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J. DICKSON PHILLIPS JR.:

PREPARATION FOR JUDICIAL EXCELLENCE*

JOHN CHARLES BOGER**

This year, the *North Carolina Law Review's* annual North Carolina issue focuses on the judicial decisions of one of the state's great federal judges, J. Dickson Phillips Jr., who sat on the United States Court of Appeals for sixteen years, from 1978 until 1994.¹ When he took senior status in 1994, the Circuit's Chief Judge, Sam J. Ervin III praised Judge Phillips as "without question, one of the most outstanding appellate court jurists that North Carolina has ever produced."² This issue will examine Judge Phillips's opinions to discover what made them especially wise and enduring. Yet Judge Phillips's life had been exemplary long before he took a judicial oath and donned black robes. This short essay will briefly review that past, searching for the qualities of mind, character, and experience that might explain such an exceptional jurist. It will be a welcome search, for Judge Phillips was "my dean" when I studied law at the University of North Carolina from 1971-74. Along with many of his former students, I venerate this important figure who so helped to shape the life of his state and region for fifty years.

Dickson Phillips Jr. was born in Laurinburg in Scotland County, North Carolina, in 1922.³ An interviewer described Laurinburg of that era as "a close-knit town of approximately 2,000 . . . dominated by Scots and a distinctive Scottish lifestyle: family oriented, clannish, frugal, hard working and heavily Protestant."⁴ Phillips's mother was a school teacher from Virginia and his father a World War I veteran

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1. Sam J. Ervin, III, *A Tribute: Judge James Dickson Phillips, Jr.*, 73 N.C. L. REV. 1, 1 (1994).

2. *Id.* at 4.

3. Tod M. Leaven, *From Cincinnatus to Cicero: North Carolina's Lawyers in the Service: An Interview with Judge J. Dickson Phillips, Jr.*, *ADVOC.* (N.C. Bar Ass'n Young Lawyers Div., Cary, N.C.), Mar. 2011, at 4, 4, available at <http://younglawyers.ncbar.org/newsletters/theadvocatemarch2011/cincinnatusmarch>.

4. *Id.*

and cotton mill executive. He grew up as a small-town boy, swimming in swimming holes, building model airplanes, and playing on football and baseball fields eagerly, if not brilliantly. Yet school was a field on which he did excel; he would graduate in 1939 as salutatorian of his high school class and would accept an offer to attend Davidson College, where he became a Phi Beta Kappa student and, despite modesty about his athletic prowess, captain of the college baseball team.⁵

Davidson remained a life-long love, a place to which he would make special trips as law school dean to recruit the college's finest graduates to UNC School of Law. Yet his four years there were not untroubled, as the growing clouds of the Second World War darkened skies across the nation and the world. Dickson Phillips, his WWI veteran father's son, joined Davidson's small Army infantry ROTC program as a freshman and, upon his graduation in 1943, enlisted in Officer Candidate School at Fort Benning, Georgia, entering the United States Army as a 2nd Lieutenant.⁶

When an opportunity arose to attend the Army's new Parachute School, he volunteered for the program and was assigned to the 513th Parachute Regiment in the 17th Airborne Division. Most of the enlisted men he encountered as a young rifle platoon officer came from backgrounds quite different from his small-town South: tough Italian and Polish immigrant youth, products of the industrial towns of the Northeast and upper Midwest.⁷ Yet Lieutenant Phillips, open and flexible toward all others, "came quickly to appreciate in the men of this unit the same camaraderie that he enjoyed" growing up in Laurinburg.⁸

After training, his 513th regiment was shipped to Europe late in August of 1944. They soon saw heavy action, including an assault on a key village near Bastogne, Belgium, carried out "[i]n deep snow and bitter, below freezing cold," with heavy casualties.⁹ The 513th was then deployed as part of the first Allied assault across the Rhine and into Germany. On March 28, 1945, Phillips and his platoon parachuted into the Rhineland as part of the "largest single-day

5. William B. Aycok, *The Vietnam Era: The Deanship of James Dickson Phillips, Jr. (1964-74)*, 73 N.C. L. REV. 601, 601-02 (1995), in *The University of North Carolina School of Law: A Sesquicentennial History*, 73 N.C. L. Rev. 563 (1995); Leaven, *supra* note 3, at 4.

6. Leaven, *supra* note 3, at 4.

7. *Id.*

8. *Id.*

9. *Id.* at 4-5.

airborne operation in history.”¹⁰ Although he landed safely, Lieutenant Phillips was wounded severely in a firefight while leading his platoon toward the key town of Munster. He spent two months in Army hospitals before being evacuated back to the United States for rehabilitation and eventual discharge with a Bronze Star and Purple Heart, just as World War II ended in Europe.¹¹

Suddenly back home on leave in 1945 with his next steps uncertain, Phillips found himself recruited by another young Laurinburg native, Terry Sanford, to join him for a drive to Chapel Hill, where Sanford was scheduled to enter law school.¹² Phillips came along and found himself admitted to the Class of 1948 on the spot by UNC Law Dean Robert Wettach, who was assembling one of the greatest classes in the School’s long history. In addition to the two who had just arrived from Laurinburg—the future law school dean and federal appellate judge Phillips and the future North Carolina Governor Terry Sanford—the Class would eventually boast UNC Chancellor and beloved law professor William B. Aycock, University of North Carolina system President William C. Friday, and the Chairs of the UNC Board of Governors, William Dees and John Jordan, among others.¹³

Phillips excelled in his studies at Chapel Hill, as he had done at Davidson, serving as Associate Editor of the *North Carolina Law Review* and earning Order of the Coif honors.¹⁴ It was understandable, then, that after graduation, he was tapped by Professor Albert Coates to become an assistant director of UNC’s expanding Institute of Government. Yet after a year, Phillips felt the call of private practice and returned to Laurinburg (and eventually to the larger city of Fayetteville) to practice law with his partner Terry Sanford and other leading young North Carolina lawyers. Chief Judge Ervin would later describe Phillips at that stage of his career as “a small-town lawyer in every good sense of the term[,] . . . engaged in both civil and criminal [practice] . . . and a keen observer of human nature[,] . . . understand[ing] the strengths and weaknesses of our society and of his fellow human beings.”¹⁵

10. *Id.* at 5.

