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WILLIAM P. MURPHY: IN MEMORIAM*

JOHN CHARLES BOGER**

William P. Murphy, Henry Brandis Professor of Law Emeritus, died on September 29, 2007, in Chapel Hill at the age of eighty-seven, after a brave struggle with prostate cancer and related illnesses. A native of Memphis, an honors graduate of Southwestern at Memphis (B.A., 1941), of the University of Virginia School of Law (LL.B., 1948), and of Yale Law School (J.S.D., 1960), Bill had several distinguished careers. After three years in the Office of the Solicitor of the United States Department of Labor (1950–53), he became a wonderful scholar and revered teacher of constitutional law, labor law, and employment discrimination at the University of Mississippi (1953–62), the University of Missouri-Columbia (1962–71), and the University of North Carolina at Chapel Hill (1971–90). He saw distinguished service as a nationally prominent labor arbitrator, culminating in his service as President of the National Academy of Arbitrators in 1986–87.

Perhaps Bill Murphy’s greatest scholarly work came in 1967, his *The Triumph of Nationalism: State Sovereignty, the Founding Fathers, and the Making of the Constitution,* which explored in depth both his own commitment to a federal union and the follies of state sovereignty doctrines that the State of Mississippi had asserted in the wake of *Brown v. Board of Education* in 1954. Yet an African American colleague at another great university told me, after learning of Bill’s death, “You know, don’t you, that he almost invented the study of employment discrimination, and that he wrote the first legal text in the field, still one of the finest?” I did not know about his great text, *Discrimination in Employment: Labor Relations and Social Problems,* but I was not surprised to learn of it, because everyone knew of Bill’s lifelong concern for racial justice and fairness.

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** Dean and Wade Edwards Distinguished Professor of Law, University of North Carolina School of Law. Adapted from remarks given at the memorial service for Professor Murphy on October 18, 2007 at University Presbyterian Church, Chapel Hill, North Carolina.

Indeed, many stories of Bill’s past began with reflections on his personal courage and integrity during his very first teaching position. In 1954, Chief Justice Earl Warren declared in *Brown v. Board of Education* that our nation’s treatment of African Americans had cruelly betrayed its own first principles. Yet it was young law professor Bill Murphy, installed in 1953 at the Law School in Oxford, in the “Sovereign” State of Mississippi, home of White Citizens Councils, of the wanton, unrequited murder of young Emmett Till in the 1950s and of the death of earnest civil rights workers James Chaney, Andrew Goodman, and Michael Schwerner in the 1960s, who bravely taught his young charges in the heart of the Old Confederacy what *Brown* and the Constitution required, what our national commitments obligated us to do. He persisted even when University officials and State legislators and Governors would have had his job to stop his teaching.

Bill’s unflinching determination to do justice to the Constitution has been the object of subsequent scholarly attention. One wrote that “Murphy mounted a consistent and thoroughgoing challenge to the heart of the southern segregationist cause.” In *Mississippi: The Closed Society*, author James W. Silver recalled that after Bill wrote a book review in 1957, declaring that the State of Mississippi’s rationale for defying *Brown* was “legal nonsense,” he was charged with “atheism, ... communism, integration, and subversion.” When a Mississippi state senator demanded that Bill be fired, Bill responded that he would not “‘tailor my teaching to satisfy any cult of crackpots, fanatics and wilful [sic] ignoramuses.’” In 1962, Bill was ultimately forced to resign, driven from the State by unyielding political opposition.

At the University of Missouri, he later spoke out against the exercise of Presidential power in Vietnam and once again found himself in hot water. His wife Joy told him, “Billy, I don’t mind your speaking up, but I do wish you’d find a place that would keep you even when they disagreed with you.” Bill Murphy turned to the University of North Carolina at Chapel Hill, where he remained a welcome law school colleague for the next thirty-seven years.

