

MULLER DAVIS

Top Divorce Lawyer Emulates, Expands on Father's Legacy

by **Melissa Birks**

A skulk of foxes prowls Muller Davis' office at **Davis Friedman**, the firm that his father started in 1946. Created in every material from porcelain to paint to metal, in representations ranging from comic to realistic, the red canids populate bookshelves, the wall, even Davis' desk.



There, resting near a nameplate, sits a small brass fox whose ears have long since been ground to nubs from years of hard knocks. This fox, like many in Davis' office, is a member of his father's original collection. The story goes that the legal community dubbed Benjamin B. Davis "smart as a fox," thus inspiring the collection that his son adds to occasionally to this day.

While Davis may share the tale of the assemblage's origin with inquiring visitors, he finds that many clients in his family law practice are, understandably, too consumed with their own case to ask about them. Indeed, Davis handles high net worth clients mired in cases that are often punctured with emotional landmines.

For Davis, helping people resolve personal

conflicts is more gratifying than practicing in the context of a sprawling, desensitized corporation. Still, he invokes the memory of his father when he says that a lawyer in this field must have the temperament for it.

"You're often dealing in what my father used to call 'belly thinking.' That's what he called emotional thinking. That's a great phrase."

The son apparently learned well from the father, as Davis today is well known for his temperament, says Davis Friedman partner Jody Meyer Yazici, with whom Davis created eight (and next year to be nine) editions of the *Illinois Practice of Family Law*.

"I think it's his nature, but I also think he's disciplined," Yazici says. "He'll always say, 'You need to stay above the fray.' He doesn't indulge in making it personal. He always keeps the larger picture in his mind with goals and how to get there."

Davis' window into his father's wisdom came not simply from being his father's son. Davis worked with his father—a "dream come true"—from 1967 until the elder Davis died in 1977. His parents neither encouraged nor discouraged his decision to join the firm after six and a half years as a litigator with Jenner & Block, where he practiced after graduating from Harvard law school in 1960 and a short stint in the Army.

"I'm still having fun, but practicing with him was really the joy of my life," says Davis, 73. "We had wonderful time together. It was an only child's dream come true. I was an only child; maybe that has something to do with it. I don't know. I'm still close to mother, and I was very close to my father."

By the Numbers

Benjamin B. Davis started the firm in a building across the street from the present offices on the 36th floor of 135 S. LaSalle St. The firm began with four partners. Today, Davis Friedman has a crew of 15 partners and associates.

"I don't know how many lawyers are practicing divorce law in Chicago; it's probably in the thousands. When my father started, it was 10 to 20 and a couple of judges. Now, there's probably 40 judges. I don't know exactly the number," Davis says with a laugh, "and I can't keep track of them."

Young Muller Davis "went around" with his father and became introduced to the vagaries of the practice early on. Perhaps, he says, that

exposure forged his temperament and ability to work with people in crisis. "It didn't come as a big shock to me. I knew what went on."

Human nature has not much changed, Davis says, but he thinks that some human constructs have.

"A lot of the structure that used to support marriage, like religion and family and other influences, don't exist as strongly as they did."

As those forces have weakened, so more couples have turned to divorce and, by extension, to divorce lawyers. Davis himself is divorced and had represented his future second wife in her divorce about eight years before splitting up with his first wife. He says that his divorce was "fairly amicable, although no divorce is amicable" and acknowledges that it was hard, "because it was my divorce rather than a client's divorce." He has three children with his first wife, and his second wife, Lynn, has two of her own children.

As more people get divorced, turning to a widening stable of divorce lawyers, so has the cost of doing business increased. The compulsion to rack up billable hours irks Davis, who recalls bygone days. "When my father was practicing, there wasn't an emphasis on time billing that there is now. If you did a good job in a case, you were paid a high fee, or if you did terrible job, you weren't paid a high fee."

He blames skyrocketing legal fees on today's increasingly fat law firms and the public perception that time billing is accurate.

"I think to some extent that's deceptive, because time can be exaggerated, if you do things that are unnecessary, or minimized, which it generally isn't," he says. "The pressure in firms now is on the associates, for example to bill a certain number of hours during the year, which I think is hard on the associates. It unbalances their lives. It's very discouraging to women, who are trying to do 7,000 things, including raise a child. And I think we're losing people because of it."

Davis prefers to practice with an emphasis on resolving the client's case, as rapidly, economically, and fairly as possible.

"If a client thinks you act fairly and put his or her interests first, he or she is probably going to come to you," he says. "That's sort of an intangible concept, but it's an attitude that needs to exist. We're not here just to churn out hours; we're here to represent clients in the

best way they can be represented, and that's always worked out well."

'I'd Change A Lot of Things'

Davis estimates that his clients break down evenly along gender lines, and more and more are in their 30s and 40s—younger than when he began practicing.

