

JURISPRUDENCE

Walter Dellinger, Legal Luminary Who Helped Build Slate's Legal Coverage, Dies at 80

BY DAHLIA LITHWICK

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Walter Dellinger testifying at a House Rules Committee hearing July 16, 2014. Win McNamee/Getty Images

Twenty years ago this June, Walter Dellinger, who identified himself as “a Duke University law professor and a Washington attorney,” wrote his [first entry on Slate’s Supreme Court Breakfast Table](#), which would go on to become one of the most widely read features the magazine ever produced. In addition to being a “Washington Attorney,” Dellinger was also the Acting Solicitor General of the United States from 1996-97, head of the Office of Legal Counsel (OLC) from 1993 to 1996, a prominent oral advocate at the U.S. Supreme Court, a champion of LGBTQ rights, voting rights, head of the appellate practice at O’Melveny & Myers, beloved professor, legal scholar, and cherished mentor to hundreds of young lawyers, of whom I was one.

On Wednesday, Walter [passed away at the age of 80](#). His death is devastating for those of us at Slate who had the honor of working with him. It is almost impossible to believe that

his work will no longer appear in these digital pages. Walter was a guiding light to Slate, a foundational voice in our legal coverage in both podcasting and print, and an unwavering believer in our mission to help everyone better understand (and critique) the Supreme Court's work.



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While the “Supreme Court Breakfast Table” was styled as highbrow published debate about what intellectuals perused over their avocado toasts, or whatever came before avocado toasts, for Walter, “the truth is that I usually spend breakfast buried in the sports section of the Raleigh *News & Observer*. And I don’t get very far beyond sports because I’m distracted by the breakfast counter conversation at Sutton’s Drugstore.” In that first Breakfast Table entry, from June 2002, Walter described himself sitting at the counter at Sutton’s in Chapel Hill, North Carolina, listening in on conversations about life outside the legal academy and the Beltway. The guys around him were debating the “death tax,” a sex scandal in the Catholic church, and a very short-lived TV show about the Supreme Court, *First Monday*, which Walter didn’t think was very accurate and which was canceled shortly thereafter.

Even when he was meant to be explaining habeas corpus, chatting with Sandra Day O’Connor about whether she was an accident of history, or contemplating the constitutional limits on presidential power, part of Walter was always back at that counter at Sutton’s. His thinking was firmly connected to the fact that the “life of the law” as Oliver Wendell Holmes Jr. famously wrote was rooted in “experience,” more than just the mathematical application of logic. Every word he wrote, every speech he gave, was imbued with his own story of growing up in an America that was still straining toward repair.

Every one of Walter’s pieces was full of his sense that he served as a bridge between what had been and what might be. In the pages of Slate he described the day *Brown v Board* was decided shortly after his 13th birthday at Myers Park Junior High in Charlotte, N.C. and how nothing changed, such that, “five years later, I graduated from a still all-white public school without ever having attended school with a black child.” From his own life he probed how fundamentally wrong he believed Chief Justice John Roberts was in 2007 when he wrote that “the way to stop discrimination on the basis of race is to stop discriminating on the basis of race,” or how harmful the court’s blessing Indiana voter ID law in 2008 would become. Nearly a decade later Walter’s 2013 elegy for Section 5 of the Voting Rights Act when the court handed down Shelby County, could not be more haunting:

I’m not an expert on voting, and I can’t profess to know what the effect of today’s decision will be on discrimination in our election processes. But its effect on the law of the Constitution is profound. It represents a fundamental distortion of the roles of court and Congress. In the aftermath of the Civil War, the Reconstruction Congress knew that it could not trust the Supreme Court—the institution that gave us the Dred Scott decision—to protect voting rights. That power was given to Congress. Explicitly. In the words of the 15th Amendment:

Congress shall have the power to enforce this article by appropriate legislation.

It is worth noting that the opinion of the court in *Shelby County* never mentions the text of the 15th Amendment.

It is hard to read Walter's words about growing up as a minority religionist in a southern public school (in the *Washington Post*), or as a white southerner headed to a formidable Ivy League law school, without sensing how the shadows of Jim Crow hovered over him even today. In 2008, he wrote for Slate about what it meant that then-candidate Barack Obama would be appearing that night in a debate at the University of Mississippi:

Somewhere in my attic there is a fading copy of a campus newspaper from 1967—my first year as a law professor at the University of Mississippi. The headline, as I recall, says “Negro to Address Ole Miss Class.” In the space of my own adulthood, a world in which a guest lecture by a black man was a front-page news story has morphed into a world in which a person of color will be speaking on the Rebel campus tonight as a candidate for president of the United States. When my wife and I first arrived in Oxford, Miss., she to teach English and I to teach law, we entered a deeper South than the one we had known growing up in New Orleans and North Carolina. We were not quite prepared for the triumphal playing of “Dixie” and the unfurling of an enormous Confederate battle flag over the entire playing field, marking the opening of every home game. Bullet holes still scarred our faculty apartment building from shots fired when three people died a few years earlier in the turmoil over James Meredith’s admission to the university. Until my wife, Anne, protested, the waiting room of the only obstetrician in town was still divided into designated “white” and “colored” sections.

The whole piece is worth reading, but this is how he concluded:

Sen. Barack Obama comes to Oxford tonight in a far more exalted role than Aaron Henry did in his appearance as a guest lecturer 40 years ago. But while the fact of his race is no longer front-page news, I am nevertheless struck by the thread that connects both appearances. Tonight’s visit to the home of the Ole Miss Rebels by a person of color seeking the presidency of the United States is just one more step on a journey of redemption for Americans, both white and black. The fact that his race is not front-page news tells me we are on the right track.

Walter was one of the most ardent feminists I ever knew. The number of young women he mentored over the past few decades was stunning, as was the number of people of color. His last op-ed, written two weeks ago for the New York Times, defended President Biden’s pledge to put a Black woman on the Supreme Court as stemming from “bedrock principles of democratic governance.” If projection means saying something of others that is fundamentally most true of yourself, his tender remembrance of Marty Ginsburg as a radical feminist spouse was as true of Walter as anyone I have known. His marriage became a model for my own and countless others, and his devotion to his wife Anne and his family had no parallel in my professional life.

Walter was also generous to a fault. In almost every one of his hundred-plus posts he unfailingly lifted up the work of an academic, a young associate, or one of the army of young lawyers (and over time judges) whom he had mentored. He was generous with his praise in ways that made you cut out and tape his words to your computer screen for years. Walter was also prescient. Whether it was his reflections on the propriety of a Justice timing his or her retirement to coincide with presidential elections, his warnings about the conservative legal movement’s opposition to reproductive rights, or that school vouchers for religious

education were coming, and about the need for Democrats to reclaim the language of morality, he almost unerringly saw what was around the corner, but never seemed to give up hope that something even better was around the corner after that.

Walter was my second guest when we launched the Amicus podcast in 2014, explaining and educating people trying to understand complex legal ideas without ego or pretension. Which more or less means that he launched both my podcasting and journalism careers, and has been bound up in the life of *Slate's* legal coverage from the very start. Our magazine will not be the same without him, and we will forever be grateful for the brilliance, wisdom, deep humanity, and joy that he brought into our pages, our earbuds and our lives. 🍷

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