BRAINERD CURRIE—FIVE TRIBUTES

BY ELVIN R. LATTY*

BRAINERD CURRIE, William R. Perkins Professor of Law at Duke University, died on September 7, 1965, at the age of 52.

He was born in Macon, Georgia, December 20, 1912, son of a Presbyterian minister. His early schooling was in Augusta, Georgia, whither the family had moved when he was six years of age. There he attended Richmond Academy and Augusta Junior College. He went straight from the junior college to the Law School of Mercer University, in 1932, and there received his LL.B. degree in June 1935. He immediately joined the Law Faculty at Mercer and within a few days of his graduation started teaching law in the summer session of 1935. He subsequently completed the work for his A.B. degree at Mercer in 1937. That same year he joined the Law Faculty at Wake Forest College, where he remained for three years. He went to Columbia Law School in 1940-41 for graduate study, there receiving his LL.M. in 1941, and his J.Sc.D. in 1955 upon the publication of his doctoral thesis “The Materials of Law Study,” which appeared in volumes three and eight of the Journal of Legal Education. From graduate work at Columbia Law School, he went to the Law Faculty of the University of Georgia for the year 1941-42. In the wartime years 1942 to 1946 he served in the Office of Price Administration and in the Office of Economic Stabilization.

Brainerd Currie resumed his law teaching career in 1946, when he came to Duke Law School to stay until 1949. During that period he was Editor of Law and Contemporary Problems and was the first Editor-in-Chief of the newly created Journal of Legal Education. Upon the organization of the new Law School at the University of California at Los Angeles in 1949, he became part of its first Faculty of Law. In 1952 he moved to the Law School of the University of Pittsburgh as Dean, and thence to the University of Chicago Law School for a nine year period, broken by a year’s fellowship in residence in 1957-58 in Palo Alto at the Center for Advanced Study in the Behavioral Sciences. He returned to Duke in 1961, where he remained until his death. He is survived by his wife, Elmyr Park

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Currie, to whom he was married in 1935, and son David Currie (Associate Professor of Law at the University of Chicago), son Elliott Currie (graduate student in Sociology at Duke) and daughter Carolyn Currie (special first-year student at Duke).

The above chronology is misleadingly brief. The story and meaning that lie behind it and within it would fill volumes. Other memorials in this issue of this Journal reveal the meaning of Brainerd Currie in the field of Conflict of Laws, Admiralty and Admiralty procedure, and as a law teacher faculty colleague. I shall not repeat their appraisals of this intellectual giant, this Universal man. I concur in the encomiums.

Some repetition is, nevertheless, inevitable in any mention of those qualities that made Brainerd Currie indispensable to the Duke Law School in the period after his return to this Faculty in 1961, in which period I was associated with him as his Dean. To have been associated with Brainerd Currie in any intellectual relationship was an humbling experience. To have been in a decanal relation to him was particularly so. Time and again I sought his opinion and advice in problems facing the School. Inevitably I came away with the thought: “Why hadn’t I thought of that angle by myself.” He combined an unmatched analytical ability with an insatiable thirst for that further elusive bit of knowledge that, so long as absent, would make any final analysis impossible. His analysis and search for significant data (“truth,” if you will) would alone have made him an inestimable adviser and confidant. But that was not all. Some would say that his greatest quality, the one that was the cornerstone of his greatness, was his exacting standards for acceptable levels of performance. He asked not “is this good enough to get by” but, rather, “is this the very best that is realistically possible?” Imposing this exacting standard upon himself, he expected it of others. Many were the occasions when he quietly and correctly reduced my enthusiasm for a performance (and performer) by pointing out the “score” by a more exacting standard. Again, an humbling experience.

