten rules by which government operates. He had the ability to play well and usually win by those rules.

He relied on his experiences and qualities, as well as his legal education. He was steadfastly tolerant, quietly courageous and personally charming. He used [*See Cole, 4c*]

Michael A. Millemann is a professor at the University of Maryland School of Law.



SUN FILE PHOTO : 1981

Court of Appeals: On Maryland's highest court, Judge Harry A. Cole wrote many important decisions, but defined himself in his dissents to opinions of the majority. In one dissent, he challenged the state's formula for funding public schools.

Intelligence, commitment were key in Cole's career

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his wonderful wit and extraordinary social graces to defuse the opposition. When they paused to listen, Cole helped them to identify their common interests.

He avoided the limelight, which made his political career a short one. He knew when to give credit to others and how to generate quiet support from public officials who needed to publicly criticize his proposals.

Combined with high intelligence and disciplined commitment to self-improvement, these qualities made Harry Cole an excellent judge as well.

Dissenting opinions

After serving as a judge on two Maryland trial courts, he became the first African-American on the Court of Appeals, Maryland's highest court. He wrote many of the court's important decisions, but truly defined himself in his dissents.

In one, he challenged the majority acceptance of Maryland's grossly unequal formula for funding public schools. Education, he argued, can be the foundation of self-development, happiness and success. The "quality of education" that a child receives should not depend on "the wealth of the subdivision in which the child lives."

In another case, Cole brought the real world to the court. When several police cars had raced toward a crowd with flashing lights and sirens, everybody ran. The police argued that they had probable cause to arrest the defendant because flight was evidence of guilt.

The court accepted this argument. In dissent, Cole charged that the majority did not understand the "realities of ghetto life." Innocent people sometimes believe they have good reasons to run from the police. Flight is not a reliable indication of probable guilt, he said.

Harry Cole expressed his respect for human dignity in little ways, as well as in his judicial craft. As he walked from his parking garage, along the street into the courthouse, he warmly greeted garage attendants, deputy sheriffs, and clerks by name. He carefully emphasized each syllable in the "Mr." or "Mrs." He listened, joked or expressed concern.

Cole described his conception of the judge's role in one of his strongest dissents. He began, as he often did, with the simple truth. "A five year old child drowned due to the admitted negligence of Agents of Baltimore City." The majority, however, ruled that the city was "immune" from the parents' lawsuit because it was the "sovereign" government.

Cole described the history of this archaic doctrine. Many centuries ago, England protected its monarchs with absolute legal immunity, believing they were divinely inspired and the source of law, not subject to it.

The doctrine of sovereign immunity is "unjust," and "wholly unacceptable in today's society," Cole said. The "primary concern of the judiciary" is "to protect the individual against unjust governmental activity." To perform its duty, he argued, the court must "abrogate" vestigial legal rules such as this one when they are based on considerations that "no longer exist today."

Cole said little about his extraordinary accomplishments. When he boasted, it was about his mother, wife and three daughters. He was joyfully proud of them, indeed in awe of them and their accomplishments. He spoke about them with love and profound respect. His family was the most important part of his life.

Cole also was proud of his proteges. One, Robert M. Bell, was the first African-American to become chief judge of Maryland's highest court.

When the older judge talked about the younger judge, it was with the respect and affection that he usually reserved for his family.

Cole confided several years ago that he hoped Bell would more carefully ration his dissents to avoid depreciating their value. (I assume the younger judge did not ask the older judge whether he had always practiced what he preached.) But Cole then paused, winked and smiled. "Judge Bell will make his mark on Maryland history," he said. "Just watch."

I am happy that he lived to see his prophesy come true.

Charter commission

Several years ago, Cole chaired the commission that reviewed the City Charter. He argued, eloquently and with great conviction, that the commission should reject a proposal to substitute single-member districts for multimember district. This would, the proponents said, increase the number of African-American council members and be more equitable.

Cole responded that three-member districts required candidates to run on interracial tickets — teams of black, white and others. To get elected, the team must identify the common ground and larger public interest that links people. Single-member districts would be divisive, he warned. The commission agreed.

In 1955, the leaders of the Senate invited the freshman senator to give the annual Abraham Lincoln holiday speech to the Senate. What Cole said about Lincoln fully describes Cole.

"Lincoln was a man of fixed purpose, great character and great principles," Cole said. He did not "sacrifice" his principles "for partisan politics." He was a "great man."

Harry Cole was a great trustee of the public trust as well. We are his beneficiaries. Our children will be too, and their children, for many years to come.