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# When Walter Dellinger Spoke, ‘the Justices Paid Attention’

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**By Jesse Wegman**

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It would’ve been a hell of a road trip. The plan was to fly to North Carolina in late March, then drive four hours to a small town on the inner banks, where one of America’s founding fathers, James Wilson, spent his last, desperate days hiding out in a local tavern, on the run from the law and his creditors. I am writing a book about Wilson’s singular life and I need to spend some time in the place where he died.

My traveling companion was to be Walter Dellinger, the former acting solicitor general, who was born and raised in North Carolina and spent decades teaching constitutional law at Duke Law School. I had reached out to Mr. Dellinger last month to propose he join me — a lark, I thought. Mr. Dellinger was 80 and not in

the best of health. He had spent the previous several years caring for his wife of a lifetime, Anne, as dementia took first her mind and then, last spring, her life. He was heartbroken and exhausted. To my surprise, he accepted immediately.

For me it was a no-brainer: the chance to spend uninterrupted days in the presence of one of the nation's most captivating constitutional scholars, and one of the greatest appellate lawyers of his day. What I didn't fully appreciate, not until I learned of his death early Wednesday morning, was how much the prospect of such a trip excited Mr. Dellinger, too. He was a deeply curious soul, filled with a genuine love of the Constitution but also an openhearted desire to learn more.

Eighty years old is not young, and yet the news of Mr. Dellinger's death still came as a disorienting shock — like the sudden loss of a parent. “I feel like an orphan today,” Garrett Epps, a longtime Supreme Court analyst and one of Mr. Dellinger's former law students, wrote on Twitter.

Mr. Dellinger was a rarity in American law. He was as revered as he was outsized, as warmhearted as he could be intimidating. In his smooth, unhurried Southern drawl you heard his origin story — a “poor white kid from North Carolina,” as he put it, whose widowed mother worked selling men's clothing to help put him through law school. After a clerkship with the Supreme Court justice Hugo Black, a famous progressive white Southerner, he went to work at Paul Weiss, a Jewish-owned law firm in New York, because, he later said, he was troubled that the other major New York firms refused even to interview Jewish law students for jobs.

After more than 20 years teaching at Duke, Mr. Dellinger was tapped by President Bill Clinton to lead the Justice Department's Office of Legal Counsel, which provides legal advice to the executive branch. In 1996, he was named acting solicitor general, giving him the opportunity to argue regularly at the

Supreme Court on behalf of the White House. “When he said things, the justices paid attention,” Mr. Epps told me. “There’s a small group like that; it’s not particularly ideological. Walter had that role.”

But what distinguished Mr. Dellinger was not just his daunting intellect and charisma; it was the generosity of spirit that showed in his mentoring of hundreds if not thousands of young law students, staff members and others who learned from, and often came to share, his inclusive vision of American democracy.

“There is almost no one in the last 100 years who’s had a more profound impact on the law who didn’t serve on the Supreme Court,” said Neal Katyal, who met Mr. Dellinger as a young lawyer and later served as President Barack Obama’s acting solicitor general, the same job Mr. Dellinger held under Mr. Clinton. “He had this expansive, generous view of the law and what the Constitution means.”

When Mr. Katyal was tasked with defending President Obama’s signature health care law, the Affordable Care Act, he relied on Mr. Dellinger’s writings and ideas to make the case, which he ultimately won. “There’s a whole strain of constitutional scholarship which views the Constitution as a set of rigid constraints,” he said. “Walter’s scholarship pushed back on that idea, saying the Constitution is a pragmatic and flexible document intended to empower government to deal with problems.”

The Constitution was also the product of a “literally unspeakable compromise” with slaveholders, as Mr. Dellinger was never shy to say, and needed to be understood in that light. In a guest essay for *The Times* last month, he came out strongly in support of President Biden’s public vow to nominate a Black woman to the Supreme Court. Rejecting Republican complaints that Mr. Biden’s promise was somehow “offensive,” Mr. Dellinger cited the “long and important tradition of presidents taking into consideration the demographic characteristics of prospective justices.” “Our history shows that the process of reaching out to

expand the personal backgrounds of the justices has often produced stellar jurists who made historic contributions to the court and our judicial system,” he added.

Pamela Karlan, a law professor at Stanford University, recalled Mr. Dellinger’s fondness for a poem by Walt Whitman, “The Wound-Dresser,” that is engraved in the subway station she used when she would visit him in Washington. The poem is about Whitman’s time as a volunteer nurse during the Civil War. “I always thought of Walter as trying to dress the American wound of race,” she said. “He was in there to heal the world.”

Poetry was only one art form that moved him. He followed the television series “Mad Men” closely enough to post lengthy late-night comments to online forums about the show. One of his comments led to a round table discussion, hosted by The Wall Street Journal, in which Mr. Dellinger first explained his affection for “Mad Men,” and then — ever the lawyer — pointed out that a chronological gap between seasons had skipped completely over two major national events: the passage of the 1964 Civil Rights Act and that year’s brutal murder of three civil-rights workers in Mississippi.

In 1988, Mr. Dellinger was selected to be a fellow at the National Humanities Center, along with Rita Dove, who would later be named U.S. poet laureate. “I remember being so impressed at how authentic he was; a Southerner deeply committed to civil rights,” Ms. Dove told me. “He was always a straight shooter, but his humor was the humor of the blues. You laughed to keep from crying.”

Although I was never Mr. Dellinger’s student, I felt as though I earned an honorary degree through our countless email exchanges and hours of phone calls over the years. What struck me in every exchange was his love — unabashed and not at all possessive — of the ideals underlying American democracy. He held neither jealousy of those who knew more than he did nor disdain for those, like me, who knew far less.

I called him recently for a piece I was writing on the Equal Rights Amendment, which would prohibit discrimination on the basis of sex. There is a long-running and legally complex dispute over whether the amendment should already be considered part of the Constitution. I found myself torn, but Mr. Dellinger didn't. His take was, as always, informed by both deep legal training and good common sense. "The tiebreaker for me is the difficulty of amending the Constitution. There are so many ways of making the process harder. My point is, it's goddamn hard enough."

There is never a good time to lose someone like Walter Dellinger. It is especially gutting right now, as a turbocharged right-wing supermajority on the Supreme Court gears up to obliterate decades of precedent that had pointed the way, however imperfectly, toward a fairer, more equal and more inclusive America. But Mr. Dellinger, a fierce liberal who spent much of his life deep in the former confederacy, was always keenly aware of the forces he was up against. Thankfully he trained a generation of lawyers to think, and to fight, the way he did.

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