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Pages from the Life of a Gentle Scholar

By Robert T. Brousseau*

Je n'ai pas de biographie et j'en suis très content.

JEAN ANOUILH**

The law school edition of the *Mercer University Bulletin*¹ which Brainerd Currie must have thumbed through at his home in Augusta in 1932 was the first one in many years that did not contain either an architect's rendering or, at least, a handsome photograph of "one of the finest law school buildings in the South."² It was "the first building that Mercer law school has ever had as its very own," the dedicatory speaker boasted. "... We expect it to mark an epoch in the life of the institution."³

This was not idle hyperbole. During the academic year 1923-24, Mercer Law School was admitted to full membership in the prestigious Association of American Law Schools⁴ and was shortly thereafter added to the

* Jervey Fellow in Foreign Law, The Parker School of Foreign and Comparative Law, Columbia University, and Assistant Professor of Law, Mercer University. Georgetown University (B.S.F.S., 1969); Duke University (J.D., 1972). The author thanks Orrin Walker of the Mercer Law School for his able research assistance.

** Letter from Anouilh to Hubert Gignoux, quoted in H. GIGNOUX, JEAN ANOUILH (Editions du Temps Present (1946).

1. 19 MERCER UNIVERSITY BULLETIN (Law School, No. 1, 1932).

2. 18 MERCER UNIVERSITY BULLETIN (Law School, No. 2, 1931).

3. The Honorable R. C. Bell, '03, Judge of the Georgia Court of Appeals (later Chief Justice of the Georgia Supreme Court), in DEDICATION CEREMONIES, SCHOOL OF LAW BUILDING, MERCER UNIVERSITY (pamphlet, privately printed, 1930) [hereafter cited DEDICATION CEREMONIES]. The building was rededicated and renamed on April 5, 1946, as the Ryals Law Building, a memorial to Col. T. E. Ryals, whose liberal gifts in the twenties had in part made the construction of the building possible. See DEDICATION, RYALS LAW BUILDING, MERCER UNIVERSITY (pamphlet, privately printed, 1946). Even today the Ryals Building serves as the core of the Mercer Law complex, but will soon give up its place, if not its memories, to the newly acquired law building on historic Coleman Hill.

4. PROCEEDINGS OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS 48-49 (1923). The colloquy on the floor of the House may be of interest.

SECRETARY AIGLER: There have been considered by the Executive Committee four applications for membership [in the Association]. Of these four we are prepared at this particular moment to report only on one. The others will come up after we have considered some of the other matters in the report of the Executive

American Bar Association's newly-formed list of approved schools.⁵ When he entered Mercer on September 19, 1932, Brainerd Currie came to it as it crested upon a wave of favorable tidings. He least of all knew that his presence there for five years, first as student-scholar and later as scholar-teacher, would in the long run stand out as one of the most memorable distinctions in that institution's century and more of legal education.

Gillette Brainerd Currie,⁶ the son of Cabell Breckenridge Currie, a Presbyterian minister, and Rose Lynch Currie, was born December 20, 1912, in Macon, Georgia. He spent his childhood, however, in Augusta, where he received his preparatory education at the Academy of Richmond

Committee. The application which we are prepared to present at this time is that of Mercer University School of Law, which application the Executive Committee recommends approval. I move the recommendation of the Committee.

. . . Seconded. . .

PRESIDENT JONES: The motion is that the recommendation of the Executive Committee that Mercer University Law School be admitted to membership in the Association is approved.

MR. HUDSON: Could we hear something about the law school at the present time.

PRESIDENT JONES: I visited Mercer University Law School about a month ago. They have a Library of over 5000 volumes of new books. Their expenditures last year for books approximated \$10,000. They have three full time men on their staff. One of them is a graduate of the University of Chicago Law School; another a graduate of Yale University Law School, and the third is Judge Fish, former Chief Justice of the Supreme Court of Georgia. In addition, they have several practitioners who are men of excellent ability and good training. They have temporary quarters which are adequate. Their attendance is about sixty. Their requirement for admission is one year of college, one that was enforced last fall, and they have provided that in 1925 they will go to a two year requirement. While I was there they fixed the annual appropriation for their Library at \$3000 per year. They will have a new building within two years. I met a member of the Board of Trustees who told me they had the funds, and that construction would be commenced, so the building would probably be completed at that time. Their classes meet in the morning between eight o'clock and one. Is there any discussion?