Brainerd Currie could spot a juridical “phony” from afar. He distinguished between what he called “hard” and “soft” legal writing in books, law review articles and book reviews. His praise he reserved for the “hard.” And even in “hard” writing he was quick to distinguish sloppy scholarship from the meticulous.
In curricular matters, he was the exponent of law study in a university as basically a blessed opportunity for one of the greatest intellectual experiences, a liberal education in and through law; nevertheless, his positions were "practical" in that he emphasized the new, the dynamic, the problems "around the corner" that the student now in law would be facing in the future, rather than the legal lore that was accumulated by and for our ancestors for a different age.

As my colleague, Professor Lawrence Wallace puts it: "In his curtailed lifetime, Brainerd Currie's achievements were of a brilliance and variety sufficient to have conferred eminence on the lives of several men."

1 The other tributes to him in this volume readily bear out that appraisal. Let me add that Brainerd Currie quickly demonstrated his intellectual versatility when he first came to Duke Law School and took on the editorship of *Law and Contemporary Problems*. A new excellence and lease-on-life in that periodical immediately became apparent. In his stride, shortly thereafter, he took on the editorship of the newly-created *Journal of Legal Education*, and set its course on the high level which it has maintained ever since. He fully lived up to the brilliant promise of his law student days at Mercer where, so I have been told by one of his former law teachers at Mercer, Professor Dale F. Stansbury (later, on the Duke Law Faculty) Brainerd Currie still holds the all-time scholastic record for law students. Adds Professor Stansbury: "I've never had a better one since, anywhere." And Stansbury tells the story of another one of Brainerd Currie's teachers at Mercer who read and re-read with increasing amazement the final examination that Brainerd Currie had written and who finally confessed: "I prepared this exam but I couldn't have written an answer half as good, or seen half as many points."

All of us who have ever known him would have to confess the same.

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1 Professor Wallace's memorial from which this quotation is taken appeared in the 1965 AMERICAN ASS'N OF LAW SCHOOLS, PROCEEDINGS, PART I--REPORT OF COMMITTEES 123.
A Nachruf, to use Mr. Justice Frankfurter's expression, is ordinarily an exercise in futility, except when one is observing the biblical mandate to praise famous men. For other subjects, it is only when it can no longer make any difference to the only person to whom it could make a difference that we permit ourselves such public expressions of affection and admiration.

Like most great law teachers, Brainerd Currie does not qualify as a famous man. His name will be absent from history books, however frequently it will be found in law books. For, in the law, except for the truly seminal thinkers of whom there have been very few indeed, it has been the men of action rather than the men of thought who have laid claim to history's notice. Oliver Wendell Holmes, Jr. understood this when he abandoned the chair for the bench. Moreover, the novel ideas of one generation, if they are not wholly rejected, tend to become the commonplace ones of the next. For all the techniques of public relations that have come to be a commonplace of university life, a professor of law remains essentially a cloistered figure, a private rather than a public person. However much Brainerd Currie has diverted the stream of law—and the importance of his work in conflict of laws and civil and admiralty procedure is not to be gainsaid—his essential role was that of the teacher.

As he understood it, the teaching process does not call for the creation of disciples. The success of a law teacher is better measured by his contributions toward the emergence of independent minds, an independence that results as often in the rejection of the teacher's postulates as in their acceptance. At the very least, it requires an instillation of skepticism, of doubt, of testing the very fundamentals that the teacher may long since have accepted for himself. The process is one of example rather than preachment. And this is the role that Brainerd Currie played so well, the role that commended him to his students and to his colleagues who were also his students.

Brainerd Currie was eminently qualified for the part, in large measure because he had a rare combination of attributes: he was both tough-minded and soft-spoken. There was no malice in the man and because he had an instinct for fairness he seldom if ever
resorted to sarcasm—the classroom weapon of so many of us. His values were revealed in his review of Mrs. Rosenfield’s book about her father, Morris R. Cohen: “It is easy to believe that Cohen was a great teacher—that he sought not to indoctrinate, but to encourage independent thinking; that he made a deep impression on his students, and was remembered by them chiefly for his kindness... It is more difficult to believe in the cliché that such success is achieved in good part by what passes for withering sarcasm in the classroom.”

