

Charles L. Black Jr., 85, Constitutional Law Expert Who Wrote on Impeachment, Dies

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Prof. Charles L. Black Jr., a leading authority on constitutional law who taught at Columbia and Yale Universities for 52 years and was a prominent voice in the national debates on presidential impeachments, desegregation, the death penalty and other issues, died at his home in Manhattan on Saturday. He was 85.

The cause was respiratory failure after a long illness, according to his wife, Barbara Aronstein Black.

In 1931, as a 16-year-old freshman studying Greek classics at the University of Texas at Austin, Charles Black, a jazz aficionado, heard Louis Armstrong play. He was dumbstruck by the genius of the performance, and by a conundrum:

"Blacks, the saying went, were 'all right in their place,' " he recalled. "But what was the place of such a man, and of the people from which he sprung?"

In 1954, as a teacher of constitutional law, Professor Black composed his answer, helping Thurgood Marshall of the NAACP Legal Defense and Educational Fund Inc., and others, to write the legal brief for Linda Brown, a 10-year-old student in Topeka, Kan., whose historic case, *Brown v. Board of Education*, became the Supreme Court's definitive judgment on segregation in American education.

In a career that arched across the last half of the 20th century, Professor Black taught generations of law students, first at Columbia from 1947 to 1956, then at Yale for 30 years, and then at Columbia from 1986 until his health began to fail two years ago.

Among his students were Senator Hillary Rodham Clinton (although not her fellow law student, Bill Clinton) and countless others who became leaders in government, business and academic life. (One of them was Professor Black's wife, the George Welwood Murray Professor of Law at Columbia and the school's first woman dean, serving from 1986 to 1991.)

He also wrote more than 20 books and hundreds of articles on constitutional law, admiralty law, capital punishment, the role of the judiciary and other legal subjects, including "Impeachment: A Handbook," that was widely praised in 1974, when President Richard M. Nixon resigned in the Watergate scandal, and also when reissued during the 1999 proceedings against President Bill Clinton.

The handbook was an analysis of the law and history of impeachment, and took no position on the fates of Nixon or Clinton. As a liberal Democrat, Professor Black had no sympathy for Nixon politically. But in letters to newspapers, he argued against forcing Nixon to surrender tape recordings that implicated him, contending that the balance of federal power might be harmed if the principle of executive privilege was breached. But a judge ruled against Nixon, who resigned in the face of certain impeachment.

Professor Black was a vehement opponent of capital punishment, and his book, "Capital Punishment: the Inevitability of Caprice and Mistake" (Norton, 1974), argued against it. The United States Supreme Court outlawed capital punishment in 1972, in part because states were arbitrarily imposing it. Dozens of states had passed new laws to revive the practice, and the book contended that the new statutes were as bad as the old ones.

Besides his work in constitutional law, Professor Black developed a second major field in admiralty law, which governs maritime affairs. With a colleague, Grant Gilmore, he was the author of "The Law of Admiralty" (Foundation Press, 1957). There was a second edition in 1975. The book was widely regarded as the definitive text on the subject.

Colleagues were often struck by his legal insights, and a writing style that was eloquent and powerful. For example, while the Supreme Court often made news by striking down a lower court's ruling, he observed once that "the prime and most necessary function of the Court has been that of validation, not that of invalidation," adding, "What a government of limited powers needs, at the beginning and forever, is some means of satisfying the people that it has taken all steps humanly possible to stay within its powers."

Professor Black -- who taught his students that being a good lawyer in an era of increasing specialization required that they broaden their horizons through interests outside the law -- was something of a renaissance man himself. He published three volumes of poetry; he painted landscapes in oil; and he played the trumpet and what he called a cowboy harmonica.

He lectured in a Texas drawl that drew on a rich blend of logic, metaphor, humor and poetry. Flowing along with the declarative sentences on torts and contracts were references to Descartes, to a Stuart king's last words as he was about to be beheaded, or to the rationality of Japanese gods.