PRESIDENT JONES: The ayes have it and Mercer University Law School is admitted to membership.

The "new building within two years" was not, of course, occupied until March, 1930. This sort of prolonged gestation is not uncommon with academic edifices.

5. But not in 1923-24, as asserted by Orville A. Park, a part-time professor, in his "History of the Mercer Law School:" "The year 1923-24 was memorable in the history of the school. During this year it was admitted to full membership in the Association of American Law Schools, and was placed on the list of accredited law schools by the American Bar Association. . . . Mercer won both distinctions in this year." DEDICATION CEREMONIES 16-17. See the list to which Park refers, 9 A.B.A.J. 728 (1923), which omits Mercer. It actually made the list in 1925.

6. It is not clear when Currie dropped the "Gillette." His preferences must early on have been for "Brainerd;" he appears that way in the law school yearbook and was initially so enrolled in the Mercer Law School. His original record will show, however, that an officious hand has inserted "Gillette" before "Brainerd" at some later date. Mercer University, Permanent Record, School of Law No. 8309 (Brainerd Currie).

County, from which he graduated in 1929. From there he moved to the Junior College of Augusta, from which he was graduated in 1932 "with Highest Honor, his general average for the entire year being 96.18 and his rank No. 2 in a class of 62 graduates."⁷ He was recommended for admission to Mercer University and his conduct was, of course, deemed "excellent." There is some evidence that Currie received a scholarship of \$135, "promised . . . to the Junior College of Augusta" by Mercer.⁸ At a time when tuition was \$180, such a grant would have been a generous one indeed.

His performance at Mercer was from the start astounding, and legend for once is truth in ascribing to him the highest average ever before achieved at the law school. He was graduated *summa cum laude*, after he achieved an almost flawless 29 A's out of a possible 30 — the honorable mention being a B in his senior year in the second term of Credit Transactions.⁹ Geniuses have been forgiven greater sins than succumbing mildly to the universal affliction of "senior slump." There are added details to give heightened color to Currie's extraordinary achievement. First, rumor has it that only one other person in Mercer's 104-year history of legal education has ever received the degree with highest honors, and rumor has been steadfastly obstinate in not yielding up his or her name. It takes a solid A average to claim the honor and it is difficult to believe that Professor Dale F. Stansbury's words, that Currie to this day holds the all-time scholastic record for law students at Mercer, will ever be said of another.¹⁰ Fortunately, through some untowardly fortuitous burst of overzealous recordkeeping, we have Currie's first-year scores (based on 0 through 100) rather than merely the official letter-grades recorded on his transcript. Keeping in mind that, by ancient tradition at older law schools across the nation, scores over 90 simply are not awarded—after all, say the professors, none of these striplings knows *that* much—and that 90 thus effectively marks academic perfection, we are able to witness Brainerd Currie progress through the first three quarters of his first year of law school: 87, 89, 88, 90, 90, 89, 90, 90, 90.¹¹ By the end of his first year, it was clear that there was someone unique among the 45 law students¹² enrolled at Mercer.

Brainerd Currie, in fact, won every single award available to a law student. If one looks at the records with 40 years of hindsight, it appears that they simply fell into his lap as their time came due. But no one who knows the later Currie's quest for excellence could believe anything but that they came by dint of endless effort. Brainerd Currie was never one to do just

7. College Record Blank (Official Transcript), The Junior College of Augusta, Augusta, Georgia. Currie was not in attendance at Augusta Junior in 1930-31.

8. Letter dated January 23, 1932, signed J.C.S., in Currie's permanent file at Mercer.

9. Mercer University, Permanent Record, School of Law, No. 8309 (Brainerd Currie).

10. Dale Stansbury to E.R. Latty, quoted in 1966 DUKE L.J. 4 (1966).

11. Mercer University, Permanent Record, School of Law (Brainerd Currie File, untitled document).

12. 20 MERCER UNIVERSITY BULLETIN (Law School, No. 3) 28-29 (1933).

