Introduction to Brainerd Currie Choice-of-Law Symposium - Brainerd Currie: I Am The Very Model of a Modern Intellectual

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Brainerd Currie: I Am The Very Model of a Modern Intellectual

by Jack L. Sammons*

I am sure some of you will remember the song, I Am the Very Model of a Modern Major General from Gilbert and Sullivan's Pirates of Penzance. For those of you who do not know him, let me introduce Brainerd Currie to you by giving you his version of it:

The Behavioral Scientist

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 courts know less than I of subjects pedagogical;

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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. 1

I want to turn this good humored doggerel around on Professor Currie
just a little, this morning, by treating him seriously as a model, not of
the modern intellectual he described so well for goodness sake, but of
law professing, or, better said, as the way by which we once knew what
a model law professor was. This is, of course, a beginning exercise in

1. This poem was first published by Phillip Kurland as an appendage to an untitled
tribute he wrote to Brainerd Currie in 1966. Philip B. Kurland, Brainerd Currie—Five
Tributes, 1966 DUKE L.J. 2, 8-9 (citing Brainerd Currie, The Behavioral Scientist,
previously unpublished). In Currie's original version he credited authorship to "Not-G"
with the footnote: "All poetry may be divided into two categories: (1) That written by W.
S. Gilbert (G), and (2) All other (Not-G)." Id.
virtue ethics, an exercise in which we examine someone we have admired within our practice not for his ethics, but as an ethic.

I think Professor Currie would have approved of this way of thinking about him (although, for a man as retiring as he, surely it would have been an embarrassment). The most distinctive feature of virtue ethics is its contextuality, and no word is more descriptive of Brainerd Currie's thinking on all subjects than "contextual." I have also noticed that when Brainerd Currie talked of legal education and legal ethics he did so in words that would be comfortable apparel for even the most carefully attired of virtue ethicist. For example, starting with his earliest article, the production of a certain kind of person is the only honest objective of legal education for Currie. The person he had in mind was a good lawyer to be sure, but a good lawyer of a very particular kind, one who by reason of his virtuousness justifies the place of legal education within the university. So, given his own proclivities, surely Currie would have been comfortable with this approach to him.

Those who have read his work on legal education, a subject he returned to frequently throughout most of his career, will notice that, far more than most writers on this subject, Currie's thoughts are always consistent with his pedagogical teleology. They are always consistent, that is, with this idea of producing a certain kind of person; just as his thought on the law, including on conflicts of law, are always consistent with a certain social teleology, a certain view of community toward which he was always moving. The only way Currie could have achieved such remarkable consistency is by carefully holding on to clear visions of what kind of people we must be to be good lawyers, and what kind of laws we must have to be good people, as constant criteria for his work. This he did with visions formed very early in his career, many of which can be found in his work on the materials of legal education at Columbia, published later in the Journal of Legal Education. As I

2. Currie often made a point in his writing of not distinguishing between legal education and the teaching of legal ethics. This itself is very telling for virtue ethics.
3. Brainerd Currie, The Law School As An Educational Institution, 24 WASH. U. L.Q. 476 (1938). This earliest of Currie articles is remarkable for the tension it displays between the writer's obviously mature wisdom and his still youthful search for an appropriate voice. It was this piece that prompted Columbia Law School, which had recently turned much of its attention to legal education, to offer the young Currie a substantial scholarship for its graduate program.
4. These virtues were, primarily, and as is fitting of the time in which Brainerd Currie taught, the virtues of the good American citizen.
have come to know him through others, this now seems to me to be a
"Brainerd Currie-like thing to do."

This last observation, then, is an example of how I want us to think
about Professor Currie this morning. Exploring the descriptive phrase,
"a Brainerd Currie-like thing to do," is the task at hand. It is an
important task. Terry Sandalow, the former Dean of the University of
Michigan Law School, said, "When I started teaching in 1961 everybody
knew what a good law professor was. It was Brainerd Currie." If law
professors today are to make useful sense of Dean Sandalow's observa-
tion for our time, if we are to reflect on our heroes in communal self-
scrutiny as a way of understanding our own tradition of law professing,
we should try to recapture what it is to do our work in a Brainerd
Currie-like manner. And, if the law students of today are to learn how
to evaluate their law professors, which of us to listen to, which to ignore,
which to admire and which to scorn, based on the standards that we
professors, as a practice, have set for ourselves, they will need to do the
same.