11. *Id.*; Aycock, *supra* note 5, at 602.

12. Leaven, *supra* note 3, at 5.

13. John Jordan, *Recollections*, CAROLINA LAW (Univ. of N.C. Sch. of Law, Chapel Hill, N.C.), Spring/Summer 2010, at 36, 36.

14. Aycock, *supra* note 5, at 602.

15. Ervin, *supra* note 1, at 2.

Although Phillips knew great success as a trial attorney, eventually his academic bent drew him back to Chapel Hill when he was recruited by Dean Henry Brandis as a visiting professor in civil procedure and related subjects in 1959.¹⁶ He quickly became an associate professor, and then in 1964, a tenured full professor and Brandis's successor as dean—an extraordinarily rapid rise to academic and administrative prominence.¹⁷

Let me share a few thoughts about his remarkable ten years spent as UNC Law's dean. He was *my* dean (as so many alumni from that era proclaim with pride and affection). He was a strong, positive presence in the school for his students, a gifted teacher for those fortunate enough to find themselves in his first-year civil procedure class, a course he regularly taught, year in and year out, despite the administrative burdens of deanship. I've heard many alumni, now successfully settled in meaningful careers, who knew him in the role of counselor and advisor as well. More than one has confessed that, had Dean Phillips not offered a well-timed half hour of advice, they would have left law school in confusion or despair, instead of persevering on to graduation and a gratifying career in the law.

Phillips led a decade of transformation like none before. In his first year, Dean Phillips presided over 376 law students in Manning Hall.¹⁸ By the time I entered Van Hecke-Wettach Hall as a student in the fall of 1971, total enrollment had more than doubled, from 376 to 754 students.¹⁹ The faculty of nineteen that Dickson Phillips inherited also nearly doubled during his deanship, from nineteen to thirty-two—and as dean, he had to winnow, woo, and land a total of thirty-one new faculty members to reach that goal.²⁰ Dean Phillips hired Carolina Law's first African American faculty visitor, Harry Groves, and its first full-time African American faculty member, Charles Daye.²¹ There was only one African American student when he became dean; by 1973, there were twenty-three, along with one Latino and two Native American students.²² The ten women who enrolled as students during his first year swelled to 121 by the time he left.²³

16. See Aycock, *supra* note 5, at 603.

17. *Id.*

18. See *id.*

19. *Id.*

20. *Id.* at 605.

21. *Id.* at 605–06.

22. *Id.* at 604.

23. *Id.*

Dean Phillips also led the effort to construct a new law school building and move the School from Manning Hall on Polk Place, where it had held classes from 1923 to 1968, into “the new law school building,” Van Hecke-Wettach Hall, where we continue to hold classes forty-six years later.²⁴

During Dean Phillips’s ten years as dean, our modern moot court program, the Holderness Moot Court bench, was inaugurated. The McCall Teaching Award for outstanding faculty teaching was created. First year small section classes were instituted for first-year students, as the upper class curriculum expanded greatly. The first-ever clinical classes were sponsored. Finally, by far the largest fundraising effort in the School’s history was successfully carried out, even while the ten-year North Carolina bar passage rate among Carolina Law graduates averaged 95.8%.²⁵

Dean Phillips oversaw and led these student enrollment gains, faculty expansion, curricular innovations, new building construction, and fundraising achievements during what former Dean Henry Brandis later described as “the toughest ten [years] in the history of the deanship.”²⁶

What kind of preparation was such a life for federal judicial review? Perhaps ideal preparation. Born in a close-knit community that afforded much of the best in American small-town life and values, raised in a family that valued education and encouraged achievement, exposed to the self-discipline and camaraderie of competitive sports, drawn toward academic study as Laurinburg’s salutatorian, given an outstanding education in the liberal arts tradition at Davidson College, tutored in the searing hardships and sacrifice of world war, lifted by excellent legal training at Chapel Hill amid unusually talented law school companions, thoroughly tutored in the realities of law practice as both civil and criminal clients came seeking his help, provided the rare opportunity to turn scholar and grow expert in civil procedure—the most distinctively “legal” of legal subjects—and chosen the leader and companion of the state’s finest legal minds, Dickson Phillips Jr. arrived to the circuit court bench with rare life and legal exposure.

What qualities of character had he shown along the way? Obviously exceptional intelligence, but also great drive and self-control. Physical and moral courage. A wise and fair temperament,

24. *Id.* at 609.

25. *See id.* at 615, 617.

26. *Id.* at 620.

and a broad understanding of human nature. These are, of course, the cardinal virtues—justice, prudence, temperance, courage.²⁷ It takes no formal acquaintance with Plato or Cicero to recognize in the life of Dickson Phillips Jr. the sterling qualities that led so many to call him forth to lead, and to judge. They knew he would do so wisely and fairly, and indeed, he did.

27. PLATO, *THE REPUBLIC OF PLATO* bk. IV, at 126–27 (John Llewelyn Davies & David James Vaughan trans., London, MacMillan & Co., 3d. ed. 1866, reprinted 1935) (c. 380 B.C.E.); *see also* CICERO, *DE INVENTIONE* bks. II, LIII, at 327, 329 (H.M. Hubbell trans., Harvard Univ. Press 1949) (c. 89 B.C.E.).