enough to get by, or even just enough to get by brilliantly. His first recognition for excellence came when the faculty elected him and two of his classmates to the Legal Clinic,¹³ the purpose of which was

to offer a service to lawyers over the State, who, by reason of limited library facilities, are unable to examine all the authorities on the questions of law before them. . . . There are many benefits flowing from such work, for not only does it render a helpful service to the Bar of the State, but it gives the student the exact kind of experience he will need in practice. Membership on the Clinic is based upon high scholarship and general efficiency.¹⁴

By virtue of his academic average, he was named an Honor Student in each of his three years,¹⁵ and in succession claimed the Callaghan Prize to the first-year student who makes the highest yearly average,¹⁶ the Harrison Prize to the student of the third-year class with the highest average,¹⁷ and finally the coveted Faculty Medal, a gold medallion "offered by the faculty of the Law School to that student of the graduating class who has made the highest weighted average for the entire course of three years in the Law School."¹⁸ We may assume that Brainerd "accepted" the faculty's "offer."

His fellow students elected him Chief Justice of the Law School Honor Court. He became a member of Sigma Pi and Blue Key and joined Phi Alpha Delta, the only national legal fraternity then established at Mercer.¹⁹ Somewhere amid all this activity, Currie found time to work with the Macon law firm of Park and Strozier,²⁰ where he helped in the annotation of *Park's Annotated Code of Georgia*, and, if we can credit an anonymous Macon news reporter, he passed some of his hours courting his employer's daughter, Elmyr Park.²¹ Indeed, just a month before his graduation in 1935, he quietly married Elmyr Park, who had been educated at Wesleyan and Goucher, in her parents' home on College Street.²²

He resigned his position with the firm of his distinguished father-in-law and future teaching colleague at Mercer²³ in anticipation of his new career

13. *Id.* at 18. His classmates were A.J. Land and S.B. Stearns.

14. *Id.* at 12.

15. 21 MERCER UNIVERSITY BULLETIN 18 (Law School, No. 5) (1934); 22 MERCER UNIVERSITY BULLETIN 18 (Law School, No. 5) (1935); 23 MERCER UNIVERSITY BULLETIN 18 (Law School, No. 1) (1936).

16. 21 MERCER UNIVERSITY BULLETIN 19 (Law School, No. 5) (1934).

17. 23 MERCER UNIVERSITY BULLETIN 19 (Law School, No. 1) (1936).

18. *Id.* at 18-19.

19. 22 MERCER UNIVERSITY BULLETIN 18 (Law School, No. 5) (1935).

20. 29 WHO'S WHO IN AMERICA 599 (1956).

21. "Brainerd Currie on Way to New Law School," undated news article in Brainerd Currie's alumni file, Mercer University (1949?).

22. The Macon Telegraph, May 7, 1935.

23. Orville Augustus Park was indeed a distinguished Georgian and attorney, and a footnote can only do injustice to this educated and active citizen. He held law degrees from both Vanderbilt and Georgia and the honorary Doctor of Laws from Emory, and he was a member

as a law professor; Currie was to start teaching summer school at Mercer almost immediately after his graduation.²⁴ It is characteristic of Brainerd Currie, and of the good grace of the new Mrs. Currie, that the Washington honeymoon was timely planned to coincide with the annual May convocation of the American Law Institute.²⁵

We should not pass too lightly over Currie's immediate appointment to the Law Faculty. At the time, no matter how stellar his academic record, his election to the faculty was an honor surpassing all his earlier ones, for the faculty was one of distinction. The President of the Association of American Law School, in admitting Mercer in 1923, had noted that the faculty of three contained "a graduate of the University of Chicago Law School; another is a graduate of Yale University, and the third is Judge Fish, former Chief Justice of the Supreme Court of Georgia."²⁶ By 1930, Orville Park in his "History of the Mercer Law School," while bemoaning the loss to Tulane Law School of "Dr. Rufus C. Harris, a Mercer man, holding the degree of Doctor of Jurisprudence from Yale," could add brightly: "The present faculty consists of J.A. McClain, Jr., dean, Henry A. Shinn, D.F. Stansbury and Karl Stecher, all Doctors of Jurisprudence from Yale University except Professor Shinn, whose degree was from Leland Stanford."²⁷ Some of these would move on before Currie joined them but would be replaced by others of equal note: Elvin Overton, William Augustus Bootle, now Senior U.S. Judge for the Middle District of Georgia, D. Meade Feild, and Henry Searcy "Pappy" Barnes,²⁸ whose dour stare still faces every Mercer law student, even these many years after his passing. Brainerd Currie always kept the best of academic company.