This is not to suggest that Brainerd Currie did not frequently display a sharp and pungent wit. His prime targets, however, were pomposity and pedantry. His stay at the Center for Behavioral Science, for example, called forth some of his famous Gilbertian rhymes that heretofore have not been published. This effort need no longer remain hidden; time has dulled such personal sting as it might have contained. Like much of his nontechnical writing, it is more revealing of his wit than anything I could say about it and so I have appended it here.

There is a hint in this clever parody of his very real romance with the English language. Many were the verbal battles and small monetary wagers over the proper use of language and grammar. Fowler was, I think, his favorite author. The abuse of the word “shambles” by the most literate authors provided a frequent source of amusement. One of his unfulfilled ambitions was to catch an error of grammar in the New Yorker’s London column, so that he might tell the editors that they had been caught with their Mollie Panter-Downes.

Language was fun; it was also a serious matter. I would venture that no author of an article in Law and Contemporary Problems ever wrote so well as he did under Brainerd Currie’s editing. Certainly the first volume of The Supreme Court Review, because of his interest, is the best edited volume in the series. Nor were his changes limited to that of a copy editor. Substance as well as form was the subject of vigorous challenge. And many was the day when we each ended up on the side opposite that on which we had started.

If he could dish out helpful criticism, he was also able to take it. And the relative immaturity of the source did not blind him to the validity of the points made. I refer you to this not untypical com-
ment from a letter referring to his most junior colleague: "... over lunch one day I was telling him about a theory I had advanced in one of my articles, which he hadn't read; on the basis of sheer analysis—not superior knowledge of the cases involved—he punctured my reasoning and turned out to be right. The consequence is that I will have to rewrite a whole section of the article ... ." His confessions of error were not limited to private viewings. Thus, in the University of Chicago Law Review in 1960, referring to an earlier article of his own published in the same journal, he wrote: "The article was not without merit; it was a conscientious analysis of the problems and of various proposed solutions. Indeed, there is only one reason for regretting the article or offering apologies for it: The conclusion reached was wrong—not just plain wrong, but fundamentally and impossibly wrong."

Obviously the invitation from the editors to participate in this symposium has called forth from me only maudlin meanderings by way of reminiscence rather than appraisal. But more fundamental appraisal is beyond me. Evaluation of his work will be made by those more competent to praise and appraise. His efforts in conflict of laws are already the subject of a doctoral dissertation at the University of Cologne. Nor can I offer an adequate appraisal of the man. We shared many things that are essential to a prized professional collaboration, and I profited enormously. We joined forces in writing briefs for the Supreme Court: the successful ones were largely his doing. We even tried to write an article together, but were compelled to publish separate pieces on the same subject because neither of us was willing to impose unacceptable ideas on the other. We shared, too, common friends and uncommon enemies, and common interests in and out of the law. But there was something deep within him that I never got to know. For his was essentially a lonely spirit. I am reminded that in his book review, to which I have already alluded, he selected for comment a sentence from a Holmes letter to Cohen: "The other dissenters thought I went too far and I flocked alone." The emphasis was Currie's and he referred to it as "a magnificent book title." If he had ever been moved to write autobiography, as he was moved from time to time to indulge in other engaging if extraordinary pastimes, like making a violin or writing a murder mystery, I am sure that it would have been titled: "I Flocked Alone." It would have been an appropriate title.
I am the very model of a modern intellectual;
I know the ruddy answers though I'm rather ineffectual.
I'm more sophisticated, son, than people clad in denim are:
When I have nothing much to say, I say it in a seminar.
I have a little paper on some matters psychological;
The highest court knows less than I of subjects pedagogical;
I know which books are best to read, which symphonies are better.

Ah!
I'm very well informed upon aesthetics and et cetera.
I know a thing or two about the sciences behavioral—
To which to foster, fellows stout, you sacrificed and gave your all.
I know about relations, both platonical and sexual—
In short, I am the model of a modern intellectual.

