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JAMES BRAXTON CRAVEN, JR.: SEEKER AFTER TRUTH

SAM J. ERVIN, JR. †

James Braxton Craven, Jr.,¹ bore a name of high repute in educational and religious circles in North Carolina. His great grandfather, Braxton Craven, was famed as the founder and first President of Trinity College, which was originally established at Trinity in Randolph County and which became Duke University subsequent to its removal from Trinity to Durham. His father, James Braxton Craven, was an erudite and eloquent member of the Western North Carolina Methodist Conference and preached with great acceptability and effectiveness at large Methodist churches in Lenoir, Gastonia, Charlotte and Greensboro.

Brack Craven was born at Lenoir on April 3, 1918. After attending the public schools of Gastonia, Charlotte and Greensboro, he entered Duke University. There he won memberships in Phi Beta Kappa scholarship fraternity and Omicron Delta Kappa leadership fraternity and graduated in 1939 with the degree of Bachelor of Arts. He was afterwards admitted by Duke to the Order of the Coif as an honorary member.

Brack Craven attended Harvard Law School from 1939 until 1942, when he received the degree of Bachelor of Laws from that institution. He then enlisted in the United States Navy for service in the Second World War. He served in the Navy for four years, rising from the rank of ensign to that of lieutenant.

After his honorable discharge by the Navy in 1946, he was admitted to the North Carolina bar and embarked upon the practice of his profession at Morganton. There he had the good fortune of being associated with the late John M. Mull, whose understanding heart made him the wisest of counselors, and Frank C. Patton, whose mastery of the arts of advocacy made him one of North Carolina's ablest trial lawyers.

Before ascending the bench, Brack Craven was active in politics, serving for a time as Chairman of the Burke County Democratic Executive

† Member, Morganton, North Carolina Bar and former United States Senator.

1. For ease of expression, James Braxton Craven, Jr., the son of James Braxton Craven and his wife, Katherine Simmons Covington, is designated in this sketch as Brack Craven, the name by which he was known to his family and friends.

Committee. He was also keenly interested in the affairs of the legal profession, holding membership in the American Bar Association, the American Judicature Society and the North Carolina Bar Association, which he served in 1959 and 1960 as a Vice President.

When he delivered the eulogy at the funeral of Justice Story, Daniel Webster declared: "Justice is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together." Brack Craven accepted this statement as verity. He believed, moreover, that a public office is a public trust. As a consequence, he was inseparably bound to the conviction that the most satisfying service anyone can render to his generation is to participate courageously, honestly, impartially, intelligently, patiently, sympathetically and understandingly in government's most sacred task, the administration of justice.

His ambition was to do that. Hence, he accepted successive calls to posts whose duties afford their occupants opportunities to participate in the administration of justice. He was prosecuting attorney in the Burke County Criminal Court in 1947 and Assistant United States District Attorney for the Western District of North Carolina from 1948 to 1952. Governor Luther H. Hodges appointed him a Judge of the North Carolina Superior Court in 1956, and he served in that capacity until 1961, when President John Fitzgerald Kennedy named him United States District Judge for the Western District of North Carolina. In 1966, President Lyndon B. Johnson promoted him from the district court to the United States Court of Appeals for the Fourth Circuit, an office he occupied at the time of his death.

Since he performed so magnificently as a North Carolina Superior Court Judge, as a United States District Court Judge, and as a United States Circuit Judge, I am not reluctant to claim some of the credit for making it possible for Brack Craven to occupy these judicial posts.

When my Chapel Hill college-mate, Luther H. Hodges, who was not a lawyer, became Governor, he persuaded me to give him confidential and candid opinions concerning the qualifications of persons he was considering for possible appointments to the judiciary. When he asked me for my opinion concerning Brack Craven's qualifications for the Superior Court judgeship, I was happy to inform him that he could not make a better choice. My colleague in the United States Senate, B. Everett Jordan, was pleased to join in my later recommendations, which culminated in Judge Craven's appointments to the district court and to the Fourth Circuit.

Judge Craven was tall, slender and erect in stature. His hair was prematurely white. When he sat on the bench, the contrast between his white hair and his black judicial robe, and his erectness of bearing projected

an image of unsurpassed dignity. Nevertheless, his innate courtesy and good humor put those in the courtroom at ease.

