



DEDICATION OF ISSUE TO ALLAN MACURDY

Allan Macurdy passed away June 23, 2008. Mr. Macurdy was a visiting associate professor at the Boston University School of Law and the director of Boston University's Office of Disability Services. Mr. Macurdy was also a graduate of the Boston University College of Arts and Sciences ('84) and the School of Law ('86).

The following three pieces are memories of Mr. Macurdy by Professor Frances Miller, Professor Larry Yackle and William S. Richardson School of Law Dean Aviam Soifer. The tragedy of Mr. Macurdy's passing, a noted disability rights advocate, was only underscored by the *Developments in International Disability Sport Law* Symposium, held so soon after his death. It is our honor to dedicate the symposium and this issue in his memory.

ALLAN MACURDY: “FROM YOUR LIPS TO GOD’S EAR”

Aviam Soifer*

How could Allan do it?

Even those of us blessed to have known Allan over many years cannot fully grasp the answer. We could not and still do not believe his tenacity and courage, abiding curiosity, sparkling ability to make connections, and profound and provocative insights. He gracefully and lovingly sprinkled these qualities throughout his significant articles, engaging and often path-breaking teaching, administrative acuity, and gift for both deep friendship and casual conversation—to say nothing of the key role he played in the belated yet marked success of the Red Sox. And, oh—was Allan ever funny!

It undoubtedly seems strange, but I believe that the Yiddish expression, “From Your Lips to God’s Ear,” might aid in understanding key aspects of the Allan Macurdy Phenomenon. To me, the old Yiddish expression seems to do nothing less than to pose a challenge to common assumptions about jurisdictional boundaries, life on earth, and a higher dimension. It also underscores the potential power of the spoken word. Finally, the thrust of its words is in a move toward a better world. This audacious hope is made at least thinkable through a subversive collaboration between human verbalization and divine intervention. In other words, a just God would heed what you just said.

Allan was preoccupied by conversing on many levels about what justice ought to mean in the here and now, and in the near future. The wonders of technology allow even someone like me—somewhat technophobic and certainly a techno-fogey—to retrieve snatches of e-mail conversations with Allan over many years. I therefore very quickly found an essay by the novelist Richard Powers, “How to Speak a Book,” that Allan forwarded to a few friends in early January 2007.¹ In this essay, Powers convincingly argues that the physical act of writing “damages memory, obscures authority, and even alters meaning.”² But even Powers’s fine

* Dean and Professor, William S. Richardson School of Law, University of Hawai’i.

¹ Richard Powers, Book Review, *How to Speak a Book*, N.Y. TIMES, Jan. 7, 2007, § 7 at 31. Apparently Allan subscribed to the advanced copy Book Review service or had some other means to see an advance copy, as his e-mail was before 8 am on the morning of January 6, 2007.

² *Id.* Powers makes the good point that these thoughts really simply translate the words of Socrates, at least as written down in the “Phaedrus,” which he points out is Plato’s “suspect transcript.” Powers also neatly celebrates his own ability to write by

essay does not come close to the wonder contained within the succinct introductory message from Allan as he forwarded the essay.

That January, Allan spoke/wrote the following: “This essay conveys one blessing of being unable to move—many have proven that bodily shackles cannot cage the mind, but few know the joy and magic of speaking your words in the glory of the language!” Leave it to Allan’s unquenchable spirit to deem the physical boundaries he faced to be part of a blessing, and to be productive of joy, magic, and even glory.

Even a small sample of Allan’s e-mails bounces with his verve for ideas and for exchanges about them, discussing the pluses and minuses of sheer intellectual audacity, for example, or how much to bring out his own voice. He is excited when he discerns that “sovereignty is a normative animal”; after two winter months with “a tenacious pneumonia,” he is happily at work on full faith and credit and has begun to think about “reasons to respect other states laws as aggregate voices of self-determination—sort of a Democratic theory of comity”; he keenly perceives that “the jurisdictional questions are what attract me to Admiralty and federal Indian law,” and now he is considering the wisdom of creating and offering a new course “in federal practice/advanced procedure.”³ There were no jurisdictional barriers to Allan’s remarkably supple mind.