We can get a small start on this task today: first by examining how
odd it is, at first blush, that Sandalow's generation would choose
Professor Currie as its exemplar of excellence, and then by briefly
describing some of Currie's intellectual virtues. Much more of what I
think you and I need to do to discover what Brainerd Currie has to say
to us today, however, can be done far better by our listening very
carefully, and with just a touch of sympathetic detachment, to the round
table discussions that follow these remarks. Through these discussions
we can get a far better sense of the virtuousness of Professor Currie's
work, not just by becoming more familiar with one area in which he
toiled, but through the application and the criticism of his work by
others, both those who agree with his conclusions and those who do not.
(For virtue ethics, this difference in agreement about conclusions makes
no difference at all). There could be no better tribute to Brainerd Currie
today than the one Professor Bruce Posnak has chosen for him: to
continue the hard work of case analysis in conflicts of interest, the hard
work of shaping the law of conflicts to match the world, the hard work
of continuing to see the world, as Currie did, in this very difficult grain
of sand, and to try to do all of this in a Brainerd Currie-like manner.

What a fool I am to attempt even my very limited task of introducing
Brainerd Currie to you before this discussion. In the audience today we
have Elmyr "Pick" Currie, Brainerd's wife, David, one of two sons, and
Carolyn, his daughter. We also have a former student, a colleague, and

6. Telephone conversation with Terrance M. Sandalow, Edson R. Sunderland Professor
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others who knew this man as well as he could be known. At the table
today we also have some of those within the legal academy who know his
conflicts of law work best, the work in which, according to most, he best
displayed what a Brainerd Currie-like manner is. For those of you who
do know him so well, my hope is that you will at least find the mistakes
I make about this wonderful man, whom I have come to love through
you, and most especially through Mrs. Currie, interesting mistakes.

Let me start then with the observation of how very odd it first appears
that Brainerd Currie would be the model of excellence for a generation
of law professors. Although his educational record was certainly
exceptional—as best I can tell through all of the correlations that have
to be made, to this day no one has exceeded his marks at this Law
School—we would have to say that his education was provincial. Before
coming to Mercer, he attended the Academy of Richmond County in
Augusta. Then, after two years, to the young Currie two terribly boring
years, working as a clerk for an auditor with the Georgia and Florida
Railroad to help his family through rough financial times, he went to the
Junior College of Augusta. It seems odd now that he did not complete
his undergraduate education until after his graduation from law school,
but this was not an unusual occurrence then, at least it was not so in
the South.

I do not mean to suggest that the educational institutions he attended
were not good institutions. They were, in fact, quite exceptional ones.
Lawton Evans, the Superintendent of the Academy of Richmond County
for fifty-one years, for example, was a noted author, a recipient of the
President's Medal from Columbia, a Trustee of the Carnegie Endowment,
and Secretary of the National Educators Association. Mercer Law
School, during Currie's tenure here, was blessed with a well-credent-
tialed, case-method, faculty that was truly extraordinary for such a
small, financially struggling, Southern institution, held together at
times, almost as sheer act of will by its then Dean, Augustus Bootle.

No, these were good institutions. I am suggesting, however, that this
is not the expected educational background for a model law professor.
Neither do we find the expected model in his publications, his associa-
tions with particular institutions, nor, finally, in the manner of the man.
He did not become a model for others by being made famous as a
textbook writer for West Publishing Company, or by long years of good
service to a particular law school, or by drawing attention to himself.
His writings, those on conflicts, the materials of law study, and
admiralty, are very well known, of course, but they are not the stuff of
great popular fame even within the legal academy. He never stayed long
enough at any one school to become famous through an association with
institutional accomplishments, traveling, as he did, in rather rapid
succession from Mercer to Wake Forest (where the Dean gave him the extremely awkward task, along with I. Beverly Lake, of demonstrating for senior members of the faculty, all of whom were excellent lecturers, how to teach using the case method). From Wake Forest, Brainerd Currie went to graduate school at Columbia, and then back South for one year at the University of Georgia, where he soon joined other law professors for well-publicized and, even for that time, ludicrous nightly-armed patrols of the Athens Water Tower to prevent Nazi saboteurs from destroying it.

After failing his voluntary enlistment physical due to nearsightedness, off Currie went to Washington, D.C., first to work at the Office of Price Administration (where he led the crackdown on black market lumber chiselers) and later to the Office of Economic Stabilization, making his reputation as one of the most promising of the young law professors brought to Washington during World War II. This D.C. experience greatly added to Currie's self-confidence. He knew far better now how to place himself in the world.

