

# IN MEMORY OF DAVID F. CAVERS

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I am honored to share in this celebration of the life of David Cavers. I come here in two capacities—as his student and as the representative of Duke Law School, an institution which still bears his stamp.

I first met David Cavers in September 1954, when as a third-year student I sought admission to his graduate seminar on Legal Education. From that day until his death, David Cavers was my teacher. Thus, as recently as 1986, we held a long, and for me instructive, discussion of the vituperative controversy in which I became enmired by my use or misuse of Mark Twain's reflections on the subject of professionalism. That discussion was a reprise to a conversation held in 1955 about a seminar paper I had written on Karl Llewelyn's ideas about legal education. On that earlier occasion, we had reflected on the nature and causes of the vituperation between Karl Llewelyn and Roscoe Pound. On both occasions, the teacher evaluated the student's appreciation of the gentle virtues which the student sadly lacked.

Never a man to lead the unexamined life, David instilled an ambition perpetually to question the assumptions which underlie and shape the institutions which we as law teachers inhabit, preserve, and extend. For these lessons, though imperfectly mastered, I will always be grateful.

I am here today, however, not merely to express my own gratitude, but also that of an institution which greatly benefited from its association with David Cavers. Our professional law school at Duke was founded in 1930; David came to us in 1931 and remained on our faculty through his wartime service in the government until his departure to Harvard in 1945.

David was revered by his students and colleagues at Duke. There are barely 200 living alumni who attended our law school during David's time, and I have received letters from over forty in the last month, most recalling a special event in which David had indelibly touched their lives. Most share the conclusion written in a 1934 postcard by a first-year student to his parents in Cedar Rapids: "Cavers was best." There are, however, more specific themes to those letters.

Genius is a word that appears frequently. That is a big word, yet one not lightly used. Its use in this case reflects enormous admiration for David's intellectual gifts, particularly for his ability to discern and depict central realities even when obscured or eclipsed by multiple illusions.

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\* Harry R. Chadwick, Sr., Professor of Law, Duke University School of Law. Paul D. Carrington, while Dean at Duke University School of Law, delivered these remarks at the Cambridge Memorial Service for Cavers in April of 1988. The speech originally appeared in *DUKE L. MAG.*, Summer, 1988, and is reprinted with permission.

He wrote a pure prose and imposed that style on his students, where it is still reflected in their letters written a half century later. It was a style also imposed on his journal, *Law and Contemporary Problems*, during the years of his editorship. That, I suspect, as much as the novel nature of the publication, accounts for its stunning success, a success which our school enjoys to this day.

But it was more than a literary style; it was an eye for the previously unrecognized center of a matter, enabling him to make complex matters truly less complex. Indeed, alas, if only there were more men like David Cavers, we would not be bound to fulfill E.B. White's awful but indubitable prophecy that "complexity has a bright future." Oh that David might have been the draftsman of the Tax Simplification Act!

Yet even his pure style and his eye for simplifying themes were not all. Due must be given to the idea of David's journal, which featured cross-disciplinary study of current legal issues as a constant theme. It has been said that a genius is one who does the right thing first, and, in that sense, his journal was ingenious. It reflected, more perhaps than any other institutional development of the first half of this century, the creative force of Legal Realism, the dominant jurisprudential expression of that time. In his first foreword, he insightfully contrasted his enterprise with that of the *Harvard Law Review*, which he had earlier served as president. He, of course, venerated the *Review*; yet it is now true that *Law and Contemporary Problems* has become as venerable as was the *Review* at the time of his writing.

