> This professional self-limitation is a safety factor or governor on the machinery of fee-setting which is overlooked by many observers, who view with understandable alarm the prospect of routine application of rates providing for 1/3 or 1/2 of the recovery to attorneys, when the recovery is large (above $50,000).[7]

The evidence provided in two studies, by the Philadelphia Bar Association and by the Columbia Law School, shows that the average fee charged was lower than the allowed maximum.

If the contingent fee were abolished or severely limited, other methods of financing the plaintiff's litigation would have to be found, and some alternative methods are discussed. Among them are "institutionalized legal services," the development of which was opened by the *Button* and *Brotherhood* cases.[8]

Mr. MacKinnon's book sets a high standard in the work of the profession of law.

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7 P. 188.

8 See notes 2-3 *supra*.

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Justice Daniel Dissenting: A Biography of Peter V. Daniel, 1784-1860. By JOHN P. FRANK. Cambridge: Harvard University Press, 1964. Pp. xii, 336. $7.95.

Justice Peter V. Daniel served on the United States Supreme Court from 1841 to 1859. He was in many respects a nineteenth century James C. McReynolds, though McReynolds, unlike Daniel, could be a charming person when it suited his whims. As a man Daniel was a boor. Deep down he was a human being of decent emotions, but he was also compulsively honest, devoid of humor, verbose, endlessly contentious, a carper at the faults of others who was hypersensitive to criticism of himself. Even his friends apparently lacked any real warmth or affection for him, complaining of his "frozen deportment." In the bosom of his family, Daniel played the role of a fussbudgetty, overly paternalistic, lovingly tyrannical patriarch. Frank sums up the Justice's character as "sadly subject to the vices of pettiness and arrogance and to an insufferable self-righteousness."[1]

As a politician, Daniel's main attribute was a tenacious ability to cling to state office. In the early 1800's he had a brief and "utterly undistinguished career"[2] in the Virginia legislature; then from 1812 to

1 P. 234.

2 P. 11.

1835, with the exception of one year, he served as a member of Virginia's Council of State, much of this time as Lieutenant-Governor, a position occupied *ex officio* by the senior member of the Council. In political office Daniel was as stiff-necked as in private life. During the War of 1812, for instance, though he considered himself an ardent patriot, he exhibited a capacity to put trivial principle above the cost of human life and the risk of the security of his state. On one occasion in the winter of 1813 he objected to the state's paying a small sum of money to buy blankets and winter clothing for a group of militiamen whose lives, their commanding officer testified, were in danger. Daniel's argument was simple: Virginia law required militiamen to clothe themselves; war or no war, winter or no winter, the militiamen should therefore clothe themselves.

In 1836 Andrew Jackson rewarded Daniel for his support of the Jackson-Van Buren faction in Virginia by appointing him a federal district judge, and in 1841 Van Buren promoted his old ally to the Supreme Court. Daniel brought to the bench the same fanatic respect for trivial principle he had displayed as a politician and the same priggishness he had practiced as a man. His dissents came often and acidly, but rarely eloquently. As a judge he was perfectly willing to crush the spirit of the law to preserve the letter, though his zealous devotion to that letter did occasionally foster observance of fair play, especially in criminal justice cases. No great opinions are associated with his name, nor are any important doctrines of constitutional law. His sole claim to fame as a judge, other than the sheer number of his disagreements with his brethren, lies in the dubious honor of having written, in Frank's judgment, the most intelligent of the opinions on the majority side of the Dred Scott case.

The last thirteen years of Daniel's life on the bench, Frank points out,[3] were marked by an increasingly fanatic sectionalism; even bad weather was the result of Northern sins. In line with an aggressive group of Southerners, Daniel stoutly defended slavery—on and off the bench—and came to be a staunch advocate of secession. His vision was that of the parochial politician, not that of the judicial statesman.

In most aspects of his life, Daniel was a child of a nonexistent age of idyllic agrarianism. On many issues he was as out of step with his own time as with ours. For instance he opposed banks, not just the Bank of the United States but all banks, large or small. Frank notes:

> His whole being cried out for an agricultural country, a land of farms and small shops, in which no man would own more than he could himself control and in which there would be no

[3] Pp. 243-58.