After the War, back he went to the Southeast to teach at Duke, to edit the Journal of Law and Contemporary Problems and a fledgling publication, the Journal of Legal Education. From there, the family went West for a disappointing three years at the University of California at Los Angeles, a new law school headed by a very dynamic, but very difficult dean who had handpicked a combination of the best and brightest of young professors, and a few of the most honored of older ones, including Roscoe Pound, to be his first faculty.

Currie escaped from UCLA through an appointment as Dean of the University of Pittsburgh Law School. His brief tenure there is remembered best for the quality of his speeches, and the good example of his hard work, rather than for any other particular institutional accomplishments. Finally, he began the longest affiliation of his career, seven years at the University of Chicago. This too, however, was interrupted by a sabbatical fellowship at the Center for Advanced Behavioral Sciences in California, a Center whose style was widely described at the time as the "Leisure of the Theory Class." According to most, Brainerd Currie did his best work there. From Chicago, now nearing the end of this arduous academic journey, he returned to the South, to country sausage and barbeque, and to Duke University, seeking, but sadly not finding, the happiness of former Southern times.

Little in Brainerd Currie's manner would have made you think of him as the model for law professing. He was always quiet and generally reserved; his was not an electrifying presence, but as his good friend
Chief Justice Roger Traynor described him, a "glowing one." His freshly ironed clothes always managed to look a bit rumpled after a few minutes of wear. His classes frequently started haltingly and with a quivering voice, as did his speeches, before he and his students or his audience warmed to the subject before them. As one of his students said, "he was neither grandiloquent nor inarticulate, rather he possessed a simple eloquence that summoned attention to the idea, not the speaker." He raised his voice only when he thought it was absolutely necessary. It was absolutely necessary only when singing Italian opera, especially with his soprano sister-in-law late in the evenings of her visits to the Currie home, or perhaps necessary for his beloved Gilbert and Sullivan to be well heard over his rhythmic pounding on an old piano at faculty gatherings, a pounding that was, well, perhaps a little too vigorous, since, according to the more musically-correct pianist in the family, Mrs. Currie, Brainerd's left-hand movements were mostly random.

Outside music, however, so soft-spoken was he that, while at Columbia working on his LL.M., one of his professors, Elliott Cheatham, who, along with Dale Stansbury, his colleague at Mercer and his dean at Wake Forest, was his most important mentor, said to him: "Brainerd, let me take advantage of my position on this side of the desk and yours on that side, to tell you that I think it would be wise if you spoke a little louder." Professor Cheatham was, by all accounts, the most gentlemanly of men, and I am sure he would not have called attention to the failings of another were the situation not desperate. Even Cheatham's warning, however, the warning from the man after whom Brainerd and Pick were to name one of their sons, was to no avail.

This, then, is not what we would expect, would we, as an exemplar of excellence for an entire generation of distinguished law professors: this extremely soft spoken, slightly rumpled, friendly and approachable, but also nervous, rather anxious, and often shy man? Soon after he arrived at Wake Forest, and having a little more money than he did at Mercer, Brainerd realized he needed a new suit. He went to a local clothier and ordered two suits that were exactly alike. His former student and then colleague, Francis Paschal, asked him: "Why in the world did you do that, Brainerd?" "Well," Brainerd replied, "it is embarrassing for me when I get a new suit for somebody to notice it, so I thought at least

8. This is from Robert C. Sink's untitled tribute to Currie in Brainerd Currie—Five Tributes, 1966 DUKE L.J. 2, 17 [hereinafter Sink].
when the first one wore out I could just shift into the second one and nobody would know the difference." As you can see, this was not someone who wanted to call attention to himself.

I do not want to mislead you here. Please do not mistake this shyness or the nervousness for meekness or timidity. There was absolutely nothing meek nor timid in Professor Currie's makeup. He was instead a very demanding man. The standard of excellence that he imposed upon himself and others, and the difficulty he had with those, including himself, when they did not measure up to it, can still be frightening, especially for such a casual thinker as I. As many have said, to be his conversational partner was as humbling as it was invigorating. The same is true, I can tell you, for being his conversational partner through others who knew him well.