It is a further mark of David's genius that, although he edited an interdisciplinary journal, he was a lawyer's lawyer, making no pretense of attainment in fields other than his own. There is irony that a founding editor of such a journal should be primarily devoted in his own work to the field of conflict of laws, a subject that can rightly be described as a study of problems that lawyers make for themselves, problems having almost no connection to the insights of any other academic discipline. Indeed, when *Law and Contemporary Problems* published a symposium in honor of David on the subject of conflict of laws, it was not to be imagined that anyone but lawyers could be asked to contribute. Some day we may have scholarship on the economics or the sociology or the psychology of conflict of laws, but it would be a bold special editor who would undertake responsibility for a symposium of such articles. What is reflected in this irony is the breadth of David's mind and the range of his interests, both so great as to justify the designation of genius. He brought remarkable intellectual breadth to bear on his arcane field.

Genius was one theme of our regard for David, but it was secondary to our esteem for his kindness as a teacher. His kindness extended to the classroom even at a time when harsh rigor was the standard affect of the law teacher, an affect which provided the inspiration for the legendary Professor Kingsfield. As a teacher, he was "swift to hear, slow to speak, and slow to wrath." Well-remembered still is an event in which David called upon the ablest student in his class to defend a judicial decision. An able defense was made and followed

by a series of gentle questions which turned the defense on its head, revealing its fundamental unsoundness. This produced a concession by the student that he had unwisely approved the decision; the concession was then followed by another series of gentle questions which revealed the even greater weakness of the opposite position which the student had just adopted as his own, causing him at last to reaffirm his original support of the outcome, if not the reasoning, of the decision.

But David's kindness to Duke students went far beyond the classroom. Remembered are the beckoning call of the clanking of iron against iron in late spring afternoons behind our library, when David would demonstrate the superiority of the South Carolina over the North Carolina method of pitching horse shoes. Remembered also was the variation on ping pong doubles played with lungs not paddles, the object being to blow the ball off the table at the adversaries' end. One student from California, then in his first year of law school, still remembered the menu of a 1934 Christmas dinner at the Cavers' home. Another recalled an unexpected visit to his Denver law office in 1940. Many recalled his help in securing employment, no easy matter for a graduate of a new school hitting the streets fifty years ago. Because of his kindness and concern, members of that generation of Duke students consulted David about their careers for many years, continuing to do so long after he had come to Harvard. And more than one continued to seek his counsel following his retirement to Florida.

Mingled with that kindness was a gentle humor that David brought to his teaching and writing. It was an understated yet contagious humor. Often it was just an unexpected flourish, perhaps merely a turn of phrase, that interrupted the simple purity of his language. Or perhaps more frequently it was simply an astonishing economy of language.

The humor is not really captured in remembered events. It is perhaps better preserved in David's writing. Thus, as a one-time student of the conflict of laws, I carry with me David's engaging hypothetical used as a theme to his elegant 1933 article:

A salesman induces a married lady in state A to order several feet of *belles lettres*. Her order is received and accepted by the publishers at their offices in state B and they express the books to her residence in state A. After reading through two inches and paying for six, she repents of her bargain. The publishers sue in state A. The lady pleads want of capacity to contract. [T]he law of state A is reminiscent of the time when husband and wife were one . . . [while] the law of State B mirrors the latest views of the National Woman's Party on sex equality before the law.

I also recall the gentle homily used to illustrate the difference between the conflict of laws theories of Walter Wheeler Cook and Learned Hand, long perceived to be the same. The tendency to conflate these two theories reminded David of:

the way in which my son resolved a like problem when, at the age of four, he encountered tuna fish salad. "Isn't that chicken?" he inquired after the first bite. Told that no, indeed, it was fish, he restored his world to order and concluded the matter by remarking to himself, "Fish made of chicken."

Unifying this remarkable intellect and this gentility was another quality which for at least some of us was his most memorable trait—his exceptional grace. More than a few of us have tried to emulate that precious inner calm reflected in both his thought and his demeanor. He seemed throughout to have lived his life according to the injunction of William Cullen Bryant “so . . . that when the summons came to join the innumerable caravan, he . . . [would be] sustained and soothed by an unfaltering trust, like one who wraps the drapery of his couch about him, and lies down to pleasant dreams.”