



1974

Book Reviews: Lawyer's Lawyer, the Life of John W. Davis

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Recommended Citation

Sandler, Paul Mark (1974) "Book Reviews: Lawyer's Lawyer, the Life of John W. Davis," *University of Baltimore Law Review*: Vol. 3: Iss. 2, Article 14.

Available at: <http://scholarworks.law.ubalt.edu/ublr/vol3/iss2/14>

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free from responsibility for the ultimate outbursts of disrespect emanating from defendants and their counsel. Almost every criminal trial lawyer can attest to instances where the trial judge or the prosecutor was less than fair to the defendant, and some can attest to instances of blatant unfairness. Yet if a defendant reacts negatively to such conduct or his lawyer seeks to overcome the prejudice engendered by it, can we, with any sincerity demand that the defense act as Job and await vindication at the appellate level?

Not only does *Disorder in the Court* fully explore all these issues, but it makes positive suggestions for counsel, defense and prosecution, and for the trial judge.¹⁷ It also adds a new insight into the role the physical courtroom plays in determining whether the trial will be orderly.¹⁸ For all of these reasons and because of its objective analysis of the problem, the book must be deemed a valuable contribution to our knowledge of courtroom behavior.¹⁹ Perhaps the best description of the book is that by Mr. Justice Tom Clark printed on the book's jacket.

Disorder in the Court is the most comprehensive and explicit report on courtroom disorder, its causes and its cures, that has ever come to my attention in the fifty-one years I have been appearing in the courtrooms of our country. . . . It should be read by everyone interested in the judicial process, and that should be all of us if that process is to remain, as it always has been, the great bulwark of our society.

To this observation, your reviewer can only add "Amen."

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17. *Id.* Ch. 6, at 90-130 provides a necessary addendum to the Supreme Court's guidelines for disorderly defendant conduct and sanctions authorized to curtail it (*Illinois v. Allen*, 397 U.S. 337 (1970)). Ch. 7, at 157-68 offers suggestions for defense counsel sanctions; Ch. 8, at 186-91 for prosecutorial sanctions and Ch. 9, at 205-16 for sanctions for judges.
 18. *Id.* Ch. 11, at 239-54.
 19. Nearly half of the 432 pages are devoted to compilations of the questionnaire responses, interviews, other studies and recommendations, state laws and court rules, bibliography, footnotes and cross-referenced index, all important and easily useable tools for the reader.

LAWYER'S LAWYER, THE LIFE OF JOHN W. DAVIS. By William H. Harbaugh.† New York: Oxford University Press. 1973. Pp. 648, \$15.00. Reviewed by Paul Mark Sandler.††

The challenge to the biographer who never knew his subject person-

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ally¹ can be compared to that of a blind man confronting an elephant. A story is told of several sightless men who encountered that animal. One felt a hair and told his friend he had encountered a dog. Another touched a foot and was certain he had stumbled upon a step of a church. Each perceived something different. None was able to discern the true form as a whole or even identify a separate part accurately. The fact that the men were blind is not significant; even those who see rarely see the entire picture of an aspect of life.

Capturing the life of a man and revealing all aspects of his accomplishments, without failing to point out his shortcomings—doing so with drama, honesty and scholarship, is an achievement. Moreover, if the individual whose life is revealed is worthy of remembering, then the achievement becomes worthy of attention. William Harbaugh's *Lawyer's Lawyer, The Life of John W. Davis* is worthy of attention.

To the lawyer, Davis' life is worth remembering because of his professional commitment, his integrity and his greatness. By greatness is meant impact. Davis argued 140 cases before the United States Supreme Court.² He argued on behalf of the steel companies in the famous steel seizure case of 1952, and he represented the state of South Carolina in the school desegregation case of 1954. Serving as Solicitor General of the United States from 1913-1918, he refused an invitation to sit on the Supreme Court.³ He was known as a corporate lawyer, and an outstanding appellate advocate.⁴

To the historian, Davis' life is worth remembering because of his influence on public policy. He served as a member of the United States Congress in 1912. President Wilson appointed him ambassador to Great Britain at the conclusion of World War I. In 1924, he won the democratic nomination for President. During the New Deal era he was one of the leaders of the Anti-New Deal Liberty League.