Currie lacked a Bachelor of Arts degree, for he had entered law school after two years of college, as was then the custom. Unlike most men, who are content with their credentials if they seem to get them by, Currie set out to remedy this perceived deficiency. He enrolled in Mercer College, and while teaching law was himself taught other things. In due course, in 1937, he received an A.B. to put beside his LL.B. Alas lawyers are unlike members of other professions; there seems no end to degrees. For Brainerd

of Phi Beta Kappa and the American Law Institute. He was the author of countless legal and historical works, including his authoritative *Park's Annotated Code of Georgia* (14 vols.) and *Georgia in the Eighteenth Century* (1921). He was president of the Georgia Bar Association in 1918 and a member of the Georgia Legislature in 1931 and 1933. He was, of course, also a devoted part-time Professor of Constitutional Law and Federal Procedure at Mercer Law School from 1907 until his death in 1943. For more detailed accounts, see 6 MEN OF MARK IN GEORGIA 350-352 (1912); STATE OF GEORGIA DEPARTMENT OF ARCHIVES AND HISTORY, GEORGIA'S OFFICIAL REGISTER 125-126 (1933-35-37); AMERICAN HISTORICAL SOCIETY, INC., THE STORY OF GEORGIA: BIOGRAPHICAL VOLUME 332-333 (1938); and 22 WHO'S WHO IN AMERICA 1704 (1942-43).

24. The Macon Telegraph, May 7, 1935.

25. *Id.*

26. See note 4, *supra*.

27. DEDICATION CEREMONIES at 16-17.

28. 23 MERCER UNIVERSITY BULLETIN 3-5 (Law School, No. 1) (1936).

Currie, anything but the best was not worth tarrying with; in later decades, he earned from Columbia University the Master of Laws (1941) and finally that academic *ne plus ultra*, the Doctorate of Juridical Science (1955).

If we are to believe the academic catalogues of Currie's teaching years at Mercer (and no one in his right mind does repose much confidence in college catalogues), Currie taught Common Law Pleading, Introduction to the Study of Law (which looks distressingly like the bane of every new teacher's existence, Legal Bibliography), Domestic Relations, Equity, and Trusts.²⁹ Had he remained at Mercer beyond 1937, the catalogue indicates, he would have taught a new course in Law of the Press.³⁰ One wonders what products of that fertile mind would have developed had he put together the materials for the course he envisioned.

Thanks to the dogged acquisitiveness which only librarians seem to possess, we do have time-worn copies of three of the examinations he devised and administered—one in Civil Procedure and two in Equity. I assure you they are long and they are difficult, with seven problems each. Although taxing, they contain early samples of Currie's delightful ability to mate the comic with the analytical. One 1936 Equity question contains virtually the entire cast of the season's raging bestseller, *Gone With the Wind*, which was certainly known in Macon, where, after all, Miss Pittypat "refugeed" when the Yankees overran Atlanta.³¹

Upon accepting his new appointment—and promotion—at Wake Forest University,³² Currie began, to borrow a phrase, his years of pilgrimage, moving on the average every three and one-half years. After three years in Winston-Salem, he took a graduate fellowship at Columbia Law School and was awarded the LL.M. in 1941. With his third scroll in hand, he returned—again promoted, this time to Associate Professor of Law—to his native Georgia and its tradition-laden university in Athens. He could hardly have familiarized himself with his new home when war and Washington called: in 1942 he joined the academic legions of lawyers needed by the national effort. Starting as a staff attorney in the Office of Price Administration in 1942 and becoming Director of the Rent and Services Division of its Enforcement Department in 1944 and 1945, Currie is credited by *Time* magazine with leading the crackdown on black-market lumber chisellers during the war.³³ His final year in government service, although by no means the last year of his service to government, found him associate general counsel of the Office of Economic Stabilization.

29. *Id.* at 21-26; 22 MERCER UNIVERSITY BULLETIN 20-25 (Law School, No. 5) (1935).

30. 24 MERCER UNIVERSITY BULLETIN 27 (Law School, No. 2) (1937).

