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EUGENE GRESSMAN: IN MEMORIAM*

JOHN CHARLES BOGER**

Eugene Gressman, William Rand Kenan, Jr. Professor of Law Emeritus and one of the nation's leading authorities on appellate practice and the Supreme Court, died on January 23, 2010, in Chapel Hill at age ninety-two, after several years of declining health. One of the most prolific and distinguished scholars in the University of North Carolina School of Law's long history, Gene was known by his colleagues for his indefatigable energy (he regularly filed Supreme Court briefs and certiorari petitions into his late-eighties), his dry wit, and his love of the law—he was a constant observer of the Supreme Court and its unfolding decisions and doctrines.

Born on April 18, 1917 in Lansing, Michigan, Gene was the son of a fundamentalist minister and lawyer. After his father died, his librarian mother moved first to Michigan and then to Ohio to support the family.¹ He entered the University of Michigan in 1934, graduating with an A.B. in 1938 and a J.D. (with distinction) in 1940. He served in the Office of the General Counsel of the Securities and Exchange Commission in Washington, D.C. from 1940 to 1943 before beginning one of his most distinctive periods of public service—as a devoted law clerk, for five terms between 1943 and 1948, to Associate Justice Frank Murphy, the longest clerkship in the history of the Supreme Court of the United States. A fellow University of Michigan Law School graduate and Supreme Court clerk, John H. Pickering, himself destined to become one of the nation's leading private law firm partners, wrote that

[b]y virtue of his dedicated service Gene earned the respect and trust of the other Justices. Also, just as he had been the 'Professor' to his [Michigan] classmates, he became the 'Judge' to his fellow law clerks with whom he was always ready to share

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** Dean and Wade Edwards Distinguished Professor of Law at the University of North Carolina School of Law.

1. Daniel H. Pollitt, *Gressman, Eugene*, in *THE YALE BIOGRAPHICAL DICTIONARY OF AMERICAN LAW* 236, 236 (Roger K. Newman ed., 2009).

his experience and wisdom. Two of those colleagues [later sat] on the Court themselves, Justices White and Stevens.²

“‘You are one of the most superb characters I have met in my lifetime,’” Justice Murphy wrote of his young clerk at the end of his tenure there.³

In 1948, Gene started a private practice career spanning nearly thirty years with Van Arkel & Kaiser, one of Washington, D.C.’s most well-known and respected union-side labor firms. Specializing in labor law and appellate practice, Gene filed briefs and pleadings for clients in every conceivable forum, including the Supreme Court.⁴

In 1949, Gene began his most enduring contribution to modern American law, as he, the five-year law clerk to Justice Murphy, joined with Robert L. Stern, a former lawyer in the Office of the Solicitor General of the United States who had argued more than sixty Supreme Court cases, to begin work on the first edition of *Supreme Court Practice*. The book drew not only upon their own extensive experience, but upon advice and counsel from the Office of the Clerk of the Supreme Court, who reviewed their draft and made corrections and suggestions.⁵ It quickly became “the Bible,” not only for Supreme Court practitioners nationwide, but for generations of clerks and Justices (many of whom wrote Gene to thank him for his erudition about their Court).

“Stern & Gressman,” now in its ninth edition, is still considered “the definitive resource” on the rules, procedures, and practices of the Court. Associate Justice Powell paid tribute to Gressman, upon his retirement in 1987, writing that “[h]is famous book *Supreme Court Practice*, now in its sixth edition, is the ‘bible’ on practice before our Court.”⁶ Another reviewer wrote that “it should be considered prima facie evidence of malpractice for any lawyer, no matter how experienced, to fail to consult this work when preparing a case for

2. John H. Pickering, *Eugene Gressman: An Appreciative Recollection*, 65 N.C. L. REV. 871, 872 (1987).

3. Pollitt, *supra* note 1, at 237.

4. E.g., Daniel Hill Pollitt, *Eugene Gressman: As Mirrored by His Cases*, 65 N.C. L. REV. 863, 863 (1987) (recalling that Gene Gressman had written the successful Supreme Court brief in *Local 283, UAW v. Scofield*, 382 U.S. 205 (1965), while at Van Arkel & Kaiser).

5. Eugene Gressman, *Celebration of the Life of Robert L. Stern*, ORDER OF SERVICE FOR ROBERT L. STERN, <http://home.earthlink.net/~alnstern/RLS/gressman.htm> (last visited Nov. 17, 2010).

