

Walter Dellinger, 80, Scholar and Top Legal Aide Under Clinton, Dies

He served as head of the Office of Legal Counsel and acting solicitor general and remained a leading figure in liberal legal battles.



By Clay Risen

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Walter Dellinger, a renowned scholar of constitutional law and one of the top legal figures in the Clinton administration, in which he served as head of the Office of Legal Counsel and later as acting solicitor general, died on Wednesday at his home in Chapel Hill, N.C. He was 80.

His son Hampton, who oversees the Office of Legal Policy at the Department of Justice, said the cause was complications of pulmonary fibrosis.

Mr. Dellinger went to Washington in 1993 after teaching at the Duke University School of Law for more than two decades. Like Bill Clinton, the newly elected president, he was a white Southern liberal, a species not yet endangered by the encroachment of social conservatism, and he took with him extensive experience pushing for civil and reproductive rights in North Carolina.

Such was his reputation in the state that when President Clinton picked him to be assistant attorney general in charge of the Office of Legal Counsel, his two home-state senators, Jesse Helms and Lauch Faircloth, both Republicans, tried to filibuster his nomination, even though he had the unanimous support of the Senate Judiciary Committee.

Mr. Helms, a social conservative, made it clear that his opposition was personal: Mr. Dellinger had been a constant antagonist, having advised Senate Democrats in their successful opposition to the nomination of Judge Robert Bork to the U.S. Supreme Court in 1987.

“I’ll go to my grave regretting that Robert Bork did not get the seat on the U.S. Supreme Court which he so richly deserved,” Mr. Helms told reporters. “This fellow had a hand in that.”

The two-man filibuster ultimately failed, and Mr. Dellinger went on to play a key role in many of the toughest constitutional questions of the 1990s, including school prayer and a proposed amendment against flag burning.

Mr. Dellinger had initially been considered for the job of solicitor general, whose task is to advocate the administration’s position before the Supreme Court. The post went to Drew S. Days III, who had been the first African-American to head the civil rights division of the Justice Department. But after Mr. Days resigned in 1996, Mr. Dellinger took his place, in an acting role, for the court’s 1996-97 term.

He appeared before the court nine times that year. In one effort he sought to defer a sexual-harassment lawsuit by

Paula Jones against Mr. Clinton until after the president left office (he lost); in another, he argued the administration's opposition to a law that would effectively establish a constitutional right to die.

Laurence Tribe, a law professor at Harvard, advocated for that law and lobbied Mr. Dellinger to join him in supporting it. He failed, and Mr. Dellinger won the case.

“No one could have been a worthier adversary,” Mr. Tribe said in a phone interview. “It was always a learning experience to grapple with Walter, and always exhilarating to have him on your side when you agreed.”

Mr. Dellinger, right, testified in defense of the Affordable Care Act at a Senate Judiciary Committee hearing in 2011. J. Scott Applewhite via Associated Press

Walter Estes Dellinger III was born on May 15, 1941, in Charlotte, N.C. His father, Walter Dellinger II, died when he was young, and he was raised by his mother, Grace (Lawning) Dellinger, who sold men's clothing.

He received a degree in political science from the University of North Carolina, Chapel Hill, in 1963 and graduated from Yale Law School in 1966.

Along with his son Hampton, he is survived by another son, Drew; his sisters, Barbara Dellinger and Pam Swinney; three grandchildren; and a great-granddaughter. His wife, Anne (Maxwell) Dellinger, died in 2021.

While an undergraduate, Mr. Dellinger joined in picket lines protesting segregated businesses in Chapel Hill. Several law schools courted him to teach after he graduated from Yale; he chose the University of Mississippi, which had recently desegregated, because he thought he could play a role in furthering integration there.

He taught for two years and then clerked for Justice Hugo L. Black of the Supreme Court.

Afterward he decided to return to North Carolina to put down roots and prepare for an eventual career in politics — he wanted to be governor, he told Politico in 2020, “and the only intellectually interesting job in North Carolina was teaching at Duke.”

Mr. Dellinger never ran for office; instead, he developed a reputation as an outspoken liberal on both state and national issues. He wrote for newspaper opinion sections and weekly magazines like *The New Republic*, and became a regular face on the Sunday political talk shows.

His soft Southern drawl moderated the force with which he argued positions that even today would put him solidly on the left. At a symposium in 1987 marking the bicentennial of the U.S. Constitution, he declared that the document was founded on an original sin that the country had yet to atone for.

“As we celebrate the bicentennial, we need to recall that the Constitutional Convention was an event whose immediate success rested in part upon one literally unspeakable compromise of principle,” he said, referring to the continuation of slavery.

After President Clinton did not appoint him solicitor general, Mr. Dellinger initially joined the White House as an adviser on constitutional matters. He helped draft a slew of executive orders addressing issues like the use of fetal tissue in research and the so-called global gag order, which barred aid groups from discussing abortion if they received federal aid. Mr. Clinton nominated him for the post of assistant attorney general a few months later.

Mr. Dellinger returned to Duke in 1997. He also joined the international law firm O’Melveny & Myers, where he founded its appellate practice.

Though he never went back to full-time government service, Mr. Dellinger remained a key figure in Democratic and liberal causes. He was a close adviser to Vice President Al Gore during his dispute over the 2000 election, and he later argued for the government before the Supreme Court in *District of Columbia v. Heller*, the 2008 case over whether the Constitution protects the individual right to bear arms. (He lost.)

During the 2020 presidential race, Mr. Dellinger joined two other former solicitors general — Seth Waxman, his immediate successor, and Donald Verrilli Jr., who served under President Barack Obama — to form the so-called Three Amigos, a rapid-response team that prepared the Biden campaign for “doomsday scenarios” in which President Donald J. Trump might refuse to leave office; one imagined the president ordering Vice President Mike Pence to refuse to acknowledge state electors.

“We were fully prepared to go to the Supreme Court by nightfall,” he told *The New Yorker* in 2021. One of the few scenarios they did not prepare for, he conceded, was if pro-Trump protesters stormed the Capitol.

Mr. Dellinger remained a prolific opinion writer, contributing frequently to *The New York Times*, *Slate* and *The Washington Post*.

One of his last essays, which appeared in *The Times* this month, argued that President Biden was right to announce that he would select a Black woman to replace Associate Justice Stephen Breyer, who is retiring from the Supreme Court.

“The Supreme Court exercises immense power to issue decisions that affect and bind all Americans,” Mr. Dellinger wrote. “For that power to be legitimate, and for Americans to continue placing faith in the court, its members must be representative of all of America.”