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DANIEL H. POLLITT: IN MEMORIAM

JOHN CHARLES BOGER

Daniel Hubbard Pollitt, Graham Kenan Professor of Law Emeritus at the University of North Carolina at Chapel Hill and one of the most extraordinary figures in the life and history of the UNC School of Law, died on March 5, 2010 at age eighty-eight. His death came amid a season of great loss at the law school. Two of Dan’s oldest law faculty friends, Sally Sharp and Gene Gressman, had died less than two months earlier, in January of 2010, and former dean Robert G. Byrd joined them in death a month later, on April 5. Dan Pollitt’s life and influence were celebrated by more than 500 friends and admirers who gathered at the William & Ida Friday Center on April 18 to pay him tribute.

In lesser part, Dan’s influence was the product of longevity. He arrived in Chapel Hill in the fall of 1957, and for five decades thereafter shared with UNC Law students his knowledge of constitutional law, labor law, civil rights and civil liberties. In greater part, it was the purity of his moral commitment that made the most lasting impression on all who knew him, for Dan unflinchingly lived out his commitment to academic freedom, civil rights, free speech, labor rights, and a just society. Soft spoken in voice, and invariably genial in manner, Dan represented the finest progressive social and political values. He was a generous and caring teacher who opened his home and life to his students, and a scholar whose writings conveyed both the legal principles and the deeper animating spirit of constitutional law, labor law, and civil rights.

Through his ceaseless social activism, continued service to the University, and friendships forged in joint struggle with many leading public figures of his age, Dan served the University in much the way that the University of North Carolina has, at its best, served the state:

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** Dean and Wade Edwards Distinguished Professor of Law at the University of North Carolina School of Law.
as a strong, beneficent mind and voice, prompting all by example to aspire to principles of fairness and inclusion. His death was an enormous professional and institutional loss.

Dan was born in 1921 in Washington, D.C. Both of his parents were lawyers in the New Deal administration of President Franklin Roosevelt. He grew up in a home committed to social justice, surrounded by ideas and idealism. His parents taught their children not only to espouse good thoughts but to do good deeds. They led Dan and his siblings in picketing a segregated amusement park near his home; they supported Dan’s attendance at an American Friends Service Committee work camp in Mexico for a month when he was nineteen.

In 1939, Dan went off to college at Wesleyan University in Middletown, Connecticut. As someone always pleased to make a connection between his own life and that of others, he once shared with me, upon learning that I had attended Yale Divinity School, his Wesleyan/Yale Divinity story: Dan apparently had pledged a fraternity while at Wesleyan. As part of a witty initiation rite, he was required to hitchhike, after dark, from Middletown to New Haven, find the home of the Yale Divinity School dean, knock on the door, and ask the dean if he might borrow a copy of Henry Miller’s then-censored novel, *Tropic of Cancer*. Showing the bravery which characterized far more serious trials later in his life, and exhibiting a bit of his future First Amendment determination, Dan carried out the deed unhesitatingly, charmed the dean, and wound up with supper, though apparently not with Henry Miller’s suppressed classic.

Pollitt accelerated his college studies in order to graduate in three years in 1943 and join the United States Marine Corps, where he saw active World War II combat duty as an infantry officer in the Pacific theater. Although he rarely spoke of it afterwards, Dan saw harrowing battle duty, receiving several Purple Hearts for wounds incurred in hand to hand combat. His unit eventually landed on the shores of Nagasaki, Japan in the closing days of the war. Those who mock most political progressives as armchair liberals, clueless about the world’s dangers and cruelty, never met Dan Pollitt, whose courage facing political opposition always had in it something of the best of Marine steel.

After World War II ended, Dan entered Cornell Law School, where he earned an LL.B. degree with honors in 1949. After a year of private practice with the private law firm of McFarland and Sellers, in Washington, D.C., Dan served a one-year federal clerkship in 1950–
51 for Judge Henry Edgerton of the United States Court of Appeals for the District of Columbia Circuit.

Thereafter, Dan began a long professional association with a law firm created by two celebrated New Deal Democratic progressives, Joseph L. Rauh, Jr.—who had joined with Eleanor Roosevelt, John Kenneth Galbraith and others to found the Americans for Democratic Action in 1947—and civil rights giant John Silard. For four years, during the worst depths of the McCarthy era, Dan, as a junior attorney, helped represent government officials accused of subversive activities, the United Auto Workers, Pullman railcar workers, the farm workers union, other labor union leaders, and many highly vocal and/or unpopular clients. One of the most prominent was playwright Lillian Hellman, whom Dan defended in 1952 against a legal attack from the House Un-American Activities Committee (HUAC), which demanded to know all of her acquaintances with Communist ties. Pollitt represented ten to fifteen such clients before HUAC at a time when most lawyers eschewed any association with such controversial figures.