In fact, Allan’s ongoing concern with and challenges to boundaries and jurisdictional lines might be traceable in large measure to his acute sense of physical constraints. What stands out throughout his scholarship, however, is how brilliantly he challenged accepted assumptions about limits of all sorts. Repeatedly, Allan demonstrated that the constraints we face and consider insurmountable are usually our own creations. He did this, for example, in some of his most recent work when he worried that Disability Studies was in danger of becoming “substantially disconnected” from a generation of civil rights jurisprudence that could be instructive about “the tenacity and complexity of prejudice.”⁴

Writing, teaching, or conversing, Allan used his intellectual breadth and his finely attuned legal mind to emphasize connections and broad

vocalizing, thanks to a three-pound tablet PC. It is intriguing that Powers invokes the same Yiddish expression discussed above, though I believe his version contains a slight mistranslation. Powers has it as: “From your lips to God’s ears.” *Id.* Powers uses this “old Yiddish wish” to underscore an important further point. Powers notes, “Writing is the act of accepting the huge shortfall between the story in the mind and what hits the page.” He goes on to contrast the work of any writer with the Yiddish expression, and he adds: “The writer, by contrast, tries to read God’s lips and pass along the words, via some crazed game of Telephone, to a further listener.” *Id.* Powers’s novel, *The Echo Maker*, won the 2006 National Book Award.

³ E-mails from Allan Macurdy to author (February 11, 2003; April 27, 2005; November 29, 2006) (on file with the editors).

⁴ Allan Macurdy, *Review Essay: Thinking About Rights: A Review of “Disability Rights,”* 26(4) *DISABILITY STUDIES Q.* (2006), http://www.dsqsds-archives.org/_articles_html/2006/fall/macurdy.asp, ¶ 1.

challenges. And he never wavered from his belief that there are universal rights, often obscured by legal analysis as well as by the rampant individualism he decried.⁵ Indeed, for Allan, jurisdictional questions should force us all to drill down to basic issues. As he put it, “Disability rights existed prior to their infringement by majorities and the state, and the rights movement arose to combat that infringement.”⁶

Toward the end of his life, Allan saw commonality in the legal arguments and the organizing that helped produce Lord Mansfield’s celebrated decision to free Somerset—a slave brought from Virginia to Great Britain, and about to be shipped to Jamaica to be sold—by reasoning that “the Air of England was too pure for slavery.”⁷ As a person who defiantly triumphed over isolation all his life and who depended on a respirator for much of it, Allan had begun to develop “a fundamental constitutional value of interaction upon which all other rights depend.”⁸ To him, “independence from others is not only myth but is pernicious.”⁹ By contrast, Allan embraced the *Letter from the Birmingham Jail* in which Dr. Martin Luther King, Jr. identified “an inescapable network of mutuality, tied in a single garment of destiny”—and Allan added that “all of us take in from the same air” and thus we must rely upon each other “to protect the air” and we must depend on “the web of relationship” that keeps us from “social asphyxiation and the death of self.”¹⁰

But no one should be fooled into thinking that Allan was a softie. His careful, often caustic, and always hard-headed scholarship and teaching entirely refute any such notion.¹¹ Nonetheless, many people will most fondly remember Allan Macurdy for his extraordinary skill in transcending boundaries and his great creativity in making original and compelling connections. One hesitates even to say “unique” about an individual who so often and so cogently critiqued individualism, but con-

⁵ Thus, for instance, “Rights are too important to be left to lawyers, but the struggle for rights and their protections is a universal one.” *Id.* ¶ 10.

⁶ *Id.* ¶ 4.

⁷ *Somerset v. Stewart* (1772), 98 Eng. Rep. 499 (K.B.).

⁸ Allan Macurdy, *Rights Respiration: Disability, Isolation, and a Constitutional Right of Interaction*, 13 TEX. WESLEYAN L. REV. 737, 746 (2007).

⁹ *Id.* at 740.

¹⁰ *Id.* at 748.

¹¹ See, e.g., Allan Macurdy, *The Americans with Disabilities Act: Time for Celebration, or Time for Caution?*, 1 B.U. PUB. INT. L.J. 21 (1991) (showing his willingness to rain carefully yet heavily on the parade for the new ADA); Allan Macurdy, *Disability Ideology and the Law School Curriculum*, 4 B.U.PUB. INT. L.J. 443 (1995) (exemplifying his sharp critique of mainstream American legal education); Allan Macurdy, *Review Essay: Thinking about Rights*, *supra* note 4 at ¶ 9 (arguing that many contributors to *Disability Rights* missed the significance of the role that private law plays in oppression as well as his point that their narrow compass risked increased marginality for Disability Studies).

nections constituted Allan's unique strength as a student, teacher, administrator, correspondent, and friend.