I'll tackle any snafu with a model mathematical;
Tough legal problems vanish when I use my method graphical;
My judgment is impeccable on matters architectural;
I'm very adamant about most things that are conjectural;
At regulating conflicts I am pretty near infallible;
On values my opinions are reportedly invaluable;
Quite modestly, I see myself an elegantly mentored man—
The jealous critics call me a complacently self-Centered man.
I ken the social sciences and eke the poor humanities;
My imprimatur sanctifies the veriest inanities;
I understand philosophy, pragmatic and conceptual—
You see, I am the model of a modern intellectual.

I flatter me that I know free-dom from responsibility—
My fellowship maintains me in respectable gentility;
My coffee-steeped opinions have remarkable felicity;
My knowledge is distinguished for its very catholicity.
I'm right on top of inside dope on Little Rock and satellites,
On horseshoe pitching, Dead Sea scrolls, and even western cattle rights,
On how to tune a motor and on how to make a Chevy sing—
I think I ought to organize a seminar on EVERYTHING.
My friends are IBM machines, my methods are statistical;
My just reflections on myself are somewhat narcissistical;
And though my lucubrations may be mostly ineffectual,
I am the very model of a modern intellectual.

—Not-G.†

BY ROGER J. TRAYNOR*

IT WAS only last year that I was reviewing Brainerd Currie’s *Selected Essays on The Conflict of Laws* for the *Duke Law Journal*, and memories of happy encounters with their gentle author were surging through the reading of his original and profound and constructive work. Now as I write of Brainerd Currie, whose life began in Georgia in 1912 and came to a close in North Carolina in 1965, it seems impossible to dispel sadness in coming to terms with the harsh loss of such a friend. Yet one hears his soft-spoken words, no less real because they are imagined, and they alleviate the hurt of loss with their sweet raillery: I expect better of my friends than that they should mourn me, for mourning is no way to celebrate a fine friendship.

Fine, in all its radiant meaning, is the word for all the aspects of Brainerd Currie’s life. The *Selected Essays* and comparable works on civil procedure and on admiralty evince the finest scholarship. The scholar had the fineness of temperament requisite for a deeply happy life with family and friends. There was gentleness in his outlook, even in his quizzical, ironic insights, an extraordinary combination of *finesse* and *gentillesse*. There survived in the man the quality of a gifted child who perceives things all too clearly, free of sophistic gloss, and does not misuse his advantage.

There was a merry streak, too, in Brainerd Currie. He would find cause for laughter, surveying this writing-table strewn with his own writings, at the jostling of his disparate creations. There is a translation of his American-born language, *Note Sui Metodi E Gli Scorpi Del Diritto Internazionale Privato*. It overlaps his version of *gli scopi* of Rose of Aberlone, the majestic cow whose unexpected

† All poetry may be divided into two categories: (1) That written by W. S. Gilbert (G), and (2) All other (Not-G).

* Chief Justice, Supreme Court of California. In this tribute to our friend, Madeline Traynor has joined with me to convey the riches of his friendship as well as of his work.

fertility wrought havoc with the sale contract in *Sherwood v. Walker*. The intrepid scholar is a polysemantic challenger to would-be legal scholars. They must know how to utilize all the resources "*della filosofia del diritto, della scienza politica, della cultura.*"\(^2\) Restated:

> "And even the reluctant drone  
> Must cope with Rose of Aberlone.  
> She rules the cases, she stalks the page  
> Even in this atomic age.  
> In radioactive tracts of land,  
> In hardly collectible notes of hand,  
> In fiddles of dubious pedigree,  
> In releases of liability,  
> In zoning laws unknown to lessors,  
> In weird conceits of law professors,  
> In printers' bids and ailing kings,  
> In all mutations and sorts of things . . . ."\(^2\)

It is relevant to Brainerd Currie's special concerns with the laws of the land, as to much else in his life, that he was born and brought up in the South. One does not leap from such detail to facile characterization of either the procedures or the substance of his work; stereotypes are archaic in an age of near, though not quite bright enlightenment, and heredity, with its myriad quirks, still appears to have the last laugh on more or less identifiable environments. Nonetheless a man of genius is better able than most to be father to the child, to know by heart the inflections of speech and manner of the child's region, to draw upon his special knowledge of home even when he is at great remove from it.