Despite the gripping quality of his litigation practice, Dan eventually found himself drawn to law school teaching. After lecturing for a year in the evening division at American University in Washington, D.C., Dan joined the University of Arkansas School of Law in 1955 as a full-time faculty member, while continuing his legal work during the summers with Rauh & Silard. Yet two years later, when Arkansas in 1957 required all professors to submit “loyalty oaths” promising they had never been members of the NAACP or supported communism, Dan refused, lambasting the University in legal papers for its infringement of First Amendment principles.

Urged to consider the UNC School of Law faculty by Norman Thomas—a fellow member of the Sharecropper’s Fund who pointed Dan toward UNC and its fearless former president Frank Porter Graham—Dan decided, to our great good fortune, to accept the suggestion and was welcomed by former dean Maurice Van Hecke and Dean Henry Brandis. Although he was later to teach briefly at Duke, Georgetown, Oregon, Virginia, and Wake Forest, UNC became Dan’s academic home for fifty-three years.

5. Id. at 92–93.
6. Id. at 107–13.
A timorous dean’s nightmare, Pollitt quickly became involved in a wide variety of civil rights, civil liberties, and labor matters seemingly everywhere. As a member of the Chapel Hill branch of the NAACP, he assisted students and other brave demonstrators in their four-year struggle to integrate the local Varsity Theatre and other segregated restaurants and establishments in Chapel Hill, all of which fought vigorously for several years. Dan did not simply serve as the movement’s legal counsel. He picketed the Varsity for an entire winter and spring, until the owner, dismayed by decreased attendance, allowed blacks to enter as paying customers. Dan also fought in concert with members of the Community Church of Chapel Hill to integrate all features of Chapel Hill’s public life, especially its segregated public schools, and after working to elect supportive candidates to the Chapel Hill school board, Dan eventually saw that old order begin to disappear.

In 1965, Dan was instrumental in recruiting to UNC Charlie Scott, the brilliantly talented young athlete—and the first African American ever to play basketball in the ACC. Dan had given a speech to the North Carolina chapter of the NAACP earlier, heard by the headmaster of the Laurinburg Academy, where Scott was a student. The headmaster suggested to Coach Dean Smith, who was actively interested in recruiting Scott, that it would help to bring Dan Pollitt along. The meeting went well, and Scott agreed to come to Chapel Hill and tour the campus. Dan later smiled about the visit: “Charlie Scott thought he’d like to be a pre-med, so the rumor was later spread that they let him perform an appendectomy during his recruiting visit. But he decided to come here, and that broke the color line in the ACC.”

Dan gave his energy to many other progressive organizations. He was a charter member and mainstay of the North Carolina branch of the American Civil Liberties Union, winning its Frank Porter Graham Award in 1974 for his active involvement in civil liberties causes. He was a vigilant member of the American Association of University Professors (AAUP), serving as president of the North Carolina chapter from 1968 to 1969, as a member of its national council from 1977 to 1980, and as an active legal advisor to scores of college and university professors from around the nation who found themselves in trouble for their exercise of free speech.

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7. See Anne Blythe, Chapel Hill Radical Dies at 88, NEWS & OBSERVER (Raleigh, N.C.), Mar. 6, 2010, at 3B.
Dan was too modest ever to mention his national service as a consultant to the celebrated Kerner Commission, appointed by President Lyndon B. Johnson after the 1967 riots in Newark, Detroit, and elsewhere; or that he was tapped to join the select “Max Goldman” group of advisors to President Johnson on domestic priorities; or that he was a special consultant for a year to the chair of the National Labor Relations Board; or that he served as a special, part-time counsel to the House Committee on Education and Labor for nearly thirty years.

A member of Southerners for Economic Justice and the Southern Regional Council, a founding member of the North Carolina AFL-CIO Labor Law Center, a board member of Farmworkers Legal Services of North Carolina—the list goes on and on. Dan’s involvements form a virtual catalogue of liberal and progressive organizations at work in the American South during the second half of the twentieth century. Nearly every summer, moreover, he would return to the D.C. area to work with Rauh & Silard, drafting key briefs and representing and befriending dozens of leading public figures of the civil rights era, including Dr. Martin Luther and Coretta Scott King, with whom he joined to integrate Rich’s Department Store restaurant in Atlanta, Georgia, labor leaders such as Walter Reuther, congressional lions such as Senator Ted Kennedy, and many more. Dan’s public interests ranged widely. In honor of Dan’s longtime support of farm worker activities and rural advancement, the Rural Advancement Foundation International dedicated its central facility in his honor; the Dan Pollitt Conference Center opened in Pittsboro, North Carolina in 2001.

