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Eric L. Muller

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THE EMBODIMENT OF ACADEMIC FREEDOM*

ERIC L. MULLER**

On August 6, 1962, the following brief article ran on Page 22 of the *New York Times*, under the headline “Teacher, Target of Attacks, Resigns Post in Mississippi”:

OXFORD, Miss., Aug. 5 (UPI)—A University of Mississippi law professor who has been the target of segregationists for several years has resigned to take a better position at the University of Missouri.

William P. Murphy, attacked by legislators and others because he is a member of the American Civil Liberties Union, will become a full professor of law at Missouri Sept. 1. He has been at Mississippi since 1953.

His resignation came after the State College Board had refused to renew his contract.

The professor first came under attack in 1959. That year, however, the College Board rehired him. In 1960, an unsuccessful attempt was made in the Legislature to cut off state funds to anyone belonging to the Civil Liberties Union.¹

Bill Murphy, my colleague on the faculty of the University of North Carolina School of Law and my friend, died on September 29 in Chapel Hill at the age of eighty-seven. His life and his work could serve as an example of many of our highest aspirations: erudition, passion, civility, and engagement in both the worlds of ideas and action. But in the days since he died, I have been thinking most about how Bill’s life and work exemplify the value of academic freedom.

The little article from the *Times* actually got things a bit wrong. Yes, powerful men in Mississippi went after Bill Murphy while he was at Ole Miss in the 1950s because he was a member of the ACLU. But that masked their real reason: Bill Murphy was a professor of constitutional

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** Dan K. Moore Distinguished Professor in Jurisprudence and Ethics, University of North Carolina School of Law. Originally published in the *Chronicle of Higher Education*, Dec. 7, 2007. Reprinted with permission.

1. *Teacher, Target of Attacks, Resigns Post in Mississippi*, N.Y. TIMES, Aug. 6, 1962, at 22.

law who refused to teach budding Mississippi lawyers that *Brown v. Board of Education* was an illegitimate ruling that should be resisted. That was their real gripe.

Bill did not set out to make himself a poster child for academic freedom; he had that status thrust upon him. As he himself explained in a 1978 oral history, he “never really thought of it in terms of taking a stand on anything.”² He was simply teaching a course in constitutional law “the way [he] would have taught it anywhere”—that is, grounded in an assumption “that Supreme Court decisions are law, and at some point, to some extent, ought to be complied with.”³

That might not have raised controversy in most places, but it did at Ole Miss, where the leadership of the White Citizens’ Council (an upscale, politically connected version of the Ku Klux Klan that formally renounced violence but preached white supremacy and the illegitimacy of *Brown*) was urging massive resistance.

A careful student of the development of federal-state relations in the early Republic, Bill Murphy was hard at work in the 1950s on a theory of national sovereignty that left little room for the states’-rights claims of the segregationists. “It just happened that the way I taught and what I wrote turned out to be directly contrary to what many influential Mississippians believed,” Bill explained in his oral history, “and so they decided they had to get rid of me. And I had to decide whether I was going to keep on writing and teaching the way that I thought I ought to, or whether I was going to knuckle under to these people, and at that point, I did have to take a stand.”⁴

Take a stand he did, but the segregationists ultimately proved too powerful for Bill, and so he resigned in 1962. When the trustees at Vanderbilt were pressured not to act on a visiting position for Bill that the law faculty there had voted for, he landed at the University of Missouri.

Sadly, the Ole Miss episode would turn out not to be Bill’s last unsuccessful tangle with powerful men who wished to censure him. At Missouri, during the turmoil of the Kent State shootings and the U.S. bombing of Cambodia, Bill stepped in to negotiate the resolution of a tense standoff between student protesters and the university administration. Bill was chairman of the faculty council and had the administration’s support of the deal he had negotiated, a deal that was sensitive to the student body’s

2. Oral History Interview by Sean Devereux with William Patrick Murphy, in Chapel Hill, N.C. (Jan. 17, 1978) (transcript available at Documenting the American South, Interview B-0043: Southern Oral History Program Collection (#4007), <http://docsouth.unc.edu/sohp/B-0043/B-0043.html>).

3. *Id.*

4. *Id.*

sense of outrage over Vietnam and other matters about which the students were impassioned. But when Missouri's governor publicly complained about the deal, the chancellor repudiated parts of it, and the law school's dean engineered the revocation of Bill's position on the faculty council. Bill again knew that it was time to leave.

In the fall of 1970, he came to UNC, where he was still in the office as an emeritus every day when I arrived in 1998. By then he was busy doing labor arbitrations all over the country and had served a term as president of the National Academy of Arbitrators. He continued this work until just a few years ago, when health problems finally slowed him down—physically, at least.

Up until the very end, Bill remained keenly interested in goings-on in the worlds of law and politics. One of my sweetest memories of Bill is of him at a luncheon table, a seat away from Supreme Court Justice Clarence Thomas. Thomas had come to UNC to deliver a talk at the law school. Some of my colleagues chose to stay away in protest—a position I certainly understood—but that was not Bill's style. In my memory, Bill is leaning intently toward Justice Thomas, pressing the jurist to defend his cramped understanding of federal power and his expansive vision of states' rights. Bill is questioning Justice Thomas with the gracious style of a southern gentleman and the intensity of a prosecutor on cross-examination. Justice Thomas is rocking slightly back in his chair, a strained smile on his face. Bill Murphy, forced out of Ole Miss at the point of a stick bearing the paired labels of "white supremacy" and "state sovereignty," could not quite get his mind around an African-American Justice's eager endorsement of the power of the states.

Bill grew very sick last spring. I visited him one afternoon in early May. He opened up to me about his cancer and his fears for what the future held, as well as his pleasure at a supportive phone call he had received out of the blue from his former student and fellow cancer patient Elizabeth Edwards. Just a couple of weeks before Bill died, at his request, I packed up a couple of annual constitutional law casebook supplements and sent them home to Bill so that he could read up on recent developments at the Supreme Court.

The legal academy has lost a brave prince. I will miss him very much. If life ever deals me a chance to show the courage of my convictions, as it twice did Bill, I hope I will do it with my friend's silent guidance and blessing.