A temporary quirk of employment policy mandated Bill’s retirement in the spring of 1990 and led to my hiring as his successor to teach constitutional law at Carolina Law. The transition from Bill Murphy at the
podium to me was a lamentable decline. Bill knew more constitutional law, understood and could convey the deep movements and tensions in that body of law, than almost anyone I have ever known. During his last formal year as a law school teacher, a year in which many might have slipped just a bit, Bill was radiant. The graduating class of 1990 named him that spring, for the second time in his career at Carolina, the winner of the Frederick B. McCall Award as the school's finest teacher. They went on to bestow, as their Class Gift, a lecture series named for Bill, "the William P. Murphy Lecture," which has since brought some of America's finest public thinkers and leaders to Carolina: Attorney General Janet Reno, Congressman and civil rights legend John Lewis, United States Senator and liberal voice Paul Wellstone, former Secretary of Labor William Usery, Jr., NAACP Legal Defense Fund leader Julius Chambers, and many more.

So, with all that, it would have been understandable, forgivable, for someone in Bill's position, still at the height of his powers in 1990—a brilliant teacher, a celebrated scholar, a tireless labor arbitrator shunted aside by a transitory labor rule, forced into retirement in favor of one of his former students—to exhibit just a little bitterness, or at least a little resentment. Nothing could have been more out of keeping with his character. Bill and his wife Joy took my wife Jennifer and me into their lives with a graciousness, an enthusiasm for our arrival, that was unstinting and magnanimous. They had us to dinner; they explored all the shared interests and experiences that might possibly bind together our lives; they took kind interest in our son, a classmate of their own grandson, whom they were raising. They discovered that Jennifer, especially, loved chamber music and invited us to share their lifelong love of music through the Duke Chamber Arts series, a tradition that endured through this last spring season. There are many on our law faculty who could tell similar stories.

Moreover, there was everything of engagement, nothing of "retirement," about either of their lives after 1990. Bill and Joy traveled widely, all over the world. They were voracious readers and deeply interested in political developments. They were proud of the interesting and independent lives led by their three sons, Patrick (who lives in Moscow), Stephen (a marine biologist), and Robert (a lawyer in New York), and by their grandson, Kiroll. And even when his flesh grew a little weak for some excursions—for instance, when declining eyesight prevented Bill from accompanying Joy on a climb to the top of Uluru (Ayers Rock) in the Australian Outback—Bill's spirit remained willing and eager.

It was this enthusiasm for life that was among the traits we most admired in him. In these last few years, when macular degeneration robbed him of direct vision, when his declining hearing made some restaurant
conversations all but impossible for him to follow, Bill would sally forth to a Tokyo or Emerson String Quartet recital, making his way hesitatingly down the steps to his seat in Duke’s Bryan Center, and then sitting with rapt attention through the earliest Haydn opus or the latest piece of commissioned dissonance. At intermission, we would accompany him through the foyer, where half a dozen Duke and Triangle friends would invariably hail him and solicit his reaction. It was always honest, but Bill’s instinct was unquestionably to praise. “Did you hear that second violin?” he would say. “Just marvelous!” Whatever powers of hearing remained to him, Bill treasured them up to expend on what was meaningful.

Bill was disarmingly unpretentious. There are some, we all know, who cannot help but wear their learning proudly, leaving others feeling judged and inadequate. More unlike these people Bill Murphy could not have been. While he could quickly discern and would forthrightly condemn willfully stupid behavior (one of George and Barbara Bush’s children, I seem to recall, came in for regular censure), Bill was charitable and affirming to virtually everyone he met, from the greenest first-year student to his oldest colleagues. He and Dan Pollitt seemed thrilled by, and took with utmost conscientiousness, their self-imposed duty to share constitutional law with all Saturday morning comers at the Chapel Hill Public Library over the past few years—an audience, as a whole, not nearly as grand or learned as those Bill had stood before at Yale and Mississippi and Missouri and UNC, yet one he treated with scrupulously identical seriousness and respect.

