

BAR BULLETIN

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Equality Focus of Law Day 2013

By Patrick Tandy

Since 1776, when Thomas Jefferson drafted his immortal introduction to the Declaration of Independence, the American way of life has been predicated on the assertion that “all men are created equal.”

However, from civil rights to women's suffrage, many have struggled ever since to ensure that principle is applied to all factions of the population. And so it is, on the sesquicentennial of President Abraham Lincoln's Emancipation Proclamation and the 50th anniversary of both Dr. Martin Luther King's “I Have a Dream” speech and the Equal Pay Act, that the American Bar Association (ABA) dedicated this year's Law Day – recognized nationwide each year on May 1 – to the premise of “Realizing the

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MSBA Law Day event uses judges, attorneys to educate high schoolers on “Equality For All”.

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Judge Bell Honored with Retirement Celebration

Gala, Symposium salute legal career of MD's top jurist

By Patrick Tandy

More than 1,200 attorneys, judges, political dignitaries, and other members of Maryland's legal community turned out on April 18 at the Hilton Baltimore to honor the 50 year legacy of Chief Judge Robert M. Bell, Court of Appeals of Maryland, who will retire from the bench this summer.

MSBA and the Friends of the Honorable Robert M. Bell Committee sponsored the gala, the first half of a two-day event celebrating a career particularly notable for its subject's lifelong advocacy of equality and access to justice.

MSBA President John P. Kudel joined a host of dignitaries representing every branch of state government and subset of the state's legal profession in praising Bell, who will step down this July upon reaching the judiciary's mandatory retirement age of 70. Kudel emphasized Bell's pronounced visibility during his 17 years as the state's top-ranking judge.



Chief Judge Robert M. Bell (left), Court of Appeals of Maryland, speaks with colleagues during a break during a half-day legal symposium held in his honor April 19 at the Hilton Baltimore.

“Chief Judge Bell has never been [isolated] in an ivory tower, and he has always been accessible,” said Kudel, noting Bell's ubiquity at events and programs across the state, from the MSBA's Annual Meeting to its yearly Law Day Conference (*see article on page 4*).

Other distinguished guests, including Governor Martin O'Malley, U.S. Senators Barbara Mikulski and Ben Cardin, Baltimore Mayor Stephanie Rawlings-Blake, as well as fellow judges representing all four levels of the Maryland courts, in turn each heralded Bell for his efforts in promoting equality throughout the justice system, particularly for women and minorities.

The gala was but one component of a two-day retirement celebration, rounded out by a half-day legal symposium, held on April 19 at the same location, that depicted highlights of Bell's illustrious career – from high school to Harvard Law School to

service on all four levels of Maryland's courts – as a microcosm very much reflective of the times during which it has played out.

Approximately 300 people attended the symposium, entitled “Access to Justice: Five Decades of Change in Maryland and the Impact on America”, which explored the American legal and social landscape through the lens of Bell's experience, broken down into roughly three epochs: the 1960s-1970s (“Protest and Reform: the Rise of Legal Services”); the 1980s-1990s (“Progress and Retrenchment: Maryland's Impact on Criminal Justice”); and post-2000 (“Courts and Community”).

Following welcoming remarks from Dean Phoebe Haddon, University of Maryland Francis King Carey School of Law, and Dean Ronald Weich, University of Baltimore School of Law, as well as introductions from the Honorable Toni E. Clarke, Circuit Court for Prince George's County, and the Honorable Pamela J. Brown, District Court for Howard County, University of Baltimore School of Law Professor Gilbert Holmes led the opening panel discussion, beginning with Bell's 1960 sit-in at the whites-only Hooper's

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UNIV. OF BALTIMORE OPENS NEW LAW CENTER



The John and Frances Angelos Law Center, the most environmentally-friendly law school building in the country, has officially opened. And for the first time in the university's history, every facet of the law school will be housed under one roof.

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Psychology of Resolving Construction Disputes

By **Kenneth A. Vogel**

The Association for Conflict Resolution published an article on homeowner construction disputes. The premise was that disputes between homeowners and home improvement contractors are more contentious and personal than conflicts among developers and building contractors. The logic is that homeowner disputes revolve around one's personal residence. People are very attached to their homes. Business disputes, the article suggests, are purely dollars and cents. Logic, rather than emotion, will rule the day.

