

Lincoln's Manager: David Davis

By

WILLARD L. KING

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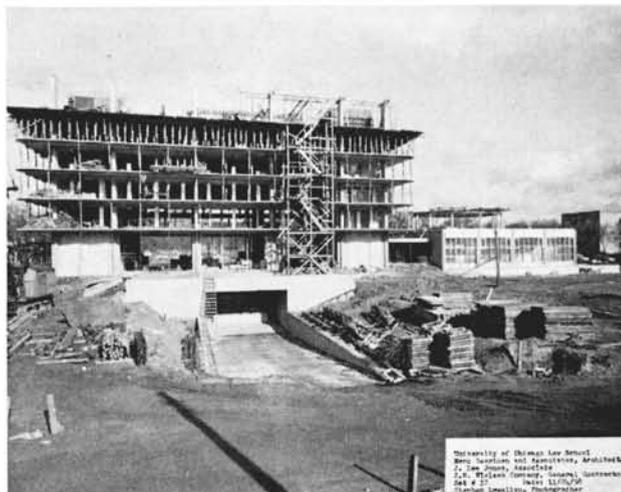
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Not least of the tributes his countrymen pay to Abraham Lincoln is to write books about men whose distinction consists mainly in the fact that their lives touched his. First as a reasonably successful young lawyer, then as circuit judge, David Davis rode the Eighth Illinois Circuit with Lincoln in the '40s and '50s; in 1860 he managed the campaign which secured Lincoln the nomination at the Chicago convention of the Republican Party; in 1862 the President appointed him to the United States Supreme Court. Mr. Justice Davis was a member of the Court until he resigned in 1877, upon his election as United States Senator from Illinois. He was in the Senate until 1833; as president *pro tem* of that body he was, in effect, Vice President while Chester A. Arthur filled out the term of the assassinated Garfield.

Mr. King, a member of the Chicago bar, has previously written a biography of another Illinois lawyer on the Supreme Court, Mr. Chief Justice Fuller. To both books he has brought exacting standards of craftsmanship. In this biography of David Davis he makes particularly effective use of Davis' correspondence, notably his letters to his wife, to add substance and color to our knowledge of politics and of the practice of law through mid 19th century. Mr. King tells his story straight forwardly, unpretentiously, with care and judgment. His two volumes represent a high order of scholarly interest and discipline.

The circumstances of Davis' early career allow Mr. King to make a notable contribution to the all too scant material in print on the history of the bar in this country. The 19th century circuit-riding period was a passing phase of the profession. But it provides the most colorful tradition of lawyering in our history, and represents an essential stage in the administration of justice in communities in or not far from the frontier condition. From Davis' letters to his wife, from local newspapers and court records, Mr. King gives us a good deal of fresh testimony to re-create the hazards and comradeship of the road, the uncertain hospitality of the taverns, the informal relations of judge and lawyers, and the mingling of routine matters of business and property with the occasional spectacular criminal prosecution or emotion-charged libel suit which made up the dockets. David Davis involved himself in partisan political activity and office-seeking

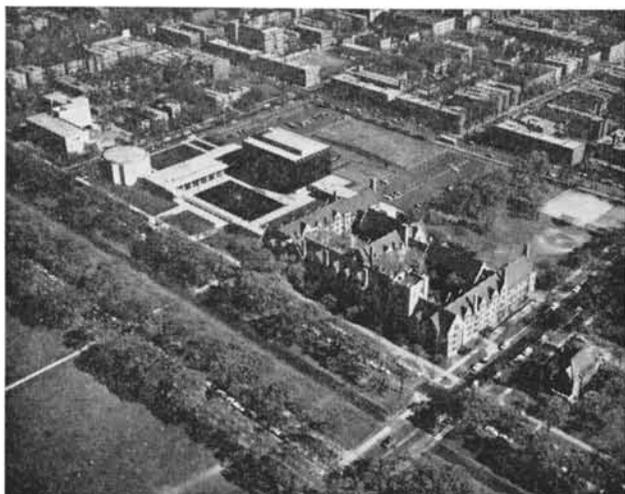


The Law Buildings on November 24, 1958, six months after the cornerstone was laid and nearly a year after ground was broken.

from his earliest years as an ambitious youngster at the bar. Mr. King's story is also valuable for its realistic picture of the endless maneuver and detail that such politically interested lawyers have contributed to the working of representative government.