With the advent of no-fault divorce, his work focuses not on who "caused" the divorce but the dispensation of marital property: that is, assets that were accumulated during the marriage, as opposed to non-marital property, which he describes as assets that one spouse, because of the statute, may claim as his or her own; for instance, inheritance.

He also deals with child custody issues, which arise regardless of a client's worth.

"The average case is not so much involved in the allocation of property," Davis says. "It's more involved in support and issues of children, which are involved regardless of whether it's a high net worth case or not. Children have a tough time in divorce. I don't think that's working out as successfully as the financial part."

Davis allows that he doesn't have the answer for how custody issues could be handled more successfully. "I used to have all the answers," he quips.

He may not have all the answers, but he has definite opinions on the practice of family law in Illinois.

"I'd change a lot of things."

For instance, regarding joint custody, Davis would alter Illinois law that he says is predicated on a flawed philosophy; in essence, the law makes it difficult, if not impossible, to grant joint custody if the parents are arguing in the divorce case.

"I think that's the wrong philosophy, because for instance you're trying to measure if they can get along or not during a divorce case—and nobody can get along during a divorce case. But that doesn't mean after the divorce is over that they can't act jointly for best interest of children," he says. "And I think there ought to be a predisposition to joint custody, because after all that's the mother and the father."

Davis also knocks the unitary system that Illinois uses to determine whether assets are marital or non-property. The method, he says, is "completely opposite to how people live."

He gives an example of a couple with a joint

bank account, into which 25 percent of the contributions were earned during the marriage but 75 percent came from the wife's inheritance.

"The natural assumption would be that 75 percent was her non-marital property and 25 percent was marital property that could be split between parties," he says. "But under unitary theory in Illinois, it has to be either marital property or non-marital property—it can't be 75 percent non-marital property and 25 percent marital property. In that kind of situation, it would all be marital property, so she would lose her 75 percent and the property could be split 50-50."

Davis' fluency in the law is perhaps best represented in the *Illinois Practice of Family Law*, considered the standard reference on the practice. He and Yazici are compiling the ninth edition of the series, which outlines family law statutes, applies and interprets case law, and includes commentary from the authors.

Yazici began working on the first edition while still in law school. As Yazici's mentor, Davis drew her into his effort to organize and edit files and notes that he had kept meticulously through the years. She joined the firm after graduating from law school and kept the mantle of the project.

"He took the time to train me. What this book is for him is a way to share his expertise in the field. He does it on personal level with the attorneys he trained and on a broader level for attorneys as a whole," she says.

All's Fair in Love and Divorce

If Davis had to synthesize his hope for the practice of family law into something more economical than a book, he would use two words: Fair mindedness.

"I think fair mindedness is a better approach than exaggerated positions, and more likely to be successful in both settlements and litigation," he says.

He defines an exaggerated position as "any time you exaggerate what the position should be, particularly with children. I mean, we're dealing with precious, fragile beings." Consider, for example, the husband who has three children but wants his attorney to find a way to leave his wife with enough assets to care for only one, or the wife who wants her attorney to ask for far more alimony than she needs. Those might be extreme examples, but they are illustrative of the landscape of the practice,

Davis says, and the best family law attorneys guard against "over-reaching."

"As a technique in representing people, I think fair-mindedness as opposed to over reaching is the way a person should be represented. That's because that kind of approach has a better chance of succeeding in negotiations, and it certainly has a better chance in succeeding in trying cases before a judge," he says.

Lawyers aren't the only ones who would benefit from fair-mindedness. Clients would, as well, but Davis has been around long enough to know that emotional equilibrium comes in precious little quantities during a messy divorce.

"People are compulsive in divorces. Obsessed. And often, they're obsessed with tangential parts of the case," he says. "They may be obsessed over an antique vase. Or artwork. Or anything like that. You know, you can resolve a case that involves multi-million dollars and end up arguing over something that's worth \$800."

Davis frequently reminds clients that they're acting as if they want the divorce to drag out for as long as possible.

"Usually, when you tell them they're spending money, they listen to that. But often times, they don't. When you're trying to get a pound of flesh in a divorce case, you never get it. [I ask], 'If you get all of his money, would that satisfy you?' And of course it wouldn't."

For his part, Davis seems to be satisfied.

"It's been a great life for me," he says. "I hope I have clients forever."

Still, like the equilibrium he espouses on the job, he maintains interests outside of the firm.

He enjoys his blended family, whose 19 members he and his wife treated to a vacation in Santa Fe this summer. He enjoys reading and subscribes to the theory that people should re-read the world's great literature as mature adults. He did so, recently, with *War and Peace*. "The only thing I could remember from reading *War and Peace* the first time, other than general outline, was that I was crazy and in love with Natasha. That was it."

He hates golf. He enjoys riding horses and, in fact, owned a quarter horse for about 10 years. A photo of the animal, which he sold when he moved farther away from the stable north of Lake Forest, claims a bit of real estate on a bookshelf in his office.

He named it "Fox." ■