For most of his life, I believe, Brainerd Currie knew his work was good, as he should have, although he seldom let anyone other than his wife, Pick, know his opinion of it. To others, including his children, he expressed only the doubts that his method requires. There is, however, a Currie difference in his attitude toward his work. Good work, for Currie, was not the work of brilliance, not the work of creativity, but the work of work. It was the work of curiosity, of concentration, and of disciplined thought. His ideas were good, he knew, not because they were his, but because they were the product of good work. His work could be good because he knew the process that produced it, the oh-so-careful plodding analysis of common law reasoning reconnected, through the clear vision of Currie's jurisprudence, with the truthful details of the human world, was a good process. All that he brought to this process, he thought, was the curiosity, the concentration and the discipline it required of its practitioners.

When he judged the work of others, it was most often not for its intelligence, or brilliance, or creativity, but instead by this standard: How well did this work meet the requirements of this good process? I must tell you, however, in fairness to the rest of us, that the powers of curiosity, concentration, and disciplined thought that Brainerd Currie brought to this process were truly exceptional. The most frequently recurring theme in all the conversations I have had with people about Brainerd Currie is his unique ability to concentrate, or, as his young daughter, Carolyn, described it when the family was living in Durham and her father would remain unmoving in the car long after everyone else had gone in, an ability to "space out" when he needed.  

10. Id.
Brainerd Currie had this unique ability from the earliest of the lamplighter days of his childhood near the Green Street Presbyterian Church in Augusta, Georgia, the Church in which his mother served as an elder in everything but name and not in name because she felt that doing so was inappropriate for a woman. When Brainerd returned to Augusta with this strong and strong-willed mother after her separation from his equally strong-willed, but perhaps more subtle, minister father, and after his father's subsequent demitting from the church, he would often spend hours in the library of Dr. McFarrin, Green Street's prominent and powerful minister, or in the libraries of his grandfather or great-grandfather, both of whom lived near the Church. There he would read all that he could but often came back, even at age eleven, to Blackstone. The family said that were a fire in the house, were there an explosion, Brainerd would not have known it until the roof fell in on him, so absorbed would he be in his readings. He was joined in this concentration, this studiousness, by his boyhood friend, David Potter. Potter later became a famous historian and, purely by chance, joined the Leisure of the Theory Class while Brainerd was there. Potter's more cosmopolitan family first introduced Brainerd to the world beyond Green Street.

His studiousness, his curiosity, and his desire to get to the "nitty gritty of things," as most of his relatives described it, however, went far beyond his association with David Potter. For this audience I need only to tell you one story to confirm this. As his brother, Marion Currie, recalls it, when Brainerd was twelve he would walk across the Savannah River with Marion to go to a swimming hole known as Getson's Pond. Now when you cross the Savannah River you cross from Georgia into South Carolina. On one trip, young Brainerd asked Marion: "Just suppose, Marion, there was a murder in Augusta and the murderer fled across the Savannah River only to be arrested in South Carolina. Where would they try the case and what law would they apply?" Later, on the next trip to Getson's Pond, Marion says, Brainerd, picking up the subject as if he had just dropped it, asked: "And what if the murderer shot from the North side of the River and hit his victim on the South side?"11

From this episode you can see that Brainerd Currie came by his interest in law quite naturally. There was never, according to his aunt, any notion of Brainerd not being a lawyer. After a flirtation with medicine, Marion became the minister everyone expected the Currie boys to be, and his older sister, Margaret, went off to Emory to become a nurse, following in the footsteps of a beloved aunt. There was, however,

11. Interview with Marion Currie (Nov. 5, 1988).
nothing but the law for Brainerd. When he was sixteen, Dr. McFarrin, who had taken a fatherly interest in him after the separation, had one conversation with Brainerd about his choice of occupations. McFarrin asked if Brainerd thought he could be honest as a lawyer. Brainerd replied: “If I can't be honest as a lawyer, I couldn't be honest as a preacher either.” That was the last effort anyone made to question his choice of professions.

We can see this same young man, this same gifted child, this same intense concentration, this same driving curiosity, this same love for the law, in Francis Allen's image of Brainerd as a colleague at Chicago:

He had a portable blackboard in his office, and he would draw these intricate diagrams that no one but Brainerd could decipher. But the thing that was so amazing was how deeply he would be caught up in this. He often kept the door to his office open. You would go down the corridor and look in his office and there Brainerd would be at his desk staring at the blackboard and the diagrams almost transfixed. You could come back an hour later and Brainerd would still be sitting there, apparently having not moved an inch in the interval. It was an enormous capacity and I don't think I have known anyone that had that more strongly than he did.

