

REMEMBERING JUDGE RONALD N. DAVIES: A GIANT AMONG US

HONORABLE RALPH R. ERICKSON*

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I want to welcome all of you, and I am going to start by saying I am completely unworthy to say anything about Judge Davies, so far are his accomplishments beyond my own. When I took the federal bench, I knew of the men who had proceeded me on that bench, men like Charlie Amidon, Charlie Vogel, Ronald Davies, Paul Benson, and Rodney Webb. And I knew that by any analysis, I was completely incapable of filling their shoes. Yet, despite that unworthiness, here I am. I have had the privilege during the time I have been a lawyer to know every judge who served on the North Dakota District Court since Ronald Davies—and that knowledge demonstrates one thing: among a number of very impressive judges, Ronald Davies stands out as a giant.¹

I. INTRODUCTION

We should get the basics out of the way. When I was asked to do this, I understood I lacked the basic knowledge set to really say anything very

*The Honorable Ralph R. Erickson, United States District Court Judge for the District of North Dakota.

1. Hon. Ralph R. Erickson, United States District Judge, Dist. of N.D., 2011 Fargo Davies High School Dedication (Aug. 21, 2011). The body of this commentary was originally presented at the dedication ceremony of Fargo Davies High School in Fargo, ND.

meaningful about Ronald Davies, the judge, and Ronald Davies, the man. So I did some research. I read every published opinion he authored sitting as either a district judge or sitting by designation as a circuit judge. I talked to the people I could find who actually knew Judge Davies and some who knew him well. What I took from talking to those of you who knew him was that Judge Davies was short, five feet and a half an inch—and that half inch was important to him. He was reported to have said, “don’t cheat me out of that half inch.” He was serious, he was direct, and he did not suffer fools. That summary of Judge Davies may be accurate, but as I dug a little deeper, there seemed to be much more to this man than this short summary.

Judge Davies was a man of great faith, he was a man of great principle, and he was a man who saw the world as it really was. He understood that the world had gray. But he also understood that some things were black and some things were white, that some things were right and some things were wrong. He was a scholar, he was an athlete, and he was a remarkably accomplished writer. His writing style really stands in good comparison to judges applying today’s rules of usage in writing. It is clear to me that he was ahead of the curve. He wrote opinions that were clear, concise, and understandable at a time when very few judges actually did that, and I think that is an important thing because it shows a straight-forward and disciplined mind. Even in his writing, he did not want to hear himself talk.

Ronald Davies was a patriot, he was a soldier, and he was the most amazing social person one could find. Judge Davies was president of the Grand Forks Chamber of Commerce, he was an exulted ruler of the Elks, he was president of the Jaycees, he was commander of the local American Legion post, and he was president of the Knights of Columbus at his church. He led not one, but two March of Dimes campaigns. To me, that is almost the most amazing part of his civic commitment. If a person begs for money from his friends and then agrees to do it a second time, it is a mark of character.

Then I looked at the transcript from his investiture, at which he and George Register, who was the judge in the Western Divisions of North Dakota, were installed on the same day in a joint proceeding. Judge Davies’ remarks appear on one page of the transcript. If you think about how long it takes to talk for one page, it is about three minutes. I think every other person who has been invested into this court has spoken for at least thirty minutes. Yet Judge Davies said all that needed to be said in three minutes. All of that, I think, is part of who Judge Davies was. He was a man of great talent, great wisdom, and great humility.

My first knowledge of Judge Davies came in an unusual way. When I was a freshman at Jamestown College, one of the jobs assigned to me was

to keep the track record book current. I do not know how many of you are aware that many colleges and universities keep a running record of the fastest times ever run on their track. It is not a school record—it is simply a record of what the fastest time was that was ever run on the track itself. The records are progressive, meaning whenever a new record is established, it is simply added to a list so you can go back and see how long records were held. While keeping this book, I noticed that someone named Ronald N. Davies held three records that had stood for decades. He held a track record for the 180-yard dash (a race that had not been run for years), a record for the 220-yard dash on a straightaway (which they quit running in the 1960s), and a record for the 60-yard dash outdoors that had recently been broken. Now, think about this: he ran on a cinder track with shoes that were three times as heavy as anything that had been worn in recent memory, and he still ran some very impressive times. No matter what else you might say about Ron Davies, that guy was fast.

This was my introduction to Ronald N. Davies. Being amazed, I asked the track coach, Rollie Greeno, who in the hell is this guy? The question should tell you something about my own education—I was twenty years old and had no idea who he was. I was told that he is a federal judge in Fargo.