He would not allow any of us to "deny our inter-relatedness, to succumb to fear, and to cover it with oily sentiment."¹² Rather, he lived and loved, and taught and learned in good company. Therefore, it is sadly and deeply paradoxical that none of us has ever known nor ever will know again anyone like Allan, so uniquely able to demonstrate "the lush breadth and power of the human spirit."¹³ Allan recognized that "learning actually happens through immersion in constant and complex interaction amongst student, teacher, and classmates."¹⁴ And could Allan ever interact!

That said, what stands out most about Allan was his wise heart and caring spirit. This largely explains his extraordinary success in connecting with others. He beautifully described how his parents "taught me that my worth was measured by my care for others" and noted how his siblings "never accepted that I had limits at all."¹⁵ The many people who helped him through the years thus became much more than hired assistants, and his mother, Sarah Macurdy, truly embodied selfless dedication through her many years as his indefatigable champion. Most of all for Allan, his wife Marie Trottier Macurdy was—as he said in his last article—"my life and my inspiration."¹⁶

Allan's words live on throughout many jurisdictions, and one can say with considerable confidence that what he said and wrote and did will be widely remembered as a blessing. As Allan said when he memorialized Professor Mary Jo Frug years ago, "though we are inconsolable, [s]he would have us hope."

From Allan's lips to . . . ?

¹² Macurdy, *Disability Ideology*, *supra* note 11, at 457.

¹³ *Id.*

¹⁴ Macurdy, *Rights Respiration*, *supra* note 8, at 747.

¹⁵ Macurdy, *Americans with Disabilities Act*, *supra* note 11, at 21.

¹⁶ Macurdy, *Rights Respiration*, *supra* note 8, at 737 n.1.

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REFLECTIONS ON ALLAN MACURDY

Larry Yackle*

There was a time years ago when it was our practice at commencement to drape graduates with their new academic hoods as they crossed the stage to receive their degrees. We ultimately dispensed with “hooding” because it consumed so much time. But back then, back in 1986 to be precise, two members of the faculty, Wendy Kaplan and Robert Volk, met each member of the class at the top of the steps and slipped a hood over the graduate’s head. Wendy and Robert always did it, as I remember, because they were tall and could manage the task. Anyway, the ceremony in 1986 was one of my first, and I watched the proceedings with the interest of an anthropologist. Everything was straightforward enough. Each degree candidate in turn wiggled between Wendy and Robert, received a hood, and emerged with a big, beaming smile. I will confess that my attention may have wandered as we worked our way through the alphabet. But then something remarkable happened—something that has returned to me at every commencement since.

Suddenly, Wendy and Robert were gone. I peered around and caught glimpses of the tops of their heads. They had moved down to the floor in front of the platform. And from there they carefully placed a hood on Allan Macurdy’s shoulders. Allan, of course, was seated in a wheelchair and unable to mount the stairs to the stage. I say that Allan was seated. But everyone else in the auditorium was standing (and applauding)—witnesses to Allan’s remarkable achievement. Allen had endured much—the steps (so many steps) in the Law Tower, the awkward elevators (so much worse then than now), and the many, many other physical obstacles on campus and in the wider city. His illness might have made his efforts futile. But Allan was extraordinary. One of the most extraordinary people I ever knew.

Intellectual capacity is a wonderful thing. We academics like to think we have our share of it, but all of us know that success in our profession requires assiduous effort to sharpen our wits in exchanges with others. Allen was fortunate to be born with a fine mind, unfortunate to be denied easy communication with colleagues. He labored to get said what he had to say, to join issue with others, and thus to develop and demonstrate his many gifts. But, of course, he did work harder, harder than any of us. And he did succeed. Allan was my colleague at BU Law for twenty years, and no one I knew during that time impressed me more. He was articulate, analytical, insightful, and witty into the bargain.

* Professor of Law, Boston University School of Law.