William Harbaugh is an historian, and he presents a picture of Davis within an historical framework. The purpose of the book is to demonstrate Davis' influence on public policy as a lawyer.⁵ The book delves deeply into the historical background of the events in which Davis involved himself. Although a lawyer reading the biography might find the historical developments rather tedious compared to the accounts of Davis' legal activities, Harbaugh blends the legal and historical quite

1. William Harbaugh never had the opportunity to meet John W. Davis. His recounting of Davis' life is based purely on the study of Davis' writings, speeches, and other information of a biographical nature including over one hundred personal interviews. Interview with William H. Harbaugh, author, in Charlottesville, Va., Feb. 2, 1974.
2. Only two other lawyers, Daniel Webster and Walter Jones, have argued more frequently than Davis before the Supreme Court. W. H. HARBAUGH, *LAWYER'S LAWYER, THE LIFE OF JOHN W. DAVIS* 648 (1973) [hereinafter cited as HARBAUGH].
3. HARBAUGH 190-93.
4. Oliver Wendall Holmes, William Howard Taft, Learned Hand and Hugo Black found Davis to be one of the most persuasive advocates they had ever heard. HARBAUGH at xv.
5. Interview with William H. Harbaugh, author, in Charlottesville, Va., Feb. 2, 1974.

well to portray the total picture of the attorney and public policy maker.

The biography is divided into five parts, each containing from five to twenty separate chapters. Part One is called the "Growth of a Lawyer". Here the personal, internal aspects of Davis' life are blended with the professional. Harbaugh effectively weaves a touching account of Davis' love, marriage and early death of his first wife with his education at Washington and Lee Law School and his first law practice in Clarksburg, W. Va., a practice he shared with his father. It was this craft of contrasting external and internal aspects of a man that made James Boswell's biography of Dr. Johnson so great and influential.⁶ Boswell's inclusion of personal anecdotes and the actual conversations of his subject were invaluable to shaping the image of Johnson.⁷ Unfortunately, Harbaugh does not continue the portrayal of the internal Davis throughout his work, although he does bring the reader closer to the personal life of the man again in the last part of the book. Harbaugh himself is not unaware of what he has done, and points out that there is a great lack of evidence revealing the inner man.⁸ In fact it was only by conducting over 100 interviews with contemporaries, friends and clients that Harbaugh could so refreshingly present what does emerge of Davis' interpersonality.⁹

The personality of Davis that Harbaugh reveals is that of a man of conservative thinking, who possessed great charm, and a talent for demonstrating his interest and concern for people, although such interest was rather abstract. Davis' dignified manner and polished style made it difficult for anyone to dislike him. Once when a black newspaper reported that South Carolina was paying Davis a huge fee for his involvement in the school desegregation case, Thurgood Marshall, then the attorney for the NAACP, called the editor of the newspaper and advised him to delete the story, stating "you can't do that to a man like him."¹⁰

Part Two of the biography is titled "Private Man in Public Life." Among the chapters in this section is one treating Davis' role as Solicitor General of the United States. During this time, Davis' technique as an appellate advocate fully matured, and his numerous appearances before the Supreme Court enthralled the justices.

In a later chapter of Part Two, Harbaugh includes brief excerpts of Davis' own thoughts on presenting an appeal taken from a paper he delivered before the New York City Bar Association in 1940. Entitled "The Argument of an Appeal," this paper remains a classic dissertation on the art of an appeal.¹¹ The ten main points of Davis' paper were

6. J. BOSWELL, *THE LIFE OF SAMUEL JOHNSON* 1525 (3d ed. Library of English Classics 1912).

7. *BIOGRAPHY AS AN ART, SELECTED CRITICISM* (J. L. Clifford ed. 1962).