A couple years later, in 1979, my dad took a job that put him in the Federal Building in Fargo. One day, he asked me if I had heard of a federal judge named Ron Davies, whom he described as intelligent, interesting, and dapper. My dad reported that he and Tom Stallman had coffee with Judge Davies every Thursday morning at the café in the Federal Building.

I said I did not know anything about him as a judge, and I told my dad about this track thing. The next Thursday, my dad told Judge Davies, “Hey, I understand you were quite a runner.” The judge asked, “Who told you that?” And my dad told him the story. Judge Davies’ response was, well, “none of that’s all that impressive—they just don’t run those races anymore.” This, too, speaks volumes about Ron Davies. There was a humility about him that is not very common in federal judges. I can say that because I am one.

II. LITTLE ROCK

I would like to briefly discuss the timeline of the Little Rock case. I will not say much about the case itself as I think others will do so. In 1949 in Little Rock, the law school at the University of Arkansas was desegregated. The libraries were desegregated in 1951. All told, Little Rock seemed an unlikely place to explode as the focal point of the civil rights disturbances. There seemed to be all sorts of other places with a longer history of a more bitter relationship between the races.

When *Brown v. Board of Education*² was decided by the United States Supreme Court, the Little Rock School District immediately began working on a desegregation plan. One year to the day after the handing down of *Brown*, the School Board announced a plan for desegregation, so it was in 1955. It called for the integration of the high school starting in 1957, with the grade schools and elementary schools to follow.

As a result, the plan was limited integration at first with later broadened integration. Politicians from outside of Arkansas started holding rallies in Arkansas to head off the integration of schools in Arkansas. This political agenda was ultimately embraced by Governor Orville Faubus. Faubus would later claim his sole purpose was to provide for the safety and security of the community. The sad truth, however, is that Governor Faubus was personally responsible for the insecurity of the people that arose out of his own vitriolic speeches and the dark evil of segregation that was promoted by politicians in a way it had not been seen for at least twenty years. There are people who have written revisionist histories over the past decade who claim that either President Eisenhower or Judge Davies were responsible for what happened, but the simple truth is that Orville Faubus, more than anyone else, was responsible for the unrest. Those people who now claim that Judge Davies was inexperienced in these matters and that inexperience caused the incident are plain and simple liars.

The bottom line is Ronald Norwood Davies was sent to Arkansas to clear the case load that had accumulated because of a vacancy on the Arkansas District Court bench. He arrived and did the work that he was supposed to do. He tried a number of cases that were backlogged and cleared the calendar. Four days before he had hoped to be ready to head for home, the National Association for the Advancement of Colored People (NAACP) filed a suit seeking an injunction. The NAACP was attempting to compel Governor Faubus to relent from his claim that integration was not feasible because it was unsafe to integrate the schools. All judges in the Arkansas District Court recused themselves.

Because Judge Davies was already in Little Rock, he was assigned by the chief judge of the circuit court of appeals to hear the case. Judge Davies did what he did every day of his life as a federal judge. He read what was filed, he researched the legal issues presented, he made the decision as his conscience guided him and his knowledge of the law directed him, and he did not back down. He did not see this as unusual. When asked about the decision, Judge Davies noted, “there are two hundred federal judges in the United States, most all of them would have done the same thing.” I wish

2. 347 U.S. 483 (1954).

that would be true. I suspect providence placed the right man in the right position to make the right decision. Judge Davies made that decision courageously, he refused to back down, and the rest is in the history books.

The Little Rock, Arkansas desegregation case was not closed until recently. It was a long and bitter journey. But once Judge Davies left Little Rock, his work on the case was done. Through it all, the actions of Judge Davies are a beacon to the people of the United States. His decision stands as a tribute to the idea that this is a nation of laws, not men, that all people are created equal, and that no person should be deprived of his rights or civil liberties on the basis of race, creed, or nation of origin. We in North Dakota are proud of Judge Davies, rightly so. He is a giant among us.

The District of North Dakota has produced two such jurists, in my opinion. Judge Charles Amidon struck down The Espionage Act of 1917 as unconstitutional as applied to people who protested America's involvement in the First World War. He was to later recount that people he had known his entire life walked across the street for thirty years to avoid having to talk to him.

Ronald Davies also suffered at the hands of his fellow citizens. He would never have, I think, wanted anyone to talk much about the death threats or the brutal comments that people made to him. Even so, what these two men did is a reminder to all of us in this business of judging that our calling is one that might ask us to sacrifice much. These two great men stand as giants in the history of our court. They stand as beacons for those of us who follow in their footsteps. I hope that the people that follow me in this position will have the same respect for their genius as I have.