In fact, the psychological dynamics of resolving commercial construction disputes is not so simple. They too can be very personal. Attorneys become involved in construction claims after the situation has gone beyond the point where the participants can amicably resolve disagreements among themselves.

A key to resolving construction disputes through mediation or

negotiation depends on the parties and their representatives.

The Nature of Change

Every construction project has change orders. They may be due to errors or omissions in construction documents; unexpected problems with site conditions; or changes in the scope of the project. There are time delays due to weather, material shortages, or unreliable labor or suppliers. Most projects experience cost overruns for materials and labor, or time delay.

How the parties dealt with those issues as they have arisen during the course of construction will explain why the dispute has not been resolved prior to attorneys becoming involved. It sets the tone for any ADR outcome.

Communication and honest dealing throughout the duration of the project are key to avoiding disputes, both during construction and at the end. A party who feels that they were bullied or taken advantage of during the project will be much harder to placate in a mediation.

Everyday on a construction site is one of problem solving and negotiation. Plans are vague or wrong. Parts don't fit. Labor or materials don't show up. It rains, snows, freezes earlier, later, or more than anyone expected.

If financially able, they will extract their revenge.

A construction project has a shifting balance of power. At the beginning, the developer holds the cards. The developer decides which contractor to hire based on a multitude of factors, including price, trust, timing (*i.e.*, can the contrac-

tor meet the project's commencement and completion schedule?), the past relationship between the parties, and the skills and experience of both the developer's team (*i.e.*, project manager, architect) and the contractor's team.

Once the project begins, things go awry. Every day on a construction site is one of problem solving and negotiation. Plans are vague or wrong. Parts don't fit. Labor or materials don't show up. It rains, snows, freezes earlier, later, or more than anyone expected. The utility companies don't arrive. Sometimes fault can be assigned, though many times it can't.

During construction, the balance of power shifts to favor the contractor. Once a contractor has begun a job, it's difficult for an owner to fire a contractor and replace

him. Contractors can "extort" high cost change orders under threat of hurting the project. Replacement contractors cannot generally come in and take over a project without considerable time delay to the project and additional cost to the owner. Replacement contractors need to protect themselves from unknown problems which may pre-exist their entry into the project. They are loath to take over someone else's broken work, especially if they are expected to warrant it.

This leaves the owner asking himself "Am I better off sticking with my current contractor, or am I better off replacing him?" Unless the owner is convinced that his contractor cannot finish the job, most of the time the owner will let him finish. It's the least bad of the alternatives.

Relationships Past, Present, and Future

The past relationship of the parties is important. It may hold

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the key to resolving the current problem. Have the parties worked together in the past? What is the status of the current project which gave rise to the dispute? Success has many parents; failure is an orphan. Do the parties wish to work together on future projects?

The Parties and Their Representatives

Everyone at the negotiating table has their own agenda. If the parties are small companies whose owners make the major decisions, the personal relationship between the disputants is everything. Is the dispute a matter of performance? Or is it a question of trust?

If the companies are large, the project has been delegated to employees of the developer or the contractor. Employees are evaluated on their performance. Their compensation and their future with the company may be at stake. An employee might need to justify his decisions to his boss. The need to be right, to be vindicated, can be an impediment to a successful mediation.

Attorneys representing companies should be careful to understand the players and their history in the project. An employee who needs to be right can intentionally or subconsciously sabotage a mediation. On the other hand, employees with something to hide, mistakes to cover up or an indefensible position might be convinced that a private resolution of the dispute through settlement is in the employee's best interest. Of course, an attorney must always remember who his or her client is. The attorney cannot help a wayward employee conceal relevant but embarrassing facts from his employer.

Attorneys representing warring sides in a construction dispute must understand the people as well as the issues in order to successfully resolve the dispute.

Kenneth A. Vogel, Esq. is the Maryland and D.C. representative for Construction Disputes Resolution Services, an international ADR firm. Vogel completed a graduate program in Spiritual Psychology at the University of Santa Monica.

**SAVE THE DATE! MSBA Annual Meeting, June 12-15
Register now at www.MSBAAnnualMeeting.org!**