6. Lewis F. Powell, Jr., *A Tribute to Two Professors: Eugene Gressman and George Wythe*, 65 N.C. L. REV. 851, 851 (1987).

submission to the Supreme Court.”⁷ Justice O’Connor once greeted him with the tribute, “Professor Gressman, North Carolina’s gift to the Supreme Court.”⁸ Bennett Boskey, himself a former Supreme Court law clerk and the author of a well-known book of Supreme Court forms, wrote in his 2002 pocket part edition: “This excellent work is an indispensable tool. It explains what the Court has done, what it now does, and which former precedents can no longer be relied on. The lawyer who fails to partake of the book’s knowledge and wisdom acts at his or her peril.”⁹ Another 2002 review of the eighth edition stated:

This is a great book. It is a monument of legal publishing. It has no rivals in its field of U.S. Supreme Court practice. It sets the standard for all appellate practice books. Indeed, the fine practice volumes that have been published for the Fifth, Eighth, and Ninth Circuits readily demonstrate its strong and elevating influence. BNA has been publishing this hallmark treatise since 1950. . . . No one should consider even attempting to pursue an appeal (or to object to certiorari) in our nation’s highest court without this book. At 1,290 pages, it may be the biggest single volume in our law library and, at \$395.00 plus, it is certainly the most expensive. It is worth every dime of its price. It has everything a lawyer needs to practice in the Supreme Court of the United States. Its treatment of all aspects of practice is remarkably broad and exceptionally deep. It is no surprise that the Court has often cited earlier editions of this book. . . . This is the best appellate practice book ever written. Buy it.¹⁰

In 1977, Gene left law practice to become a Kenan Professor at the University of North Carolina School of Law. During a scholarly career spanning nearly sixty years, he would author more than seventy-five law review articles and several textbooks.¹¹ His 1952 law review article entitled *The Unhappy History of Civil Rights*

7. Gressman, *supra* note 5.

8. *Scholar, Supreme Court Contributor Gressman Leaves Legacy*, UNC SCH. OF LAW (Jan. 26, 2010), <http://www.law.unc.edu/news/story.aspx?cid=398>.

9. *Ex Ante: Supreme Credit*, 6 GREEN BAG 2d 120, 120 (2003) (quoting BENNETT BOSKEY, 1 WEST’S FEDERAL FORMS: SUPREME COURT (Supp. 2002)).

10. Dennis Owens, *Lead Book Review: Supreme Court Practice*, APP. PRAC. J., Summer 2002, at 6.

11. See, e.g., Eugene Gressman, *The Constitution v. The Freund Report*, 41 GEO. WASH. L. REV. 951 (1973); Eugene Gressman, *Much Ado About Certiorari*, 52 GEO. L.J. 742 (1964); Eugene Gressman & Angela C. Carmella, *The RFRA Revision of the Free Exercise Clause*, 57 OHIO ST. L.J. 65 (1996); Eugene Gressman, *Uniform Timing of Presidential Primaries*, 65 N.C. L. REV. 351 (1987).

*Legislation*¹² is often considered the most important spur in the revival of section 1983 of the Civil Rights Act of 1866.¹³ Fifty-seven years after that article, in 2009, the fifth edition of Gressman's constitutional law casebook appeared only shortly before his death.¹⁴ Gene was also a remarkably active advocate before the appellate courts. He filed more than 400 petitions, motions, and briefs in the Supreme Court of the United States, and orally argued thirteen cases there,¹⁵ including *Immigration & Naturalization Service v. Chadha*¹⁶ in 1983, where he was asked by the United States House of Representatives to serve as its counsel before the Court.

A marvelous teacher of Supreme Court practice, federal jurisdiction, constitutional law, and professional responsibility, Gene won the Frederick B. McCall Award for Teaching Excellence at UNC Law in 1987, and he was honored when the first-year advocacy awards at UNC Law were named the "Gressman/Pollitt Awards" for Gene and his long-time friend and colleague, Dan Pollitt. Ken Broun, a former UNC School of Law dean, recalled that "Gene has set a tone of decency, of consideration for others, and of good humor His quick wit and sense of what is funny in an otherwise unfunny political scene have kept students and faculty colleagues alike laughing with him."¹⁷

Gene's talents were tapped, not only as teacher and scholar by UNC Law, but as committee chair and advocate by the United States Court of Appeals for the Fourth Circuit, where he served as chair of the Circuit's Advisory Committee on Rules and Procedure from 1983 to 1988 and as an amicus curiae attorney at the court's request. Fourth Circuit Judge (and former UNC School of Law dean) J. Dickson Phillips, Jr., remembered that his court was "[q]uick to recognize and capitalize on" Gressman's arrival at UNC Law; it "enlisted Professor Gressman's great talent for both general and

12. Eugene Gressman, *The Unhappy History of Civil Rights Legislation*, 50 MICH. L. REV. 1323 (1952).

13. Jack M. Beermann, *The Unhappy History of Civil Rights Legislation, Fifty Years Later*, 34 CONN. L. REV. 981 (2002); see also ARNOLD M. PAUL, BLACK AMERICANS & THE SUPREME COURT SINCE EMANCIPATION 9 (Arnold M. Paul ed., 1972) (describing the article as "the first in many years to give adequate attention to the failure of the old civil rights laws" and as offering a critique of the judicial neglect of those laws that was "years ahead of [its] time").

14. See DAVID CRUMP, EUGENE GRESSMAN, DAVID S. DAY & CHARLES W. "ROCKY" RHODES, CASES AND MATERIALS ON CONSTITUTIONAL LAW (5th ed. 2009).

