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## In Memoriam: David P. Currie (1936–2007)

Saul Levmore

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*Saul Levmore*†

David Currie's passing seems to mark the end of an era at The University of Chicago Law School. But what era, exactly? The Currie era can be defined with some circularity by noting that nearly all those giants whose portraits adorn the main floor of our Law School have now passed away. Alternatively, we might say that everyone who taught at Chicago in 1968 is now either deceased or retired, but David's own retirement a short time ago made that so. When an important colleague retires, it seems inappropriate either to mourn or to celebrate. We use the occasion to express gratitude and to reflect on the work of a career, even as we hope that there will be many years of productivity in (nominal) retirement. In the case of Professor Currie, he and we were cheated out of this retirement. He continued to teach and work at The Law School, to be sure, but the remarks delivered upon his retirement, and at the unveiling of his portrait in our classroom wing, now seem like farewells.

Observations regarding demise do not help us understand the character or value of what is gone—or what remains. We want to capture the distinct quality of a generation, and of David Currie, in particular. Viewed from the perspective of successors, it is usually the case that distinguished predecessors seem firmer in their standards than do those who follow. I might describe the current generation of Chicago faculty as productive, imaginative, versatile, brilliant, ambitious, and always interesting. Some of these adjectives come to mind in describing the Currie generation, if there is such a thing, but that generation would also surely be described as principled, unwavering, and strong-willed. My contemporaries think of excellence as coming in many forms and as produced in many styles. But David Currie and his earlier set of colleagues had much stronger views regarding the ingredients necessary for a good day at work or a good class. Some are humorous, but perhaps nevertheless revealing. David wore a tie and thought others should too. David thought that good lunch conversations required that one be seated and that lunch be served. He was a member of the Constitution Generation at Chicago. Members of that generation carried around the US Constitution in their inside jacket pockets; most had notes in the margins. By 1985, a majority of the faculty would have found it somewhat humorous or ironic to whip out a

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† Dean and William B. Graham Professor of Law, The University of Chicago.

copy of the Constitution during a meal. By 1995, most topics of faculty discussion would have required knowledge of some other country's laws or would have been about human behavior or economics, rather than about a beloved text. By 2005, most faculty would have appeared at lunch, and certainly at dinner gatherings, without a jacket.

David, however, liked the old texts. He never tired of asking prospective faculty members about the Rules of Decision Act—and he continued to see new things in their replies and in the ensuing discussions. I recall a law school classmate, in 1980, describing a Chicago interview in which Professor Currie grilled him about this important statute. Twenty years later an applicant again confided in me that an interview in Currie's office had gone well because the applicant had been warned of the likelihood of such a question at Chicago. Those of us who went to Yale had not, of course, met the Act during three years of law school, except as something found in *Erie Railroad Co v Tompkins*, a case taught to us in one class and by someone who had spent most of his career at Chicago. In the normal course of events, no one at Yale would ever have mentioned the Rules of Decision Act, or perhaps any other statute! It was the threat of an interview with David Currie in Chicago that kept that Act alive in New Haven.

There were times, I admit, when I thought David more inflexible than traditional or principled. For example, he thought the first-year curriculum at our Law School was close to perfect, and he had no patience for my wanting to experiment with it, whether by introducing intellectual property into it, globalizing it, or even injecting it with more parsing of statutes. His memos on the subject of curricular reform were direct and witty, except that I began to see that he did not find the subject amusing at all. Nor did he like new casebooks. Someone would suggest a book to him and he would tell the author that he preferred the predecessor book, with shorter and older cases, and with traditional themes. I have learned that this preference for tradition and authenticity extended to films. A movie that took liberties with the historical record or with the book on which it was based would cause Currian displeasure. The idea that a modern twist on an old story might inspire some viewers to go read the original was never enough to justify the novelty.