Brainerd Currie came from the region whose society was seemingly the most settled in the United States and in reality the most unsettled. Tumult lay close to the surface of its convivial living and found expression in perceptions ablaze with imagination, in a fiercely observant speech and literature without parallel in this country. It was a land where gracious manners commanded as much interest as money, fostering provincial loyalties and also, not inconsistently, an outgoing worldliness. City dwellers maintained close communication with country cousins, and like them took time out to meander, for in more ways than one, even in speech and writing,

\(^2\) 10 *Student Law. J.* 4, 8 (1965); *Harv. Law Rec.*, March 24, 1960, p. 16.
a meander could prove to be the shortest distance between two points of view.

In this land one learned early that the polite term for the Civil War is The War Between The States. The sense of the land at large could be painfully clear, though land titles might now and then be more blurred than in some tight little old new island. One could envisage the developing western regions from the agrarian south more sharply than from the smoky cityscapes of the northeast.

In the south the compass did not necessarily point northeast as it was made to do in the north. One knew that though Nantucket antedated Cape Charles on the discovery map of America, Jamestown antedated Plymouth as a settlement. One could tuck Nantucket away on the map, along with such new towns as Boston, with drawling wry versions of the New England lullabies that twanged of Domicile. One could reflect to good purpose on disharmonies in the United States, on failures of communication, on conflict of laws. A prescient habitant had many intimations that the times they were a-changing, and the land was bursting its bounds.

In conflict of laws, however, the clock was running slow. Brainerd Currie knew it as only an imaginative scholar can, and I was bound to learn it as a judge, and so it was that our paths eventually crossed. They began to converge after the 1953 opinion of the California Supreme Court in Grant v. McAuliffe, which phrased its ratio decidendi in hereditary patois, via a classification of the issue as procedural, and thus quit itself of the orthodox Restatement view that the law of the place of the wrong governed. In a nutshell, it made use of a wooden convention to take leave of a deadwooden concept.

Brainerd Currie was not flurried, as were some commentators, “because the decision is unorthodox in terms of current conflict-of-laws doctrine.” His concern was with the scholars who “have not provided the courts with a systematic method of analysis whereby the sound instincts employed by a sensitive court in the adjudication of conflict-of-laws cases can be fitted into the conventions and the

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3 41 Cal. 2d 859, 264 P.2d 944 (1953).
5 CURRIE, op. cit. supra note 4, at 131.
More than one judge would learn, across the chronically lean years of scholarly help, that Brainerd Currie had taken upon himself to work out one painstaking analysis after another of timely, unresolved problems, demonstrating how large and constructive a job a scholar can do to pave the way for orderly and intelligent adjudication. It is not often that one can say, as one can of him, that "every court in the land is in his debt." 7

His was no cloistered life, criss-crossed as it was with varied law practice and with special assignments that took him to Washington, D.C. during the war years of the forties, and all over the country in recent years as Reporter on Admiralty Rules for the Judicial Conference of the United States. Even his academic career made him a resident of various states: Georgia, New York, North Carolina, California, Pennsylvania, Illinois, and finally North Carolina again when in 1961 he returned to Duke University.

