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Brainerd Currie: Teacher

Herma Hill Kay

in the first-year law class of 1932-1933. What a genuine pleasure it was to have him in my course in Equity. Convinced am I that no member of that class or student body will resent my saying that as a student he was of unsurpassed excellence. His high intellectual capacity and his soft and perfect articulation caused him to stand out—but only in a modest manner; he was completely unassuming. Whatever scholarship was displayed in that course must be attributed largely to him and his peers, because the teacher was hard put to stay a step ahead of the brightest students.

He was graduated June 3, 1935, summa cum laude. During the four intervening decades only four graduates have attained that distinction.

He was so uniformly admired and respected that his immediate elevation to the faculty in the fall of 1935 was applauded by students and faculty members alike.

Among my highly prized mementoes is this inscription in the handwriting of Professor Currie on the flyleaf of his scholarly and influential book, *Selected Essays on the Conflict of Laws:*

> For Gus Bootle (Your Honor)
> With high regard and deep affection, and with grateful remembrance of the fact that you gave me my first teaching job.
> Brainerd Currie
>
> Durham, N. C.
> February 20, 1965.

BRAINERD CURRIE

TEACHER

'The Instructor . . . invites the students to share his amazement that self-respecting judges could ever . . . reach such results.'

By Herma Hill Kay*

When I studied conflict of laws under Brainerd Currie's supervision in 1958 at the University of Chicago Law School, I do not recall having been asked to provide an evaluation of his teaching. Having been made aware, through my own teaching experience, of the usefulness of student

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evaluations, I thought it appropriate to prepare one for inclusion in this memorial edition. A slight adaptation of the ubiquitous form follows.

COURSE: Conflict of Laws *INSTRUCTOR:* B. Currie
QUARTER: Fall (?) 1958 *STUDENT YEAR:* Third

1. Assess the Instructor's familiarity with the course material. The Instructor is so familiar with the traditional approaches to the subject matter that he seems faintly ill when discussing them. Words such as "perverse," "capricious" and "irrational" fill the classroom. Nor do more modern suggestions, particularly those offering global solutions, fare better. The Instructor seems to prefer a case-by-case analysis of the policies underlying the local laws asserted to be in conflict, followed by an inquiry into whether the respective states have an interest in the application of those policies. He frequently urges us to use the ordinary processes of construction and interpretation that he seems to think we have learned in other courses.

2. Does the Instructor stimulate student thought? The Instructor is in the process of formulating his own approach to the problem of choice of law. He circulates drafts of his articles to the class and seems genuinely interested in student criticism. He has asked this student to prepare a draft of an article on unconstitutional discrimination in choice of law, with the comment that — if the draft is good enough to be useful to the Instructor in his own work on the topic — the resulting article can be published jointly. I find this assignment extremely stimulating and challenging, especially since there appears to be a total absence of case law on the subject.*

3. Does the Instructor perform well in the classroom? Does he (she) hold student interest and attention? The Instructor sits at his desk and discusses the traditional approach with the class; he invites the students to share his amazement that self-respecting judges could ever be expected to reach such results. He then points out that, in fact, judges have managed to work out escape devices to avoid having to reach the more ludicrous results required by the system. Once the wreckage has been cleared away, the students are treated as colleagues working with the Instructor on a common problem: how to arrive at satisfactory solutions pending congressional action under the Full Faith and Credit Clause. This student, at least, hangs on every word.

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* The draft turned into two articles by Brainerd Currie and Herma Hill Schreter: *Unconstitutional Discrimination in the Conflict of Laws: Privileges and Immunities*, 69 YALE L.J. 1323 (1960), and *Unconstitutional Discrimination in the Conflict of Laws: Equal Protection*, 28 U. CHI. L. REV. 1 (1960). — The Editor

4. Would you take any other course from this Instructor? Would you recommend this course to other students? Yes, to both questions. Even admiralty, now that the waterway has reached Chicago.

As those of us in the teaching profession are well aware, one of the major shortcomings of student evaluations is the lack of any follow-up after the course is finished and the student has graduated to permit the development of a more reflective view of what a particular professor has contributed to his or her training. Since this evaluation is being prepared some 18 years after the course was completed, I will take the liberty of adding a few other questions to the form.

5. Has this course been of professional value to you? Yes. I have been teaching and writing in the field for 16 years, and have been greatly influenced in my approach by Currie's thinking. Although my interests have expanded to other fields, I retain an enthusiastic commitment to conflict of laws.

6. How do you evaluate this Instructor's contribution to your legal training? His contribution did not end in the classroom. He helped me find my first job, as law clerk to Justice Roger Traynor of the California Supreme Court, whose interest in conflicts mirrored his own. The two men were friends as well as colleagues, and I remember with pleasure one long afternoon of conversation with the two of them about conflicts theory and conflicts cases. Currie became reflective; he speculated about the use to which interest analysis would be put by judges less sophisticated in its method than Traynor. The discussion centered about a recent case in which the majority's analysis of state policy and interest differed sharply from that of the dissent. While the prevailing opinion purported to apply Currie's analysis, the three of us seemed to think that the result reached by the dissent, although couched in terms of other approaches, more closely approximated his method. For me, the conversation exemplified the dilemma of creative persons who can neither control the use of their inventions by others nor prevent themselves from continuing to produce new ideas. By his own example, Currie showed me that afternoon some of the misgivings, as well as the satisfactions, that accompany innovation.

When I began teaching, Currie generously read drafts of my first conflicts articles. When I became bold enough to disagree in print with his treatment of one of Traynor's conflicts—community-property opinions, Currie responded with a wry pun: at the time he had written about that case, he said, he must have been wearing his "light fall suit." He helped me mature as a legal scholar by making it possible for me to use, even against his own work, the

critical approach he displayed and taught so well. At a time when there were few women students in law school, and virtually no female professors to serve as role models for them, Brainerd Currie helped me gain the confidence to believe that I had something to contribute to the legal profession. Only the verdict of more time than has elapsed will determine whether he was right, but enough years have passed for me to know that I am grateful.

BRAINERD CURRIE

SCHOLAR

'His conversational patience, his personal kindliness, and his unlabored use of very great learning could not help but stick.'

By William Van Alstyne*

When a scholar dies and memorial editions subsequently mark the loss, the most usual convention is to honor him in a *festschrift* of articles that measure his influence—tracing the impact of his work and his thinking, in measurable ways, upon the remaking of an entire discipline. In Brainerd Currie's case, that ought not be neglected, because surely his seminal contributions to choice-of-law theory have had a major impact. From an original trilogy of articles written in 1957 (which with later essays were to identify him as the first recipient of the Coif award), through a powerful symbiosis with the highest courts in California and New York, Brainerd regenerated a whole new intellectual life in the then-moribund subject of conflicts of laws. Much that has happened since then has been like footnotes to his own footprints.

Nevertheless, an erudite remembrance of Brainerd Currie would leave out certain things that are not easily measured. As a means of appreciation, it would suffer in the same way that the study of law itself has been said to suffer—that it sharpens the mind by narrowing it. Most especially for that reason—to fill in the personal contributions he made—I am grateful for the invitation to write briefly about Brainerd; it is frankly in the interstices of what is already well known about him as a distinguished

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