I have often recalled (in and out of David's presence) one of our first encounters. Just after I joined the faculty, David came by my office to invite me to walk over to lunch. I was on the telephone with a prospective student, having previously suggested to the Admissions Dean that it would be a good idea to ask several faculty to call some of the very best applicants, in order to entice them to Chicago. Such calls might signal our accessibility and our interest in ideas, and it might also show that we cared about students. I was given the files of

four or five applicants, and I called them, making conversation about subject areas indicated in their applications. When David came to my door, I was completing one such phone call. He asked me what that had been all about. I described the recruiting plan, and commented on how well this had worked at my previous law school, and how I thought the just-concluded conversation had gone. David looked at me with incredulity and said, “But we don’t want every student at Chicago. If they are not smart enough and well-informed to know that this is the best place, then we should not try to get them here.” No academic wants to say that he or she thinks that a great University needs to invest in marketing, but I suspect that David’s belief that the good and pure will win out without any advertising or advocacy is part of what we admire, but decline to follow, in that earlier generation.

I hope that none of these quick descriptions makes David seem wrong or inflexible. I came to learn that he was principled and more often right than not. It was, as I now see it, simply the job of the newcomers to suggest change, and the job of the old guard to resist change and to place the burden of proof on those who would do things differently.

When I became Dean, my relationship with David changed a bit. For one thing, he felt it his duty to report to me. Every so often I would receive a note or call informing me that he would be missing several days at work because he would be on a family vacation. To this day, I am puzzled by these regular reports. Could he have thought that other colleagues also reported every missed day at work? It must have been the case that when he served The Law School as Interim Dean he noticed that not a single other faculty member reported planned absences. I suspect that he simply thought that in a well-run workplace everyone ought to be accountable, and that if the rest of us were not up to his standards, that hardly excused him from correct behavior.

David was an incurable romantic, with respect to both The Law School and his marvelous spouse, Barbara Flynn Currie. Just as he never seemed to think that scholarship written at another law school could hold a candle to work done here, or that students trained elsewhere could be a match for those whom we had graduated, so too he did not think that the institution of marriage could be flawed in any way. Barbara was simply the answer to all his life’s dreams, as it ought to have been. Who can forget notable Currie-isms on this score such as: “Do I believe in inarrriage? I have seen it with my own eyes!” and “Here’s to Barbara—wife, mother, and management, all rolled into one.” I think this was much more than old-fashioned rhetoric or taste. David’s eyes would twinkle as he said nice things about Barbara or reported on their trips together, very much as they would twinkle when he quoted a relevant line from an opera or when he knew he had a winning legal argument. We are fortunate that Barbara remains

in our Law School family. Still, we have lost not only a great colleague and teacher, but a great partnership.

I like to think that we have inherited most of the great characteristics of our lost friend. As a faculty we will surely combine to maintain The Law School as he estimated it to be. Indeed, we should not think of David's passing as marking the end of an era—because the era marked by great teaching and serious scholarship, as well as some old-fashioned values—has hardly ended. David was often excited about new areas of law; he taught around the first-year curriculum and made important forays into Environmental Law and Comparative Law. Our experienced faculty do the same, and our young faculty can be counted on to follow this pattern. If the Constitution Generation was remarkable for its love of teaching and its careful analysis and writing, then that generation is very much an ongoing one here. Nor would I be surprised if a junior colleague stood up one day soon, as David did from time to time, in order to cast doubt on the appointment of an interdisciplinary scholar with demonstrated indifference to the teaching of law, by saying, "For Heaven's sake, we are supposed to be a *law school*." There was something about the way he emphasized each of those words, putting roughly the same force behind each in consecutive fashion, that spoke volumes about who we are and what he was. I will miss the force behind those words, but that sentiment will also be carried forward.

Finally, we will all miss David Currie's scholarship, not to mention his amazing ability to produce original and interesting work year after year, through thick and thin. You would pick up his latest work and be surprised at how quickly he could interest you in constitutional history, German and American alike. He was serious but also witty. He could tease his colleagues about their taste for social science in law, and for objective measures of productivity, even as he taught you something about early constitutional law. I refer here to one of his most influential works, *The Most Insignificant Justice: A Preliminary Inquiry*.<sup>1</sup> Part of the fun of this piece is its irony. For the right word with which to describe its author is not traditional, old-fashioned, or principled. It is significant. Farewell, David Currie, our Most Significant friend.

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<sup>1</sup> 50 U Chi L Rev 466 (1983).