One might conclude that Dan inevitably neglected both students and scholarship and was a pariah in the University community. Nothing was further from the truth. His disarming personal manner and self-evident decency helped Pollitt become a respected University figure while his social justice crusades were underway. He served repeatedly on the UNC Faculty Council, was chair of the Faculty Advisory Committee to the chancellor, was chair of the faculty from 1978 to 1982, and received the University’s Thomas Jefferson Award in 1982.

Dan also became a legend to forty or more years of UNC law students. Initially taken in by his magical teaching in constitutional law, many went on to enroll in his civil rights and liberties seminar, taught often in his home with his gracious wife Jean Ann Rutledge, daughter of United States Supreme Court Justice Wiley Rutledge, as hostess. Many of the UNC School of Law’s greatest alumni, from
Julius Chambers to Wade Smith, even lesser lights like me, point to Dan as one of the chief mentors and influences in their professional lives.

Dan was also the author of more than sixty articles, many in leading law reviews, as well as thought pieces in popular national magazines such as *Harpers*, *Esquire*, and *Christianity and Crisis*.8

In 1990, Dan was compelled by University policies at the time to formally “retire.” Yet the term proved a misnomer, for during the ensuing two decades, few members of the UNC law faculty logged more time in their offices, met more often with students, or engaged in more socially and scholarly productive work. UNC School of Law deans regularly recruited Dan, until the last years of his life, to teach the odd section of labor law, constitutional law, or civil rights as a distinguished “adjunct” professor. Dan kept up his volunteer AAUP representations of professors who came under University fire. His determined opposition to capital punishment, moreover, led to dozens of articles in local journals and a book against the death penalty.9 Dan was also a faithful presence at religious services and vigils before every North Carolina execution, for each of which he prepared a meticulous analysis of legal and factual issues that raised any doubts about constitutional issues or the defendant’s guilt.

I close with much left to say. Dan’s modesty would have been content with far less. The one thing he would not have wanted omitted was mention of his beloved family. I have alluded to his first wife Jean Ann Rutledge, who passed away in 2006. A year before his death, he married North Carolina State Senator Ellie Kinnaird. She and Dan’s three grown children—Danny, Suzie, and Phoebe—and their families continue, in their own lives, to share Dan’s passionate devotion to justice and equality.

The most memorable feature of Dan’s extraordinary life is not the roster of his accomplishments but his sterling quality of character—which never indulged intellectual or personal intolerance despite his uncompromising support of unpopular causes, or bitterness at the frequency with which his pleas and arguments were


rebuffed. Dan possessed an absolutely unquenchable good cheer and resilience. He was no fool; he understood when opponents, courts, or legislatures played dishonestly, unfairly, or cruelly. Yet he would neither let their tactics deter him nor shape who and what he stood for: always the happy warrior (like Al Smith, the presidential candidate whom his family had supported in 1928, all their friends' condemnations to the contrary).

It was Wordsworth, of course, who penned an earlier poetic tribute to the Happy Warrior, almost as if he had Daniel H. Pollitt in mind:

Who is the happy Warrior? Who is he
That every man in arms should wish to be?
—It is the generous Spirit, who, when brought
Among the tasks of real life, hath wrought
Upon the plan that pleased his boyish thought:
Whose high endeavours are an inward light
That makes the path before him always bright . . .

Who, doomed to go in company with Pain,
And Fear, and Bloodshed, miserable train!
Turns his necessity to glorious gain;
In face of these doth exercise a power
Which is our human nature's highest dower;
Controls them and subdues, transmutes, bereaves
Of their bad influence, and their good receives . . .

—'Tis he whose law is reason; who depends
Upon that law as on the best of friends;
Whence, in a state where men are tempted still
To evil for a guard against worse ill,
And what in quality or act is best
Doth seldom on a right foundation rest,
He labours good on good to fix, and owes
To virtue every triumph that he knows:

. . . .

Whose powers shed round him in the common strife,
Or mild concerns of ordinary life,
A constant influence, a peculiar grace;
But who, if he be called upon to face
Some awful moment to which Heaven has joined
Great issues, good or bad for human kind,
Is happy as a Lover; and attired
With sudden brightness, like a Man inspired;
And, through the heat of conflict, keeps the law
In calmness made, and sees what he foresaw . . . 10

Whenever I think of Dan Pollitt, even in death, it is with a smile, recalling what he meant to all, and how lightly he wore his “peculiar grace.”

Robert G. "Bob" Byrd
Burton Craige Professor of Law Emeritus