I have always found our faculty workshops daunting affairs. I know I can count on everyone to be kind and gentle, and not to embarrass me (more than absolutely necessary). Still, I get nervous at the prospect of facing hard questions; still, there is a little lump in my throat. I know, then, something of what Allen must have felt when he gave workshops. Again, he had to work harder to be heard and to engage others. But he did it, and he did it successfully, time and again, year after year. His presentations were always well attended, his papers always sparked intellectual excitement, and everyone in the room valued his careful, professional, good-humored style. In those workshops, the law faculty experienced what Allan's students enjoyed—a serious mind at work.

Allan sent me drafts of his papers, and I sent him drafts of mine. We tried to help each other as best we could. I must say that he helped me a lot more than ever I helped him. His scholarship followed a model that grew on me over the years. Allan didn't pick topics at random, nor on the basis of intellectual curiosity alone. He wrote about what was important. Things that were important to him and should be important to us all. Philip Kurland might have been thinking of Allan's work when he entitled his collection of Frankfurter's papers "Of Law and Life and Other Things that Matter." I deeply respected Allan for thinking, and writing, and caring about things that genuinely *matter*. He was an intellectual. But he was not a bystander to the world at large. He wouldn't be, he couldn't be, a bystander.

Courage, too, is a wonderful thing. We are protected in our cloister, and we are rarely asked to show much real moxie. Allan was different in this respect. He had courage in long supply. His every movement drew upon that courage and reflected it for the rest of us to see—and respect. As I think back on Allan now, I must say that it is his valor that most stands out in my mind. He was a valuable colleague and a valuable friend, and he showed me how to live a valuable life.

A QUALITY LIFE

Frances H. Miller*

Allan Macurdy took full possession (and command) of his allotted space in this universe—he was a force to be reckoned with, in the very best sense of that phrase. Strong, articulate, and bright, endowed with an extra helping of good old-fashioned common sense, Allan made his mark on the world through his teaching, his scholarship, his public speaking, and his clear-eyed approach to disabilities. I knew him for more than twenty years, and not for him the passive, dependent role of someone forced to rely on the help of others for the physical necessities of life. To me it seemed that the more physically dependent Allan became as his disease progressed, the more independent he grew in thought and deed.

Allan's charismatic impact was indelibly engraved on my mind at the Pike Institute's 2005 Conference entitled *Five Years After the Terry Schiavo Litigation*, here at Boston University School of Law. He and I were scheduled to speak at the end of a long day, on the same panel about decisions to terminate medical treatment. By that time Allan's illness had advanced to the point where he could no longer raise his arms. As the initial panelists presented their theses, I remember watching his attendant repeatedly bring a straw immersed in a glass of water to Allan's lips. Their interaction was a well-rehearsed ballet, each dancer performing his role and anticipating the other one's moves instinctively. The thought crossed my mind that Allan might not be able to summon the strength to make his presentation.

I needn't have worried. Allan delivered an articulate, powerful, and yet analytically dispassionate discourse on the worth of a life to the individual living it, a life to which many not standing in that person's shoes might not accord particularly high value. Economists speak in terms of QALYs—Quality Adjusted Life Years—when analyzing whether medical interventions are “worth” their costs; Allan quietly demonstrated that QALY analysis can never be anything but a blunt instrument. QALYs cannot hope to deliver definitive statements about individual situations. Although Allan's presentation was all-too-obviously informed by the life he had, through force of circumstance, to live, not one ounce of self-pity—or even self-reference—came through. He just held a mirror up to his audience, and that was enough to make his point. Few eyes were dry when he ended, but the tears were not for him. They were tears of appreciation for provoking those who heard him to take a harder look at their

* Professor of Law & Neal M. Pike Scholar, Boston University School of Law. Professor of Public Health, School of Public Health. Professor of Health Care Management, School of Management.

own readiness to rely on easy assumptions, and thus avoid the difficult questions of life.

So Allan did indeed make his mark on the world, in many ways. I discovered a few years ago that my mother's Virginia cousin had been Allan's choirmaster when he was a young boy—a young boy with a sharp mind and a beautiful voice, who just happened to have a serious physical problem. The cousin had lost track of him over the years, but when I told him that Allan had become a lawyer, then a law professor and university administrator, he didn't bat an eyelash about Allan's achievements. "I always knew he had it in him to accomplish great things. I just worried that he might not live long enough to realize his potential." Allan did just that, despite a life nonetheless cut far too short, and we are all enriched by his legacy.