31. See M. MITCHELL, *GONE WITH THE WIND* (1936) *passim*. The examinations are in the Mercer Law Library.

32. Most of the subsequent professional chronology of Currie's career has been gleaned from 29-34 WHO'S WHO IN AMERICA (1956-67) and 4 WHO WAS WHO IN AMERICA 221 (1961-68), as well as from all editions of ASSOCIATION OF AMERICAN LAW SCHOOLS, DIRECTORY OF LAW TEACHERS, from 1935-1966.

33. TIME, January 8, 1965.

The combined call of his beloved Southeast and the thrill of legal scholarship took him in 1946 for the first time to Duke University where, incredibly, he became almost simultaneously professor of law, editor-in-chief of the internationally respected *Journal of Law and Contemporary Problems*, and, in 1947, founding editor-in-chief of the fledgling publication of the Association of American Law Schools, the *Journal of Legal Education*. Many fine hands have guided *Law and Contemporary Problems*, Currie's among the most capable, but there is no doubt that the issues of the most uniformity of excellence of the *Journal of Legal Education* went to press in those early days under his watchful eye and those of his close successors.

Duke and these two national journals lost Currie to another innovation in legal education: the new law school at UCLA, which was gathering a hand-picked faculty to stock its new \$1.5-million building in 1949.³⁴ He and his family remained in California for three years, until he was appointed to the deanship of the School of Law at the University of Pittsburgh,³⁵ "that fabulous 40-story skyscraper university," as Women's Reporter Blythe McKay of *The Macon Telegraph* gushed.³⁶ The overwhelming author jotted a telling sentence in her report: "Elmyr . . . also rather dreads packing and moving, which seems to be up to the distaff side, for the man of the family had already promised to head the summer school at the University of Chicago Law School this summer and won't be home to help."³⁷ So Brainerd was going to be exposed to Chicago. It must have been bracing or infectious, for his deanship at Pittsburgh was quickly resigned,³⁸ and he began the longest affiliation of his career, a seven-year liaison with Chicago—one that would see awesome quantities of superb scholarship issue from his desk. From his writings, lawyers, judges, law professors and, unwillingly, even law students know his intense intelligence. But it was during these same Chicago years that Currie established himself as Poet Laureate of the profession³⁹ with an imagination that supplied him with not only a bottomless fund of wit but also a knack for those wonderful, ear-grinding Gilbert-and-Sullivan-esque end-rhymes. Through Currie's rendering of *The Rose of Aberlone*, twice printed in the *Harvard Law Record*,⁴⁰ a generation of contracts students is familiar with the sale of the baleful, dessicated cow who would not (or would she?) bear in *Sherwood v. Walker*.⁴¹ The poem has irrevocably passed into the lore of the law. As Currie himself noted in the final "Canto" of the poem:

34. The sum comes from the unidentified clipping mentioned in note 21, *supra*. Today, \$1.5 million would not buy you an old law school, much less a new one.

35. University of Pittsburgh News Release, Friday, June 6, 1952.

36. *The Macon Telegraph*, June 27, 1952.

37. *Id.*

38. Currie was succeeded by his future colleague, Arthur Larson, James B. Duke Professor of Law in Duke University.

39. Giving full credit to William Prosser as Association Minstrel.

40. 30 HARVARD LAW RECORD 12-16 (1960).

41. 66 Mich. 568 (1887).

'Tis the middle of night before the exam,
 And there's nothing to eat but a cold bit
 Ah me! — Ah moo! Mark how the eager students cram,
 What coffee black they brew!
 A dismal specter haunts this wake —
 The law of mutual mistake;
 And even the reluctant drone
 Must cope with Rose of Aberlone.
 She rules the cases, she stalks the page
 Even in this atomic age.

 For students of law must still atone
 For the shame of Rose of Aberlone.

Equally delightful is "The Behavioral Scientist," written by Currie during his tour away from Chicago as Fellow at the Center for Advanced Study in the Behavioral Sciences ("the Casbah") in 1957 and published posthumously by his friend and colleague Philip Kurland.⁴² In a footnote to this opus, which Currie designated "Not-G," he explained: "All poetry may be divided into two categories: (1) That written by W. S. Gilbert (G), and (2) All other (Not-G)."⁴³ Currie is also responsible for a lusty sea-chanty, "Eino, a Sailor," which illustrates one of the more bizarre intersections of the law of admiralty with that of bawdy-houses.⁴⁴

Ribald doggerel was certainly only a divertissement in Currie's interest in admiralty. In 1960, Chief Justice Earl Warren appointed him Reporter of the Supreme Court's Advisory Committee on Admiralty Rules. Five years later, with Nicholas J. Healy, he coauthored *Cases and Materials on Admiralty*, long a standard work in that field.