After his elevation to the court of appeals, Judge Craven moved from Morganton to Asheville in order to be near an airport for ease of transportation to the headquarters of the Fourth Circuit in Richmond and to the other places where the court held its sessions from time to time.

Although he abstained from political activities after ascending the bench, Judge Craven maintained a lively interest at all times in public affairs and was sometimes criticized for his outspoken comments upon them in speeches before bar groups and similar bodies.

As one who had an enduring interest in legal education, he taught constitutional law as a visiting professor during several summer sessions at the law schools of the University of North Carolina and the University of Texas; as one who had a profound concern for the Bill of Rights, he testified on occasion before the Senate Subcommittee on Constitutional Rights in favor of proposed legislation I offered in my role as Subcommittee Chairman that would make the constitutional rights of individuals more meaningful in practice.

As the son of James Braxton Craven and the great grandson of Braxton Craven, Judge Craven was ardently attached to Methodism and Duke University. He served as a delegate to the Southeastern Jurisdictional Conference of the Methodist Church in 1956, 1960 and 1964 and to the General Conference of the Methodist Church in 1964, and he became a Trustee of Duke University in 1972.

Judge Craven worked hard. He likewise played hard, his favorite sports being skiing and tennis. He died of a heart attack while playing tennis in Richmond, Virginia, May 3, 1977. As was fitting, his funeral service was conducted in Duke University Chapel, and interment was in the old Trinity College Cemetery at Trinity in Randolph County.

Judge Craven was survived by his widow, Susan Schatzel Craven of Asheville, his sons, James Braxton Craven, III, an attorney in Durham, and Stephen Kistler Craven, with the Department of Commerce in Washington, D.C., and his daughter, Elizabeth B. Craven, a student at Duke University.

I have recounted the external events of Brack Craven's life. I will now meditate upon the imponderables that made him the man and the judge he was.

Brack Craven was wont to describe himself to others as "a person with one of the greatest capacities for uncertainties you ever saw." In saying this, he reflected an observation of the French philosopher, Rene Descartes, who

declared: "If you would be a real seeker after truth, it is necessary that at least once in your life you doubt, as far as possible, all things."

Brack Craven's uncertainties indicated strength and not weakness. They were begotten by a powerful intellect, the inborn honesty of which disabled him from accepting the norms of society as truth unless he had subjected them to critical analysis and found them to be sound.

As a consequence, he was uniquely individual and independent in his thinking and sometimes reached conclusions or took actions many of his contemporaries deemed unorthodox. For example, he damned American involvement in Vietnam long before it was popular to do so, calling it "a monstrous, muddle-headed, pridefully aggressive, immorally jingoistic crime against humanity."² By so doing, he attracted the criticism of those who believed his action incompatible with judicial tradition in North Carolina. He undoubtedly knew this to be true, but his courage would not allow him to ignore what his mind declared a crucial wrong, regardless of what others might think.

Brack Craven was unwilling to live with uncertainties. Since his intellect was insatiably inquisitive as well as scrupulously honest, he was an incessant seeker after the truth that removes doubt. He knew that the road to truth is hard and that those who travel it must pay its heavy toll. This he was always willing to do. As a lawyer and as a judge, he was indefatigable in searching for the facts involved in each case and in studying the constitutional or legal principles applicable to it. His abiding conviction that a judge has a moral obligation to know the facts of a case before he makes his decision was well demonstrated by his opinion in *Bradley v. School Board*,³ in which he stated with simplicity the facts he had gleaned from an extremely complicated and protracted record.

Brack Craven's search for truth led him unerringly to an understanding of the true office and province of the judge in a government of laws.

Before discussing this matter further, I deem it not amiss to deplore a besetting sin of our generation—the notion that, by labeling a public figure as conservative or liberal, we reveal the truth concerning him. While he sometimes called himself a liberal in politics, Brack Craven expressed the hope that he would be "unlabelable" as a Circuit Judge. In expressing this hope, he manifested his comprehension of the unreliability of customary labels.