8. Interview, *supra* note 5.

9. *Id.*

10. HARBAUGH 503.

11. Davis, *Argument of an Appeal*, 26 A.B.A.J. 895 (1940).

listed by Harbaugh and they include: change places with the Court; state first the nature of the case and briefly its prior history; state the facts; state the applicable rules of law; go for the jugular vein; take delight when the Court asks questions; read seldomly from prepared text; avoid personalities; know the trial record; and sit down. It is regretful that the author was unable to reprint the paper in its entirety in the Appendix.

"The Law and Politics" reveals Davis' reasons for declining an invitation to sit on the United States Supreme Court. The author appears unsympathetic to Davis' refusal, creating a latent tension between biographer and subject. Imposing certain financial goals for himself, Davis rejected the judicial opportunity that would fail to satisfy those goals.¹² Harbaugh does not speculate on the contribution that Davis might have made had the appointment been accepted, but the very existence of tension is some evidence that Harbaugh believed it would have outweighed the monetary considerations Davis put first.

Here the author introduces the reader to the House of Morgan, Wall Street and Davis' involvement in business law, that realm where the financial goals were realized. "Davis' presence was felt everywhere within [his law firm]. His genius as an advocate was an inspiration to all, and it was universally agreed that no one matched him in his ability to extract the pith of a complex legal matter; even the specialists in corporation law had him review their important opinions."¹³

Hesitation to take the bench did not extend to the political arena. In the longest convention in history, Davis won the nomination for President from the democratic party. Harbaugh devotes two chapters rich in the history and personalities of presidential politics in recounting Davis' nine-days to the nomination.

Perhaps the most absorbing part of the biography, "Elder Statesman of the Law," relates Davis' role as an advocate in the steel seizure case and the school desegregation case. Although Davis is not remembered as a civil libertarian, his most famous cases involving individual rights are also treated here. Strangely these cases were taken only after friends had utilized their pressures and persuasions. Once Davis accepted a case, however, his commitment was unwavering. In the Alger Hiss case, Davis remained willing to testify as a character witness, despite rigorous opposition from friends.

It is to Harbaugh's credit that he made no attempt to buoy up his subject. There are instances throughout the biography, and especially in this part, where Davis would refuse involvement in a particular event, causing a recurrence of the latent hostility suspected when Davis declined the Supreme Court appointment. Harbaugh never offered an

12. HARBAUGH 192-93.

13. *Id.* at 225.

14. *Id.* at 450.

excuse for Davis' actions, recounting events and Davis' reaction to them with objectivity and refinement.

A specific example of Harbaugh's literary refinement is demonstrated in his treatment of a Baltimore attorney who took strong disagreement with Davis' willingness to represent J. Robert Oppenheimer before the Atomic Energy Commission. Harbaugh, after quoting from a vitriolic letter sent to Davis by the Baltimore attorney, and documenting it in impressive footnotes, withheld disclosure of the name of the attorney. Explaining that the attorney is still practicing, Harbaugh refused to cause him any possible embarrassment.¹⁴

Throughout the book, Harbaugh thoroughly treats each historical event Davis participated in. Often he mentions a person or event, then comments on related matters within the past, projects the future, and includes a full development of the future events. For example, in discussing the fury of a debate among the trustees in the Carnegie endowment, Harbaugh discusses William Marshall Bullit's statement to the meeting, demanding the resignation of Alger Hiss. "Six months later, at Hiss' first trial, the presiding Judge would reprimand him [Bullit] for sitting in the press section and distributing a printed diatribe against Hiss. Now in what Henry Risten remembered as a 'tirade,' Bullit demanded Hiss' instant dismissal."¹⁵

It is interesting to speculate on the outcome of this book had it been written by a lawyer, and not an historian. Perhaps an attorney might have included reprints of Davis' legal talks, or writings, and concentrated even more on Davis' involvement with particular cases in legal problems. However, Harbaugh's book is impressive because it takes into account the aspects of Davis' life that are both non-legal as well as legal, thus presenting the balance and harmony which does distinguish this work from other legal biographies.

Upon concluding the biography, one cannot help but admire the quixotic personality of John W. Davis, who was a man of great charm and personality, although conservative in thinking, a man cast in the vortex of social interaction, but a man who had a distinct lack of the urge for power.

14. *Id.* at 459.

15. *Id.* at 450.