Nor did he ever seem worried about compelling from his colleagues recognition of his own achievements or deference to his status. When, last spring, I was faced with the painful task of informing our distinguished emeriti faculty that the law school had run out of room and that they would have to give up their individual offices—with all that they contained by way of bookshelves and wall space for a lifetime of papers and pictures and diplomas—and begin sharing cubicles in a single converted classroom, it was Bill Murphy who immediately responded, “Jack, my only worry about this decision is that you’ll feel bad about what you have to do. I remember in 1942, at the War Labor Board, we had to sit three or four to an office, and it wasn’t so bad at all. This will be just fine.”

I gave a talk in the spring of 2006 that happened to feature a quotation from Alfred Lord Tennyson’s famous poem, Ulysses. Bill and Joy weren’t present for the occasion, but characteristically, Bill sought me out to ask what I had said. After looking up my talk on the law school Web site, Bill contacted me to tell share that Ulysses was his favorite poem, one he made it a point to reread every few weeks. It is, as you will recall, a portrait of the great survivor of the Trojan War, long returned to his home on the
island of Ithaca, grown old in body though not in spirit. By way of close, let me share some of its lines:

I cannot rest from travel: I will drink
Life to the lees: all times I have enjoyed
Greatly, have suffered greatly, both with those
That loved me, and alone; . . .

Much have I seen and known; cities of men
And manners, climates, councils, governments,
Myself not least, but honoured of them all;
And drunk delight of battle with my peers;
Far on the ringing plains of windy Troy.
I am a part of all that I have met;
Yet all experience is an arch wherethrough
Gleams that untravelled world, whose margin fades
For ever and for ever when I move.
How dull it is to pause, to make an end,
To rust unburnished, not to shine in use!
As though to breathe were life. Life piled on life
Were all too little, and of one to me
Little remains: but every hour is saved
From that eternal silence, something more,
A bringer of new things; And vile it were
For some three suns to store and hoard myself,
And this gray spirit yearning in desire
To follow knowledge like a sinking star,
Beyond the utmost bound of human thought.

. . .

There lies the port; the vessel puffs her sail:
There gloom the dark broad seas. My mariners,
Souls that have toiled, and wrought, and thought with me—
That ever with a frolic welcome took
The thunder and the sunshine, and opposed
Free hearts, free foreheads—you and I are old;
Old age hath yet his honour and his toil;
Death closes all: but something ere the end,
Some work of noble note, may yet be done,
Not unbecoming men that strove with Gods.
The lights begin to twinkle from the rocks:
The long day wanes: the slow moon climbs: the deep
Moans round with many voices. Come, my friends,
'Tis not too late to seek a newer world.
Push off, and sitting well in order smite
The sounding furrows; for my purpose holds
To sail beyond the sunset, and the baths
Of all the western stars, until I die.
It may be that the gulfs will wash us down:
It may be we shall touch the Happy Isles,
And see the great Achilles, whom we knew.
Though much is taken, much abides; and though
We are not now that strength which in old days
Moved earth and heaven; that which we are, we are;
One equal temper of heroic hearts,
Made weak by time and fate, but strong in will
To strive, to seek, to find, and not to
yield.

"Though much is taken, much abides"9: In old age, Bill lost, with his
decaying hearing and his eyesight, ease of access to much of what had
given his life meaning. But to his final days, his focus remained steadfastly
on what abided, and he affirmed that it was "much."

So all who loved him now confess that, in his death, much indeed has
been taken. Yet how much more abides: unnumbered lives made better by
his unfailing decency, his unquenchable curiosity, his irrepressible good
humor, his dauntless courage, his hunger for justice, his humility, his
generosity, his kindliness. One "heroic heart[], made weak by time and
fate, but strong in will." We have all been blessed by his presence among
us.

8. Alfred Lord Tennyson, Ulysses, in THE POEMS OF TENNYSON 560, 562–66 (Christopher
9. Id. at 565.