III. IMPORTANT CASES IN JUDGE DAVIES' CAREER

I am going to talk very briefly about the cases that Judge Davies said were the most important cases of his career. Judge Davies said that while *Aaron v. Cooper*³ was the most prominent historical case of his career, the legal issues were straightforward, he did his duty, and, in the end, justice was done. He said other cases made him more proud because they presented more complex legal issues, were less clear, and were of lasting significance. I believe those are cases we should spend some time thinking about. Judge Davies identified three of these cases as being of special importance.

3. 156 F. Supp. 220 (E.D. Ark. 1957).

A. *STROMSODT V. PARKE-DAVIS & CO.*

The first case Judge Davies identified was a case called *Stromsodt v. Parke-Davis & Co.*⁴ This was a case tried to the bench. It is, I believe, the first case and one of certainly many cases in which a court found the manufacturer of a vaccine could be liable for damages arising out of the unsafe character of that vaccine based on the notion of strict liability. Prior to this ruling, I cannot find a case where anyone had made such a finding. I believe it is the first, but I may be wrong. The facts are fairly straightforward.

Shane Stromsodt was born on May 24, 1959 in Fargo, North Dakota.⁵ When he was three months old, his mother took him to the doctor.⁶ He was given a vaccine called Quadrigen.⁷ It had diphtheria, pertussis, and the polio vaccine combined together.⁸ There was no apparent incident.⁹ On October 1, 1959, Shane went back for the second of what would eventually become three doses of the vaccine.¹⁰ When the second dose was given to Shane, he suffered signs of anaphylactic shock, including rash, fever, vomiting, and seizures.¹¹ Shane's parents called the doctor.¹² The doctor said he should be watched carefully, and they should report back if further problems develop.¹³ Shane had two less severe seizures over the next three weeks.¹⁴ He was eventually taken back to the doctor on November 4, 1959, at which time the treating physician concluded Shane should not be given the final Quadrigen shot.¹⁵

Thereafter, Shane missed all of his developmental milestones.¹⁶ By the time he was seven years old, he was diagnosed as suffering from irreversible and permanent brain damage.¹⁷ Doctors believed it was the result of an anaphylactic shock reaction to the vaccines.¹⁸

The question presented in the case was whether Parke-Davis was liable. The trial was heavily contested and, in the end, Judge Davies

4. 257 F. Supp. 991 (D.N.D. 1966).

5. *Stromsodt*, 257 F. Supp. at 993.

6. *Id.*

7. *Id.*

8. *Id.* at 992.

9. *Id.* at 993.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* at 994.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

concluded Parke-Davis had breached the following implied warranties: (1) the duty to warn because its studies had shown that what happened to Shane was a possibility, and (2) its duty to adequately test and report testing results in an appropriate manner.¹⁹ In addition, Judge Davies concluded Parke-Davis had no defense, under the circumstances presented in the case, to claim the vaccine had been approved by the federal government.²⁰ Judge Davies awarded \$500,000 to the family.²¹ As far as I can tell, none of these holdings had been reached by any court prior to that time. The body of law that we deal with involving bad drug cases continues to operate on these same principles. I believe Judge Davies was the first judge to set these principles out and analyze them in an opinion.

B. *MERCHANTS NATIONAL BANK & TRUST CO. v. UNITED STATES*

The second case Judge Davies identified as significant was the 1967 case of *Merchants National Bank & Trust Co. v. United States*.²² The basic holding of the case is fairly straightforward. It holds if there is a particularized threat to a third person that is readily apparent, the United States may be held liable to an injured party, who is identifiable, for harm caused by an escaped mental patient, if the escape is the result of action by the United States.²³ The case fell under the Federal Tort Claims Act and resulted in a \$200,000 judgment against the United States.²⁴ The facts are far more interesting than that, though. Merchants National Bank was the representative of the estate of one Eloise Newgard, who was murdered by her husband, William Newgard.²⁵ Mr. Newgard was a patient at the United States Medical Center at Ford Meade, South Dakota, at the time. The bank sued for negligent supervision and failure to protect and warn Mrs. Newgard.²⁶

On January 17, 1965, Eloise Newgard called Dr. Mack Traynor frantically asking for help about her husband, Bill.²⁷ Dr. Traynor went immediately to the home where he found Bill glassy-eyed and ranting about horses, cattle, and God.²⁸ He observed Mr. Newgard was certainly not

19. *Id.* at 996.

20. *Id.* at 997.

21. *Id.* at 998.

22. 272 F. Supp. 409 (D.N.D. 1967).

23. *Merchants Nat'l Bank & Trust Co.*, 272 F. Supp. at 418.

24. *Id.* at 421.