"It's mesmerizing," a former student wrote in a profile of the professor for an alumni magazine. "It is not filibustering. It is all, beautifully, to the point."

Akhil Amar, a Yale law professor who was in many of Mr. Black's classes, said: "He was my hero. So many of the great moral issues of the 20th century seem clear in retrospect, but were quite controversial at the time. He had the moral courage to go against his race, his class, his social circle."

Professor Amar said Professor Black regarded the Constitution not as something to be read literally or loosely, but as a whole, a carefully organized expression of democracy at the heart of law and politics. "He saw the architecture in the document," Mr. Amar said. "Many of the people who do constitutional law now do it differently, and I hope better, because of Charles."

Charles Lund Black Jr. was born on Sept. 22, 1915, in Austin, one of three children of Charles L. Black Sr., a prominent lawyer, and Alzada Bowman Black. The boy stood out early. After graduating at 16 from Austin High School in 1931, he entered the University of Texas, focusing on Greek classics as if he had been born in another age.

After taking a bachelor's degree in 1935, he went to Europe to indulge his appreciation of ballet. He then enrolled at Yale, taking Old and Middle English literature, writing a thesis on Shelley as a translator of verse, and earning a master's degree. He entered Yale Law School in 1940 and graduated in 1943. He served in the Army Air Corps as a teacher, and after the war practiced law for a year with the New York firm of Davis, Polk, Wardwell, Sunderland & Kiendl.

But he preferred teaching, and joined the Columbia law faculty in 1947. He became a full professor in a few years. In 1954, he married Barbara Aronstein. Besides his wife, he is survived by two sons, Gavin and David, both of North Brunswick, N.J.; a daughter, Robin Black of Bala Cynwyd, Pa., and his brother, Thomas B. Black of San Antonio.

In 1956, Professor Black joined the Yale law faculty as its first Henry R. Luce professor of jurisprudence. In 1975, he became the Sterling professor of law, the Yale school's highest teaching post, and one he held until 1986, when he retired and became the Sterling professor emeritus of law.

At his retirement, the law school student body gathered in a dining room and sang, "The Battle Hymn of the Republic." The Yale Law Journal devoted its July 1986 issue to him, incorporating colleagues' tributes and poems and other writings by Mr. Black. "He is the rare professor who consistently seeks out students for conversation, debate, spirits and good tidings," a preface said.

His teaching days were not over, however. Moving with his wife to Columbia University, where she became law school dean, he continued lecturing there as an adjunct professor until 1999. His last book, "A New Birth of Freedom" (Grosset/Putnam, 1997), re-examined the Declaration of Independence and the Ninth and 14th Amendments to the Constitution as a basis for unwritten human rights.

As his bibliography and his reputation as a constitutional scholar grew over the years, Professor Black was often sought out by reporters for opinions on civil rights, the death penalty, impeachment and other national issues. He also wrote extensively for legal and academic journals, and occasionally for The New York Times and other publications.

Professor Black's work on *Brown v. Board of Education*, his stature as an authority on civil rights issues and his love for jazz and Louis Armstrong led Ken Burns, the documentary filmmaker, to feature him in an episode of last year's documentary "Jazz," and in the opening chapter of a companion book, "Jazz: A History of America's Music."

Professor Black's poetry was published in many journals and magazines. His books of poetry were "Telescopes and Islands" (Alan Swallow Press, 1963), "Owls Bay in Babylon" (Dustbooks, 1980) and "The Waking Passenger" (New

Orleans Poetry Journal Press, 1983).

The verse was dense and mystical, as in "Letting Go," a 1985 poem:

In process of letting go the breath,

Moment for relieving your eyes' ache,

You see bark patterns, a child's hand

Catching and throwing, next to the tree.

You have to relive all your days

To receive the gift of surprise

At words you didn't quite hear, once riding.

Do what you can; everything will come

In memory if never in experience.

Revisit, retell. Love sounds deeper

Out of time than in time. Act love

Imperfectly; you will remember love itself.