15. Kenneth S. Broun, *Eugene Gressman: A Comment on His Retirement*, 65 N.C. L. REV. 857, 857 (1987).

16. 462 U.S. 919 (1983).

17. Broun, *supra* note 15, at 858.

particular services[,] . . . rendered with the consummate quality that was expectable, with unhesitating acceptance of the court's request for assistance, and, characteristically, essentially *pro bono*.”¹⁸

Gene's first retirement came in 1987, and at that time, former UNC chancellor Bill Aycock offered a tribute to his colleague:

He is an acknowledged master of procedure, together with the technical detail necessarily embraced therein. Yet, he is a sturdy disciple of the generative principles of the law. Ever mindful of our heritage, his diligent study of the past usually leads his mind to the edge of the future. When he is on the threshold of new insights, his eyes dance like the flames of an open fire. He has always been generous in sharing those insights. As a colleague, he has a gentle demeanor but an inward vigor. . . . His knowledge of the law, his devotion to justice, and his personal character have fulfilled the highest hopes of his colleagues. Truly, he has brought to us the ideal blend of excellence as a teacher, scholar, writer and practitioner of law.¹⁹

The flame still burning brightly after 1987, Gene found he could not truly retire at seventy, and he began a long association with the Seton Hall University School of Law where he became the Richard J. Hughes Distinguished Visiting Professor of Law from 1987 to 1989 and again from 1989 to 1994. His colleagues and students at Seton Hall eventually named their appellate moot court program after him.²⁰ Returning to UNC in 1994 as a professor emeritus, Gene's scholarly and Supreme Court work continued, as he also taught a Supreme Court practice seminar in which a generation of students crafted their first petitions for certiorari and Supreme Court arguments for his gentle, experienced review. No one logged longer or more regular hours in Van Hecke-Wettach Hall than this eighty-year-old plus faculty member, grading papers, churning out briefs, articles, and sharing a constant stream of bon mots on Supreme Court opinions that failed to meet his high standards.

Married for sixty years to the artist Nan Gressman, who predeceased him in 2004, Gene is survived by four grown children, William, twins Nancy and Margot, and Eric. He was devoted to his

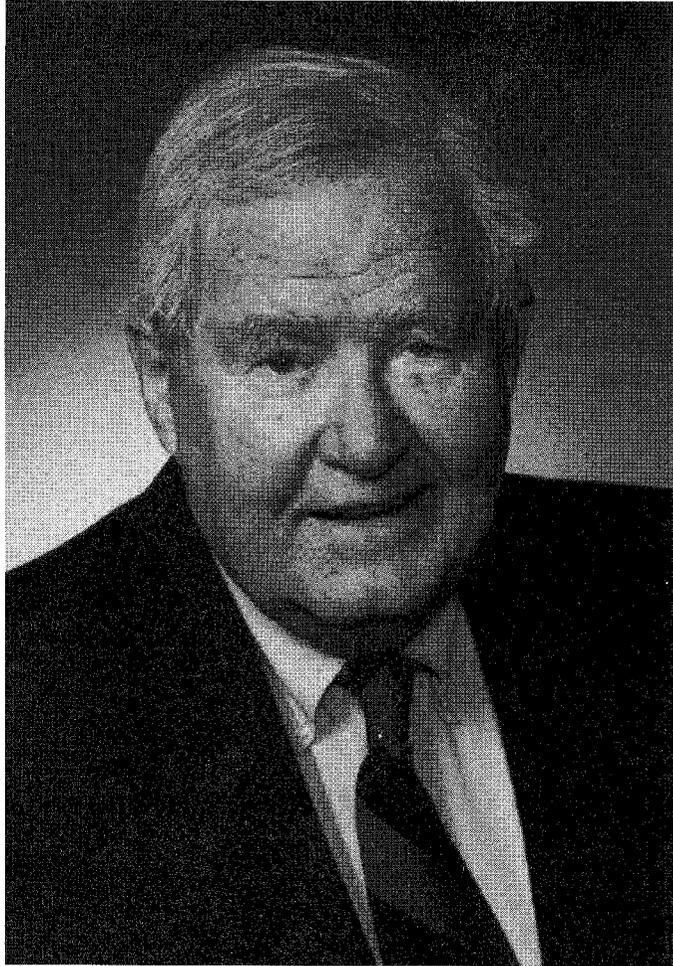
18. James Dickson Phillips, Jr., *Eugene Gressman: Friend of the Court*, 65 N.C. L. REV. 859, 859 (1987).

19. WILLIAM B. AYCOCK, *Eugene Gressman: On the Occasion of His Retirement*, in SPEECHES AND STATEMENTS OF WILLIAM BRANTLEY AYCOCK (1957-1989), at 524 (1989).

20. Pollitt, *supra* note 1, at 237.

talented spouse Nan, and he generously donated more than a dozen of her acrylic abstract paintings to the UNC School of Law upon her death. Many of them presently adorn the law school's rotunda. Gene himself adorned the life of UNC Law, and indeed the life of American law, for over seventy years. He will be greatly missed.





Daniel H. Pollitt
Graham Kenan Professor of Law Emeritus