2. Speech by Judge Craven, Buncombe County, N.C., Bar Ass'n (Apr. 30, 1971), excerpted in *Lawton v. Tarr*, 327 F. Supp. 670, 674 app. A (E.D.N.C. 1971).

3. 462 F.2d 1058 (4th Cir. 1972), *aff'd per curiam by an equally divided Court sub nom. Bradley v. Virginia Bd. of Educ.*, 412 U.S. 92 (1973).

As currently employed, the terms conservative and liberal are undefined and unrevealing. In my personal lexicon, a liberal is one who believes that the freedom of the individual is the most precious value of civilization. Measured by this test, some who others brand conservatives are true liberals, and some who call themselves liberals are reactionaries wedded to the proposition that government should manage the affairs of all individuals and thus rob them of freedom.

The terms are singularly inappropriate as they are now applied to occupants of judicial offices. This is so because those who revel in their use apply the term conservative to judges who interpret the Constitution to mean what it says and the term liberal to judicial activists who are bent on interpreting the Constitution to mean what it would have said if they had written it.

While he undoubtedly believed that the freedom of the individual was the most precious value of civilization and that the Bill of Rights should be construed with liberality to make effective its manifest purpose to ensure such freedom, Brack Craven was not a judicial activist. His search for truth had led him unerringly to the knowledge that the true office and province of the judge in a government of laws is to interpret law and not to make it.

Brack Craven's mind was disciplined as well as honest and inquisitive. While he was conscious of the ills of society and the deficiencies of some laws, and entertained strong opinions as to how those ills could be alleviated and those deficiencies removed, he was insulated by his disciplined mind from the temptation to which judicial activists all too often succumb. He was faithful as a judge to the principle essential to a government of laws—that it is the duty of the judge to declare and not to manufacture law. Like the legal sage, Benjamin N. Cardozo, he knew that when judges substitute their personal notions of justice for established law under the pretense of interpreting it, they sound the death knell of the reign of law.

This was revealed by Brack Craven himself in 1971 when he was asked by a United States District Attorney to disqualify himself from a draft law violation case because of his well known opposition to America's involvement in the Vietnam War. Although he was rightly confident that his power of judicial self-restraint would enable him to lay aside his personal views and found his decision solely upon the applicable law, Judge Craven acceded to the request that he disqualify himself. In a dramatic statement that sets forth in illuminating fashion his concept of the duty of the judge in a government of laws, he said:

The beginning of intellectual honesty in a judge is the recognition that, like other men, he has his own predilections and preferences and intellectual and philosophical attitudes that color and influence his viewpoints. Achieving it requires that he be constantly on guard against his own bias, not in pretending that there can be none. I do not believe that a judge has a duty of loyalty to a political administration with respect to any particular policy of that administration—international or domestic. Nor do I believe that he must pretend to believe that all policies or even all laws are wise and just. But I do believe that he must read, interpret and apply laws as written without regard to whether he would like to see them changed.⁴

Brack Craven's search for truth led him to another truth of crucial import in a government of laws—that law is made for man, and not man for law. He manifested his appreciation of this truth in this saying: "I get a little impatient with the preoccupation many have with what they call 'legal problems.' There are no such things. There are peoples' problems, some of which might have legal answers."⁵

Since it is made for man, Brack Craven concluded, law must be an instrument of service to society, and judges can best make it effective as such by stating the legal rules they apply to facts in a readily understandable way. Hence, he made his opinions models of clarity.

As a result of his awareness that the law is made for man, Brack Craven had a profound appreciation of the critical value of the first amendment to America as the constitutional instrument primarily designed by the Founding Fathers to make and keep Americans politically, intellectually and spiritually free. He realized that the amendment extends the freedoms it enshrines to the foolish as well as to the wise and did not fear the exercise of such freedoms by the foolish because of his faith that truth would not be put to the worse in any fair and open encounter with error.

I sorrow because Brack Craven has left us, but rejoice because his judicial labor enriched the law.

4. *Lawton v. Tarr*, 327 F. Supp. 670, 671-72 (E.D.N.C. 1971).

5. Raleigh, N.C., *News and Observer*, May 4, 1977, at 1, col. 3.