He was no less a teacher of judges than of students, and he alerted them to areas of law where houses of card-indexes swayed uneasily on sliding foundations. So I looked forward to our first meeting in 1956, when he was teaching at the University of Chicago and I lectured there on the ponderous subject of *Some Open Questions On The Work of State Appellate Courts*. 8

In that dynamic environment it seemed appropriate to make the questions wide open, without curfew for succeeding discussion. In the crash of counter-questions that followed, I declared that no judge really knew what he was judging about unless he renewed his education regularly and that there was no better way of relearning a subject than to teach it. Oh, just for a summer, of course, and just a fairly easy subject, like conflict-of-laws. The twinkle of Brainerd Currie's glance should have been fair warning. In retrospect it recalls the kindred look of a Connecticut Yankee, a year-round villager, as he heard summer visitors gurgle their enthusiasms about the balmy climate, the rise and fall of low-slung highlands, even the ubiquitous clams. "You should come here in the winter sometime," he murmured, and with his text so ended he went about his chores.

It proved to be quite a winter the following summer when I did give that course at the University of Chicago. In the learning process

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I came to know the magnitude of scholarship and soul of the full-time professor of conflict-of-laws. In our frequent meetings I soon learned that here was no grum groovedigger. Here was no confirmed classifier attributing to judicial opinions a neutralism or activism, with the notion of distinguishing them on the basis of classificationisms that would square unto themselves all the convolutions of a reasoning process.

Nor did Brainerd Currie, scorning mechanical counts of precedents and mechanical labels of opinions, ever indulge in theatrical stances of scholarship. He would not be wearing the anemic visage of one hors de combat, as do those who would indicate their exemption from problem-solving by virtue of the delicate condition of their noncommittal thoughts. He would not be writhing with pangs of creation each time he put pencil to paper. Neither would he be pretending that he put paragraphs together with the greatest of ease, as a gentleman's pastime. Day in and day out he worked at putting together paragraphs that would abate the muddle of years, that would rescue admiralty law far out at sea, that would ameliorate the ironic disorders of procedure, that would take unnecessary conflict out of conflict-of-laws. He had the staying power for his grand objectives.

One always talked law with him, and it was like advancing in good company to new ground in mountain territory. As one listened to him gently expounding problems, his mind directed to solution in a context far beyond the ken of most judges and lawyers, one could not but realize how consumed he was with law.

The lawyer par excellence, tending the law's ills with devotion, commanded affection and respect on other counts besides his professional gifts and involvement. His was not an electrifying presence but a glowing one; when he entered a room, casting a shy smile about him, his quiet manner suggested friendliness rather than reticence, and even a tender of very present help in trouble. One soon became aware of the sense he had that there was always very present trouble in the world, casting its shadow on each of us, but that of course we could stand together against it. Rather a challenge, was it not, to reckon with all the misfortune that could engulf us one by one or en masse, and still not let it diminish the present joyousness of good company. If there were no happy endings, there was still happiness to be seized for the occasion. So he
would begin to discourse on all manner of things, on law, on some small adventure of the day, and he would bend an ear for the listener's rejoinder. There would be an *entente cordiale* and he would warm up to his subject, and if it was not a legal one it usually led back to the law. His words had the sound of pebbles deftly tossed in the sea. One heard their repercussions for days.

He was nowhere more at home than in his own home, in the warm, hospitable environment that the Currie family created wherever they lived. A visit with Brainerd and Pick Currie and their children, David and Elliott and Carolyn, was an event to be remembered. One looked out on the land from their home and saw it whole, regardless of where they were domiciled. Their muted Georgia accents mingled with the speech of many regions in their apartment home overlooking the Midway in Chicago, Chicago's bustling green plaisance. They brought their Georgia childhood home to their country house in Durham, North Carolina, together with years of living along the labyrinths interlaying Pierre l'Enfant's grid for the nation's capital; along the smog-fogged Côte d'Azur and the overbaked Côtes d'Or of the Far West; amid the mock throughfares and obscure cement trails of New York City; amid the variegated colonies of a Keystone State; in the midst of the so-called Midwest, where one can put out to sea from a lakeshore. Around their new home within the city bounds of Durham the tall trees in groves gave proof of what the country at large could be if its habitants took thought for it. There was still space to spare for the stretch of man's imagination.