One price Professor Currie paid for this enormous capacity of concentration is the usual one; he was just as absentminded as the stereotype of thoughtful professors tells us he should be. This was beautifully, and very succinctly described by Mrs. Currie, when she told me: “Brainerd could forget anything except an idea.” Even this absentmindedness, though it fits well the stereotypical professor, is not what we expect of someone who was the model law professor, so closely wed are law professors to a practice in which absentmindedness is surely a vice. So the oddity remains that it was to Brainerd Currie that Terry Sandalow's generation of professors, coming into teaching in the late fifties and early sixties, turned for a model of what they wanted to become.

Yet isn't this the way of the world? Aren't we always surprised by our heroes? Aren't great artists or artisans, like their art, great to us because we did not expect what they offered? And isn't this a

12. Id.
15. My colleague Hal Lewis has graciously asked me to rethink this, but I think I will stick with what I say in the text although it is not quite right. Currie is a surprise to us
blessing for our study of Brainerd Currie? If Brainerd Currie had achieved his fame in a more usual manner, we would have had to cull appearance from reality and convention from a truer quality. If he had been more expected, we would need to work hard to separate the wheat from the chaff. With a man like Currie, however, it is all wheat. He was what he was for a generation of law professors because of his merit alone—his merit as a teacher, as a scholar, as a writer, as a colleague, and as a friend.

Before turning to a description of the intellectual virtues displayed through his work as a teacher and scholar, the virtues I hope you will use as standards in listening to the discussion that follows, I want to talk briefly about his merit as a colleague and as a friend. Much of what I might say about this you can probably imagine for yourself: the interesting and educational conversations with this imminently clubbable Renaissance man who made violins, told good stories well, sang in Italian, taught all the courses in the curriculum, loved the law, and loved language in the way that any good craftsman loves the tool he uses. Surely you must already know the charming wittiness and good humor of the author of the poem I read at the beginning, or the far more famous Rose of Aberlone, a poem still found in any good first year contracts text. On and on we could go with his obvious collegial qualities.

There are, however, two aspects of his relationships with his colleagues that may escape you. The first is easy. Unlike some other intellectuals, Professor Currie enjoyed all manner of people; he did not suffer pretentiousness well, but he found something that he could learn from everyone he met. If you were human, you were interesting to Brainerd Currie, and if you were a law student or a law professor, so much the better. The second aspect is more difficult. His dear friend, Chief Justice Roger Traynor, noted it best:
This lawyer *par excellence*, tending the law's ills with devotion, commanded affection and respect on other counts beside his professional gifts and involvement. . . . [W]hen 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 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.\(^6\)

Traynor's phrase, "*even a tender of very present help in trouble*"\(^{17}\) puzzled me. Professor Currie was not a man of action. (Mrs. Currie will tell you, with great and gentle humor, that he was almost worthless in an emergency). There is, however, something in the phrase that correctly captures a certain reassurance that many of his colleagues received from Brainerd Currie. I think I have come to know what this is from conversations with them. There are people on my own faculty whose company is reassuring to me in much the same way. I know that if troubles arise among us that they will, because of how they approach the world, offer the stability of careful thought, the patience of good judgment; they will see to it that my own thinking does not go too far astray from the person they know me to be. These are people who know, as Traynor said Currie knew, "that there is great trouble in the world, casting its shadow on each of us, but that of course we [can] stand together against it."\(^{18}\) Yet, Traynor goes on to say, Currie's message to his friends was,

Rather a challenge, is it not, to reckon with the misfortunes 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 [Brainerd] 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 to the subject, and, if it were not a legal one, it usually led back to the law. His words had the sounds of pebbles deftly tossed in the sea. One heard their repercussion for days.\(^{19}\)

Of such was his merit as a colleague, as a friend, and these repercussions continue today, though there are no pebbles tossed.

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17. *Id.* at 13.
18. *Id.*
19. *Id.* at 14.
If you are a dean of a law school, you had best pay attention to a colleague like this, for it is in such people that true power lies in any law school! Dean Edward Levi, at the University of Chicago, knew this well. He told us that before every faculty meeting he went to Brainerd's office to see what he was going to say. When Brainerd did speak at a faculty meeting, it was always crisp and to the point. Walter Blum of Chicago, someone who would know, said: "You could have copied his dialogue and with very little editing it would have been ready for publication."