> aggregations of capital larger than a simple partnership. His dream was of a Stafford County [Virginia] become national, a nation whose business was done by men of unhurried rectitude [and, one might add, by happy slaves], protected by a government which was occupied with patrolling of the borders, preferably far at sea.[4]

Frank's book adds a thoroughly researched and well written biography to existing studies of the careers of Supreme Court Justices. Certainly much of the information we have about the Court has come to us as a welcome by-product of biographies of the Justices. All students of the Court, whatever their particular interests, owe a heavy debt to their colleagues who have labored over biographies. Without the volumes of Beveridge on Marshall,[5] Swisher on Field[6] and Taney,[7] Fairman on Miller,[8] and Mason on Brandeis,[9] Stone[10] and Taft,[11] knowledge about the Court would shrink in the same proportion as the task of every scholar in the field would expand.[12]

Despite the great value of many previous biographies, I cannot say that this study of Daniel directly adds much to our knowledge of the Court during a crucial period of its history, nor can I say that it contributes directly to our general understanding of the judicial branch of government. The heart of the problem is that since Daniel was at best a second-rate judge, it is difficult, even for a first-rate scholar like Frank, to write an important book about him.

Beyond its obvious literary merits, however, this biography does make at least one indirect contribution to a broader understanding of the Court. In reading this book the thought occurred to me that there was a striking similarity between Daniel and McReynolds. More generally, I wondered whether typically there has not been a maverick judge on the Court. More generally still, this last question stirs speculation about the norms of judicial behavior and the legitimate roles within the Court open to a Justice. We know little about the ranges of conduct the Justices have tolerated; we do not know whether these standards, assuming the existence of standards other than those of basic honesty, have been

4 Pp. 166-67.

5 BEVERIDGE, THE LIFE OF JOHN MARSHALL (4 vols.; 1916-1919).

6 SWISHER, STEPHEN J. FIELD: CRAFTSMAN OF THE LAW (1930).

7 SWISHER, ROGER B. TANEY (1936).

8 FAIRMAN, MR. JUSTICE MILLER AND THE SUPREME COURT 1862-1890 (1939).

9 MASON, BRANDEIS: A FREE MAN'S LIFE (1946).

10 MASON, HARLAN FISKE STONE: PILLAR OF THE LAW (1956).

11 MASON, WILLIAM HOWARD TAFT: CHIEF JUSTICE (1965).

12 See Pettason, *Supreme Court Biography and the Study of Public Law*, in ESSAYS ON THE AMERICAN CONSTITUTION (Dietze ed. 1964).

relatively stable over the years or whether they have changed radically from time to time. Does, as Story once thought,[13] the loyalty we would expect Justices to feel to the Court cause them to draw lines between permissible and impermissible limits in number and tone of dissenting opinions? How far can a Justice go his own individualistic way without incurring sanctions from his brethren? What sanctions do the Justices have to use against a lone wolf and under what kinds of circumstances are these sanctions likely to be effective?

It would seem no less true of collegial courts than of legislatures that they are social systems[14] as well as formal, legal institutions. Knowing the canons of conduct judges expect to be observed in their relations with one another is as vital to a full understanding of the judicial branch of government as knowing the folkways of the Senate would be to an understanding of the legislative branch.

From my own experience I know that all too often the gist of a reviewer's criticism is that the author wrote the book he wanted rather than the book the reviewer wanted him to write. Nevertheless, it seems to me that the only justification, aside from antiquarian interest, for a full length study of a man like Daniel is the light that it throws on the important figures, institutions, and processes with which he was in close contact. This volume offers such light in a very sparse and indirect manner. It is a far better life history than Daniel deserved, but it is not a book that demonstrates Frank's usually perceptive grasp of what is significant about the Court and its work.

WALTER F. MURPHY*

13 Letter from Mr. Justice Story to James Kent, June 26, 1837, in Fairman, *The Retirement of Federal Judges*, 51 HARV. L. REV. 397, 412-14 (1938).

14 See WAHLKE, EULAU, BUCHANAN & FERGUSON, THE LEGISLATIVE SYSTEM (1962).

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Delinquency and Drift. By DAVID MATZA. New York: John Wiley & Sons, Inc., 1964. Pp. x, 199. $4.50.

The current genetic, constitutional, psychological and socio-cultural explanations of juvenile delinquency are incorrect, according to sociologist David Matza. Instead, he believes, the delinquent is a drifter, made so in part by the self-same legal institutions which we have established to help him.

Dr. Matza is Assistant Professor of Sociology at the University of California and a Research Associate in the Berkeley Center for the Study of Law and Society. In this erudite essay, which has an excellent