Our last visit with Brainerd Currie was in our own home last year. So much had he accomplished, though he did not say so, that there was abundant reason for his happy mood. He parried questions of others gently, reflectively; there were happy digressions, uproarious tales of a wayfarer, and then there would be law talk again, fragments of evolving essays as only Brainerd Currie could speak them.

One was reassured by his company. There was hope for the sad world if only once in a while, if only here and there, a man like Brainerd Currie appeared and worked to make it better.
ON SEPTEMBER 7, 1965, the legal profession lost its most distin-
guished thinker on the problem of which law should be selected
to govern the legal consequences of relations extending into the area
of interest of more than one government, whether local or federal,
whether on land or sea. That day Professor Brainerd Currie died in
the fullness of his powers, heaped with the honors of his profession.

His skill as a teacher was measured by the circumstance that he
was as easy to please as he was hard to satisfy. Others, more com-
petent than I, will do justice to his career as a teacher. But if a
visitor may venture an amateur opinion on this aspect of his life,
his towering success was that any conversation became a seminar,
each classroom inquiry an investigation.

He was not alone an outstanding teacher, but a truly productive
scholar. In 1954 he began the series of articles developing his gov-
ernmental interest analysis of choice of law problems. For these
studies, the chief of which were collected in 1963 as Selected Essays
on the Conflict of Laws, he received on December 29, 1964, the First
Triennial Order of the Coif Award in recognition of “Pre-eminent
scholarship in the law” evidencing “creative talent of the highest
order.”

In 1960, he was selected by Chief Justice Warren as reporter of
the Supreme Court’s Advisory Committee on Admiralty Rules.
Thenceforward he performed for the Committee his masterwork, for
which he will be long remembered and called blessed: the integra-
tion of the rules of federal admiralty and civil practice. In this, he
undertook for the Committee a task demanding not alone great pro-
fessional skill but also the power to negotiate wisely and fruitfully
with divergent groups for whom each proposal had transcendent
interest. Judge Albert B. Maris, Chairman of the Committee on
Rules of Practice and Procedure, speaking of Professor Currie’s role
said he “had achieved what most of us thought was impossible in
drafting rule amendments for the unification of civil and admiralty
procedure which the admiralty bar is prepared to accept. When the
unification proposals are approved and promulgated they will repres-
ent a towering monument to the scholarship, industry, tact and

* United States Department of Justice. Member, Supreme Court’s Advisory Com-
mittee on Admiralty Rules.
general ability of our late lamented friend. They will, I venture
to say, represent the crowning achievement of his life."

Yet despite the burden of this work as reporter and a full teach-
ing schedule, Professor Currie still found time to continue his schol-
arly writing. Chief subject of his studies in this last period was the
credit a forum should give to prior judgments. Whether as res
judicata or estoppel by judgment, in his view this matter, just as
choice of law and unification of procedural rules, should be tested
by the single touchstone of the forum's governmental interest in a
just result. Prior judgments should be considered as a possible
equitable estoppel, not accepted as a mechanical bar. Could he have
continued his development of this theory he would surely be remem-
bered no less for this significant approach to justice than for his
other contributions to a more just theory of conflict of laws.

Those of us who had the joy of toiling with him in the vineyard
of the law, whether on the Admiralty Rules Committee or else-
where, were evermore his pupils. Gentle and humorous in his man-
ner, he nonetheless was rigorous in his demands upon himself and
others for clear thinking. He did not announce the law's first prin-
ciples as he perceived them, but evoked the views of the others and
played the thoughts of one against the other until the right solution
gradually emerged.

Even though I was never actually in his classroom except as a
visitor, he was still my chief teacher in the law of conflicts and pro-
cedure. He was to me like an elder brother and his death leaves me
saddened and bereft.