As fruitful and as firm as his Chicago connection had proven, Currie was tempted once again by the giant Southern pines and gentle Piedmont setting of Duke in 1961. In that year, he was named the first William R. Perkins Professor of Law in Duke University, a tribute to both Currie and the eponymous New York lawyer who engineered the transition of Trinity College into Duke University.⁴⁵ But the tributes did not stop there. In 1963, Currie published his monumental *Selected Essays on the Conflict of Laws*,

42. 1966 DUKE L.J. 8-9 (1966).

43. Currie could imitate Gilbert and Sullivan as well as just Gilbert. Hidden in a little-known pamphlet edited by William L. Prosser, LAW SCHOOL ASSOCIATION LYRICS, at 64 (undated and not copyrighted; 1962?), is a song by Currie entitled "The Promised Land," to the air, "Bound for the Promised Land." Apparently Currie sang it himself at several Association gatherings.

44. To my knowledge, the typescript poem, signed "Brainerd Currie, Chicago, 5/16/55," has never been published. It came to my hands from those of the Honorable Wm. Augustus Bootle, former teacher and colleague of Currie's at Mercer, who received it directly from Currie. The case which the poem so graphically relates is *Koistenen v. American Export Lines, Inc.*, 83 N.Y.S.2d 297 (City Ct. N.Y. 1948).

45. See Duke University News Release, Friday, Oct. 13, 1961.

a volume hailed at once both within and without the profession of legal scholarship. In 1965, the prestigious Order of the Coif initiated its Triennial Coif Award for legal writing "that evidences creative talent of the highest order." Chosen for his *Selected Essays* by the panel of six leading legal scholars, including Justice Roger J. Traynor of the California Supreme Court, as the award's first recipient was, as *Time* magazine put it, "Duke University's shy, witty, brilliant Law Professor Brainerd Currie."⁴⁶ Though Currie's conflict-of-laws theories were and are controversial, to Harvard Law School's Fairchild Professor Emeritus John P. Dawson, who presented the award, "it seems clear that after Brainerd Currie, that dark science called the conflict of laws can never be the same."⁴⁷ In similar debt, two conflicts scholars, Dean Roger Cramton and Professor David Currie,⁴⁸ dedicated their volume *Conflict of Laws* "to Brainerd Currie . . . who first opened our minds to these problems."⁴⁹

Within ten months of this unprecedented recognition by his peers, at the full apogee of his great powers, Brainerd Currie was dead. He died September 7, 1965, in his home in Durham, North Carolina. He was laid to rest among the Park family, high atop a knoll in Riverside Cemetery in his native Macon, overlooking the wide Ocmulgee River. As befits the man, he is memorialized not by bronzen plaques or gloomy paintings, but rather by things of the mind. Annually a distinguished legal thinker delivers the Brainerd Currie Lecture at Duke. At Mercer, the Brainerd Currie Honor Society inducts into its membership those few students who show evidence of the qualities of mind and spirit which Currie himself displayed in such abundance. It would indeed do all of us well to remember Brainerd Currie, for we should search hard and we should search long, and probably without success, to find another so worthy of our respect as student, as teacher, as scholar and as man.

46. *TIME*, January 8, 1965.

47. *Id.* See also *Report of the Triennial Coif Award Selection Committee*, 17 *J. LEGAL EDUC.* 338 (1965). Besides Traynor and Dawson, the committee included Edward H. Levi, A. Leo Levin, Justice Walter v. Schaefer and Whitney North Seymour.

48. With Elliot and Carolyn, one of the three children of Brainerd and Elmyr Currie.

49. R. CRAMTON AND D. CURRIE, *CONFLICT OF LAWS* ix (1968). The second edition of the casebook, published in 1975 and coauthored by Dean Cramton, David Currie and Professor Herma H. Kay, is similarly dedicated.