Now what of his work? What of his teaching? What of his writing? What now of how he defined the intellectual virtues for us? I have gone on at length and only hinted at the intellectual virtues he displayed. But there is nothing mysterious here. He simply did better, and with better adaptation to the truth, what others in a certain, mostly American tradition of legal thinking always wanted to do. The virtue terms we should use to describe his work, both his teaching and his writing, are honesty, integrity, humility, patience, and a steadfast devotion to the truth. There is surely nothing unusual in these. What we can learn from Brainerd Currie, however, is what virtue terms like these might mean in an approach to the law.

His approach to the law, his approach to all things really, was bottom up and inductive. In writing about law, you start with the cases and you do not generalize until you are certain that you have them right. In Wittgenstein's extreme terms, you don't think, you look. To do this well requires a humility toward the materials of the law, a certain doggedness and determination, and, most important, a patience that most of us now lack. It also requires great intellectual honesty, an absolute refusal to bend the materials of the law to your own purposes, and a personal clarity, a careful self-reflectiveness, on what your own purposes might be.

Part of what this means for law professors is that our work must be our own. Currie's advice to young colleagues was usually the same: Look for yourself. Your thinking should be your own and not derivative; not secondary to the work of others. Go to the materials of the law, the materials of our study as professors, and work them for yourself.

In teaching, and in learning, Currie tells us, you start with the facts of legal disputes, and you stay with those facts, until the case is well grounded in all its humanity. The case itself, then, can become a source

of truth that is held out equally against the student and the professor so that the exercise of learning is one done together in the classroom. Professor Currie cared nothing about the reconciling or distinguishing of cases, the sequencing of cases, the categorizing of cases, or the classification of cases until this first task was done well. There was in fact, as his former student Dallin Oaks told us, nothing more appalling to Professor Currie than an opinion by a judge which ignored the humanity of the claim before him.22

There is an interesting connection here, I think, between this sense of the humanity of the law and the fact that the way Brainerd Currie discussed the law with students and with colleagues was always as story, as narrative. His colleague, Walter Blum, described it this way:

And the way he would tell the story of a case, it was like hearing a narrator describe it. I think of some of my other colleagues whom, when they presented something, it was with such force and gusto that, if you did not get on the trolley at the right time, you were not going to ever make it. But with Brainerd, each case was a way of coming back to storytelling. He would talk about these problems just the way he would tell some other story. In the process of doing it, the issues would emerge, but he wouldn't start with the issues, he always started with the facts, embellished in just the right way.23

His famous association with legal realism, with Llewellyn and Minchnikoff and others, and his use of the social sciences were, I believe, nothing other than a reflection of this. The corruption he sought to avoid through legal realism was artificialness—too narrow a definition of the discipline of the law that would separate it from its human, sometimes all-too-human, narrative base. This was never said better than by his Duke student, Robert Sink. “He lived with the law,” Sink said, “which by his translation meant people.”24

The most pressing current problem for law professing is that we no longer know how to do this. We no longer know how to translate the law to people rather than the other way around. We no longer know how to understand the limits of the discipline of law and, because we do not, we corrupt the law with other disciplines. My suggestion, as a virtue ethicist, would be that we stop thinking about this and start instead looking more carefully at how someone like Brainerd Currie worked through this problem. For here was a man who was among the first to

24. Sink, supra note 8, at 18.
use the work of other disciplines in shaping the law and yet one who steadfastly maintained the disciplinary lines of his work as a lawyer. He knew, in other words, how to take law seriously and yet keep it from being exclusive, keep it open to others, so that others could keep it open to its own humanity. Surely we can learn from this example.

It is time for me to turn you over to those who will do what I have only been describing. I want to end with a quotation from Stanley Hauerwas, a theologian friend of mine, that I think nicely captures what we may be able to learn from Brainerd Currie as a teacher and as a scholar:

> Education calls for a patient standing before that which we know not in order to know. Disinterestedness is the hallmark of education, for it requires unselfing that we might be open to that not present in our interests and assumptions of relevancy. Disinterest is not the precondition of intellectual endeavor necessary because the truth cannot be known, but because it can . . . For the truth is not less real for its being clothed in the contingencies and ambiguities of our historical existence.\(^2\)

Hauerwas goes on to say: “Education, as I am conceiving of it here, is a painful process for student and teacher, because truth is such a tiring business.”\(^2\)

This was true for Brainerd Currie. It was a tiring business. Yet, in the best of times for this most remarkable man, and in quiet, soft-spoken conversations with students, with colleagues, with family and with friends, truth could also be a joyous business that held the pain at bay.

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26. Id. at 123.