BY ROBERT C. SINK*

THE SEQUENCE is all too familiar. A professor comes to your cam-
pus, or you to his. Then for three years you sign up for his
courses, talk about him over coffee, repeat his stories and solutions,
mimic his style, covet his insight, boast of his intellectual integrity
and precision of thought, bandy about his theories and perhaps read
his book. You leave. And no occasion has seemed appropriate or
convenient—save perhaps a perfunctory farewell—for telling him,
even by indirection, what his impact has been. Perhaps a professor

* Member of North Carolina bar. Member of the 1965 graduating class, Duke
University School of Law.
senses, even after discounting the slippery indicia of classroom approval, that for a particular month or year or for several years he has been consistently engaging or frequently provocative. But often, I suspect, the good professor, caught up in the immediacy of his subject, remains oblivious to his own value. I hope that somehow Professor Currie knew.

I hope he knew that classes for four years at Duke regarded him as infinitely more than a Name, a former Dean, confidant of Justices, ubiquitously cited scholar and Coif Award winner. Credentials intrigue, but rarely satisfy. And even the most critical among us appreciated what Professor Currie brought to the classroom: a rich progression of thoughts and observations, only roughly prearranged, yet always measured, ordered and supremely logical. He was neither grandiloquent nor inarticulate; rather he possessed a simple eloquence that summoned attention to the idea, not the speaker. Ideas were the essence of his classroom hour. That is not to say that he handed you a tidy package that was the ultimate product of his years of intense consideration. For even as he stood before you he continued to examine, test, and analyze; first offering, then reconsidering, retracing, or retreating if need be. All the while he earnestly invited challenge and contribution, which when received was examined for the slightest merit and accorded an appropriate response. It was the aptness and accuracy of the offering that he considered, never the reputation or prior performance of its proponent. A useful wrinkle or challenging hypothetical might come from any quarter; as might “absolute nonsense.” He always appeared to be asking himself why, for what purpose, to what end; and exhorted his classes first to understand the problem, the goal, the forest, the social context. Yet with his uncanny ability for relating the disparate and for suggesting analogy, he made it clear that there were to be no pigeonholes for approaches or solutions. Nor would he confine himself to a myopic, comfortable specialization. In our eyes he was, or soon became, as at home with torts, jurisprudence, insurance or chattel mortgages as with conflicts, jurisdiction or admiralty.

And always there were details, human details. He would criticize a vapid, dehumanized student recitation or restate the case in his own way. He remembered countless fact situations and, to give ultimate importance to a statement of law or legal philosophy, re-
lated them with that sincere interest and empathy that distinguishes the story teller from the entertainer. Kilberg v. Northeast Airlines was more than a landmark decision in the conflict of laws, it followed a lawsuit that involved human protagonists and that had grown out of a human calamity. He warred with artificial distinctions—privity, lex loci—particularly when they resulted in untoward and unnecessary social consequences; and his whole approach to the law seemed to be one of making fewer hard cases while at the same time making good law.

Neither he nor his typewriter appeared ever at rest. He seemed constantly, and concurrently to be pounding out letters, articles, pointed notes, clever reminders; poring over and clipping from the advance sheets; offering critical suggestions or timely aid to the Journal or to someone writing a paper; talking with a student or colleague in his office or in the lounge—about any of an endless list of topics: diversity of citizenship for unincorporated associations, the relationship of judge and jury, increased sentences for prisoners upon retrial, collateral estoppel and the Bernhard case, loss shifting and enterprise liability, the interest of State Y in applying its law.

In short, Professor Currie was, to most of us, I believe, of heroic proportions. This was so even though he eschewed the easy path of opaque aloofness that enables a man of reputation to avoid pitiless personal scrutiny. Although he sought and particularly enjoyed the company of those few who numbered among his intellectual peers, he delighted in the too rare opportunities he had for acting directly in the affairs of a student or man on the street. He lived with the law, which by his translation meant people.

We will remember him because his life and ideas spilled over into ours.

THE WRITINGS OF BRAINERD CURRIE

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BOOK REVIEWS


As Editor of Law & Contemporary Problems from 1946 through 1949, Brainerd Currie edited and wrote several forewords to Volumes 11, 12, 13 and 14.

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