25. *Id.* at 411.

26. *Id.*

27. *Id.*

28. *Id.*

himself.²⁹ Mrs. Newgard reported to Dr. Traynor that she had earlier called her pastor, Reverend Faust, and asked him to come over and try and calm Mr. Newgard down.³⁰ When Reverend Faust arrived, Bill hid, but eventually came downstairs in his boxer shorts, exposed himself to his pastor, said he was going to repopulate the world, and threatened to kill his wife because she was unfaithful to him.³¹ Reverend Faust suggested Mr. Newgard needed psychiatric help, which is why Dr. Traynor was called.³²

Reverend Faust made arrangements to have Mr. Newgard taken into immediate custody. He was taken to a hospital in Fargo where he was examined.³³ The psychiatrist reported that Mr. Newgard believed himself to be Christ or Christ's representative on Earth.³⁴ Mr. Newgard was committed to the North Dakota State Hospital, and when his condition stabilized in March, he was transferred to the veteran's hospital at Fort Meade, South Dakota.³⁵

While at Fort Meade, Mr. Newgard showed some improvement and was treated by Dr. Linnell, who was a relatively young and inexperienced psychiatrist.³⁶ On May 25, 1965, Dr. Linnell received a request from Mr. Newgard's father asking that Newgard be released to their farm in Mayville on a funeral leave because Mr. Newgard's uncle had passed away.³⁷ While Dr. Linnell approved the leave, Mrs. Newgard reported to Judge Paul Paulsen that Mr. Newgard was far from well and that he posed a danger.³⁸ Judge Paulsen, who was singularly unimpressed by the assurances made by Dr. Linnell, issued an order to have the Cass County Sheriff take him back to Fort Meade, and he was.³⁹

On June 30, which was now a month later, Dr. Linnell filed a report finding Mr. Newgard had reached maximum hospital benefit and directed the hospital psychologist, Dr. Cheney, to prepare a plan of reintegration.⁴⁰ Before this event, Dr. Herman, the director of the hospital, conducted his own independent investigation and told Dr. Linnell that Mr. Newgard was

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.* at 412.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.* at 413.

39. *Id.*

40. *Id.*

not to be released, but Dr. Cheney made arrangements for Mr. Newgard to be placed in a job.⁴¹

Dr. Linnell, disregarding recommendations regarding Mr. Newgard, placed Mr. Newgard at a ranch owned by Mr. Davis in Belle Fourche, South Dakota.⁴² This was the first mentally ill patient who had ever gone to work on the ranch.⁴³ While at the ranch, Mr. and Mrs. Davis reported to Dr. Cheney that Mr. Newgard seemed awfully nervous and fixated on his wife.⁴⁴ Dr. Cheney went to Dr. Linnell and said he thought Mr. Newgard was not well enough to be out and he was dangerous. Dr. Linnell denied such a conversation ever took place.⁴⁵

On July 24, 1965, Mr. Newgard travelled to Mayville, North Dakota, where his parents' farm was located with no apparent problems.⁴⁶ However, on July 31, Mr. Davis took Mr. Newgard to Belle Fourche to pay him.⁴⁷ Davis took the hired men to town, went to the bank, got the cash, paid the men, told them he had some errands to do, and said they would meet back some time later in the day.⁴⁸ Newgard took the cash, obtained an automobile somehow (the opinion is not clear), and drove to his mother-in-law's house in Detroit Lakes, Minnesota, where his wife Eloise was.⁴⁹ He had tried to run her down with the car when he arrived there late in the evening, and when he was unsuccessful in an attempt to drive over her, he shot her dead.⁵⁰

The case was tried to the bench as a federal tort claim, and two issues before the court were: (1) whether the United States could be held liable under the Federal Tort Claims Act and, therefore, negligence could lie when a mental health patient escapes and harms a third person, and (2) whether North Dakota's damage recovery should apply.⁵¹ The government claimed South Dakota's damage recovery should apply, something of no importance to us.⁵² Ultimately, Judge Davies found the evidence supported a finding of negligence, the government had breached ordinary care, and the Federal

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.* at 414.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.* at 417, 419.

52. *Id.* at 419.

Tort Claims Act authorized the case.⁵³ Judge Davies awarded \$200,000 in damages.⁵⁴

At the time, the case was one of first impression and it established a rule that exists today. The rule applied in courts all across the country holds a hospital responsible for an escaped mental patient who causes injury to an identifiable victim under circumstances in which they should have known, warned, and protected that individual victim, but that the mental health provider is not the guarantor to the public at large for injury caused by an escaped mental patient. The case is forty years old and continues to be the law of most of the country.