Davis worked conscientiously at his job on the United States Supreme Court. But he worked simply as a practical man, interested in no more than turning out the business at hand. "I write the shortest opinions of anyone on the bench. If I had to . . . write legal essays as some judges do, I would quit the concern." (1870: King, p. 277). His opinion for the majority of five in *Ex parte Milligan* (1866) stands as his only major contribution to the literature of high policy. It is a constitutional document of moving force in its commitment to civil liberty, declaring in bolder terms than may provide reliable precedent, that law must be administered through the civil courts, so long as these can in fact function, and may not in those circumstances be placed in military tribunals. However, the opinion in *Milligan* is alone in Davis' record on the Bench. Significantly, he won the warmest regard of his contemporaries as a trial judge, as much when he was Circuit Justice as when he rode the course of the Eighth Illinois. Significantly, too, he appears to have found the most zest of his years in Washington from maneuvers on the fringes of politics, as he sought appointments for friends, talked and wrote in critical and always independent appraisal of party affairs, and angled for a Republican or a Democratic Presidential nomination.

This biography adds relatively little to what we have already in print on the history of the United States Supreme Court in the years of Davis' tenure. But in this respect, Mr. King seems faithfully to



An aerial view of the Law Center, showing the American Bar Center on the left, the new Law Buildings in the center, and, attached to the Law Buildings, Burton-Judson Courts, the Law School Residence, on the right.

reflect the limitations of Mr. Justice Davis. The most informative parts of the story of Davis' years in Washington lie in his reactions to contemporary politics; the biography has more to offer the student of political affairs than of law. Mr. Justice Davis lacked the interest or capacity to engage himself deeply in the policy making functions of the Court in the manner of Field or Miller. He emerges as an attractive man, candid and blunt, loyal to his friends, faithful and shrewd in tending the affairs of Mr. Lincoln's widow and children, sober and responsible in judgment on men and events. But he emerges also as a relatively undistinguished member of the Court, one of that majority of its roster who at best have given dutifully to the corporate performance, making indispensable contribution to the institutional continuity and force of the Court, but without striking quality of individual craftsmanship.

When an author choose to write about a subject of substance, his reader usually has no title to complain that he did not write of something else. But question may properly be raised, whether his treatment fully realizes the potential content of his chosen subject.

Mr. King finds that Davis "was, in a sense, a great judge": "His sense of justice was like an ear for music in a fine musician; no scholarly conceits ever led him into folly; his decision of a case was more likely to be right than his opinion to be precise in every sentence." Yet, with characteristic responsibility of judgment, the author observes also that "In spite of grinding study [Davis] . . . never became a notable Justice of the Supreme Court. He was no scholar; he detested close study — his ear always remained more receptive to the human voice than his eyes to the printed page.

Detachment was not his forte; he felt things too strongly. He had no preparation for that precision of judicial statement required in a court of final jurisdiction." The judicial strength which Mr. King finds in Davis seems to represent sufficiency for a trial judge more than for a member of this unique appellate court, the distinctive function of which is the articulation of high policy. It may explain Davis' limitations, but does not reduce their significance, to add that Davis "was too modest and too amiable to press his own views as . . . did" Marshal or Miller, that he "did not cultivate the Chief Justice, who assigns the opinions, as many Associate Justices have done", and that "He was never a favorite of any of the Chief Justices under whom he served . . . and they assigned no outstanding cases to him." (King, pp. 310, 311).

Most men who have sat on the United States Supreme Court have been competent, rather than great judges. It falls to the lot of all Justices to write for the Court in cases which are not "outstanding", but probably in greater measure to those who prove themselves simply capable technicians rather than men who know how to practice philosophy. Given a man of this middle range, given, too, the fact that most of the administration of justice at all levels depends on the middle range of talent and imagination, a major theme for the biographer might well be to catalog and characterize in substance and detail the content of the flow of business that does not make "outstanding cases." I make no special criticism of Mr. King here. He follows the general current of legal history writing — and of Supreme Court biography — when he gives a chapter to Davis' one "great case", but has no chapter in which he aligns Davis' total voting record on the Court, or inventories the whole of Davis' opinion writing, or analyzes in concrete particulars what goes into an ordinary performance on ordinary cases. Yet some detailed study of his ordinariness may yield what is of broadest meaning in the career of an ordinary Justice.

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