

THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

FROM THE LIBRARY

LISTENING TO JOHN W. DAVIS

With this issue *The Journal* inaugurates a new section. FROM THE LIBRARY will reprint the best that has been written about appellate practice and the appellate process. Many of these essays are hidden away in out-of-print books and hard-to-find periodicals. Our goal is to put these good works back within easy reach of the bench and bar.

We begin with some timeless advice about oral argument, *The Argument of an Appeal*, by John W. Davis. He gave this talk to the Association of the Bar of the City of New York in the fall of 1940. The American Bar Association Journal printed Davis's speech shortly thereafter,¹ and we gratefully acknowledge the ABA's permission to reprint it here.

John W. Davis was uniquely qualified to give counsel about oral argument. His legal career covered the map: country lawyer in West Virginia, law teacher at Washington and Lee, state legislator and congressman, Solicitor General of the United States, Ambassador to the Court of St. James's, Democratic candidate for President in 1924, and managing partner of the

1. 26 ABA J. 895 (Dec. 1940).

New York City law firm that still bears his name, Davis Polk & Wardwell.²

At his death in 1955, Davis had argued one hundred and forty-one cases before the United States Supreme Court—more than any other twentieth-century lawyer.³ Among his cases are the famous and the obscure: Compare *Hammer v. Dagenhart*, 247 U.S. 330 (1918), and *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), with *Page v. Arkansas Natural Gas Corp.*, 286 U.S. 269 (1932), and *Pep Boys, Manny, Moe & Jack of California, Inc. v. Pyroil Sales Co., Inc.*, 299 U.S. 198 (1936).

The Justices before whom Davis appeared gave him high praise. Chief Justice White joked that “no one has due process of law when Mr. Davis is on the other side.” Chief Justice Hughes said that Davis was the “clearest thinker and the best informed and prepared man” to appear before the Court during Hughes’s years as a side judge. And Justice Holmes said that “[o]f all the persons who appeared before the Court in my time, there was never anybody more elegant, more clear, more concise or more logical than John W. Davis.”⁴

How did Davis do it? Listen as he tells us.

DPM
Jonesboro
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2. See generally William H. Harbaugh, *Lawyer's Lawyer: The Life of John W. Davis* (U. Va. 1990) (1973); *The Ambassadorial Diary of John W. Davis* (Julia Davis & Dolores A. Fleming eds. W. Va. U. Press 1993).

3. Harbaugh, *supra* n. 2, at 531.

4. All are quoted in Harbaugh, *supra* n. 2, at 127-28.