C. *DICK V. NEW YORK LIFE INSURANCE CO.*

The final case Judge Davies identified was a case that went to the United States Supreme Court, *Dick v. New York Life Insurance Co.*⁵⁵ It was a case in which the question was whether an incident was suicide or accidental.⁵⁶ It involved a double indemnity insurance policy. New York Life had paid the primary claim of \$7500, but contested the double indemnity.⁵⁷

The facts were controverted. It was undisputed that Mr. Dick kept a loaded shotgun in his barn at all times.⁵⁸ Mr. Dick was found dead in his barn having suffered two shotgun wounds: one to the head, and one to the side.⁵⁹ Essentially, the question was whether a person can be shot with a shotgun twice and have it be accidental. Judge Davies let the case go to the jury over the objection of the insurance company, and I think there are some pretty good reasons for allowing it if one looks at the facts.

The shotgun, twenty-six years old, had been relatively poorly maintained.⁶⁰ There was evidence that the shotgun was unreliable and there were times when the gun did not fire as well as times the gun accidentally discharged.⁶¹ Mr. Dick did not always use the gun.⁶² Often, when he went hunting, he would ask his father to borrow his shotgun because Mr. Dick felt this particular shotgun was unreliable.⁶³ Other evidence showed the sheriff and the coroner took the gun, loaded it, dropped it repeated times,

53. *Id.* at 417.

54. *Id.* at 421.

55. 359 U.S. 437 (1959).

56. *Dick*, 359 U.S. at 437.

57. *Id.* at 438.

58. *Id.* at 441.

59. *Id.*

60. *Id.* at 442.

61. *Id.* at 441-42.

62. *Id.* at 441.

63. *Id.*

and were unable to get the gun to discharge.⁶⁴ The coroner examined the body and concluded both wounds were fatal.⁶⁵ The coroner said the first wound was to the side, and it was clearly from an upward trajectory.⁶⁶ The second wound to the head would have been instantly fatal.⁶⁷ The trajectory of the second wound was unknowable, but an argument could be made that it was a downward trajectory.⁶⁸

The case was tried, and the jury found the plaintiff's decedent, Mr. Dick, did not die from a self-inflicted wound, contrary to the coroner's findings that the death was accidental.⁶⁹ The case was appealed to the Eighth Circuit Court of Appeals.⁷⁰ The court of appeals reviewed the facts, finding it defied all logic that someone could have accidentally died in such a manner, and concluding the absence of fact to support the claim rendered the case such that there was no triable question of fact for the jury.⁷¹ Essentially, the court of appeals determined that the facts were so one-sided that the judge should never have allowed the jury to decide the case, and they reversed and rendered judgment.

The case was appealed to the United States Supreme Court, and the United States Supreme Court granted certiorari. The Supreme Court basically held there were sufficient fact issues to give rise to a jury question.⁷² This ruling reinstated the jury's verdict.

IV. CONCLUSION

What do we take from all of this? Simply put, Judge Davies was a pioneer. He was a scholar of the first order, and his work has stood the test of time. If there had never been the Little Rock case, it still would be fitting for the Ronald N. Davies High School to be named after Judge Davies. The Little Rock case elevated Judge Davies into a national figure. After Little Rock, he was a man of importance in our nation's history, but I think sometimes we, as lawyers and judges, focus so much on *Aaron v. Cooper* that we forget the breadth and the quality of his other work. As someone who has read every opinion Judge Davies published, I can say the body of that work is impressive. It is well written; it is scholarly. There is nothing

64. *Id.* at 442.

65. *Id.* at 441.

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.* at 442.

70. *See generally* New York Life Ins. Co. v. Dick, 252 F.2d 43 (8th Cir. 1958).

71. *Id.* at 47.

72. *Dick*, 359 U.S. at 437.

in it that is dated to the point where it would be an embarrassment to see written today, and that is not true with a lot of people that were writing opinions forty and fifty years ago. Fifty-year-old writing usually looks like fifty-year-old writing; Judge Davies' opinions do not. It was a real privilege for me to go through and read those cases, but for this occasion, I never would have had the opportunity.

My own experiences with Judge Davies are the kind of experiences young lawyers have with retired judges. I had coffee with the Judge and my dad a few times. Judge Davies was very bright, he was very witty, he was perfectly dressed, and he was charming. He was an attractive man—he had the ability of drawing you in to him. He was a person you would just want to spend time with. I think it was a great privilege to have had that glimpse because very few people my age got to spend that sort of time with him. I am honored to be here; I am honored to be able to say the Ronald N. Davies High School stands as a testament to a truly great judge, but an even greater man.