

I have heretofore refused to review friends' books, for how could I publicly excoriate a friend if I hated his work? And how could any reader take seriously words of praise for a pal? Good reasons, it always seemed, but I've agreed to break my own rule in this case. I'm doing so because there aren't very many people who have gone through the kind of ordeal that the author of this book describes. Since I have

had my own extensive dealings with the Office of the Independent Counsel (the Special Prosecutor), and since I, like Elliott Abrams, have had a taste of Ordeal by Scandal, I think I'm in a particularly good position to evaluate what my friend Elliott Abrams has to say. With that excuse, here's the consumer warning: Elliott is a friend of long standing, back to the days when I first came to Washington and he was working for Daniel Patrick Moynihan. His wife, Rachel, is one of my wife's very best friends. His in-laws are both editors of mine, and friends as well. We gave money to his defense fund, and wished we could have given more.

Now for the substance. This is a very important book, one that should be given to anyone thinking of a career in what used to be called "public service." *Undue Process* is a gripping account of what it is like to be in the jaws of the Special Prosecutor—that modern version of the Star Chamber presided over by Judge Lawrence Walsh and his junior Savonarola, Craig Gillen. In telling the tale, Elliott Abrams takes us through all the Kafkaesque discussions with his team of lawyers, their bizarre shadow-boxing with the Walsh mob as they try to decide whether to plea-bargain (without even knowing the charges!), and the ultimate decision to plead guilty to two misdemeanors that no self-respecting prosecutor would ever have taken to trial. If only

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UNDUE PROCESS:
A STORY OF HOW POLITICAL DIFFERENCES
ARE TURNED INTO CRIMES

Elliott Abrams

The Free Press/250 pages/\$22.95

reviewed by MICHAEL LEDEEN

for that, *Undue Process* would be a valuable contribution to public understanding of our political and judicial systems. But what makes this book so precious is that it provides us with the first full account of what Ordeal by Scandal does to a man and his family, something that the other "scandal" books haven't dealt with adequately, if at all. And finally, it contains an unforgettable, blood-curdling chapter on how, worn down by the ordeal, momentarily broken in spirit and intellectually disoriented, Elliott convinced himself that his enemies were his friends, and that the only way to gain redemption was to collaborate with Walsh and Gillen at the expense of his friends and colleagues. He did not—but that such a strong person could have become so confused demonstrates the intensity of his ordeal.

We needed this book because with very rare exceptions the debate about the Special Prosecutor has been either so abstract, or so politicized, that the human effects were ignored. It was usually dealt with as if it were a kind of legal/political Olympics, with Walsh trying to outscore the Reagan guys. *Undue Process* brings our attention to the children of the accused, the parents of the accused, the wives. These are the people who suffer the most, for they are subjected to the stress, the social ostracism, the unthinking and the deliberately cruel remark, and they develop the same rage as those involved in the process, but they cannot strike back. At least, in some weird and distorted way, the victim gets at least the semblance of a fight because he sits in front of his accusers and

does some intellectual sparring.

So, while it's depressing and infuriating and frustrating, it's also a bit exciting and, as Abrams shows us so well, it's even quite interesting. After all, the actions that Judge Walsh calls "crimes" have never before been so considered, so his prey constitute sacrificial trailblazers of sorts. But the family can only sit at home, or go to work or school, and wait it

out, or—at best—attend meetings with the accused's lawyers, and that is why the ordeal is much, much tougher on the family than on the victim himself. The Abrams family is a solid one—indeed, the best observations come from Rachel and the children—but even so the process took a terrible toll on them, as it did on every family caught in the grips of the Special Prosecutor. I will never forget the day my daughter came home from school, badly shaken because one of her teachers had leered at her and demanded, "Well, is your father guilty?" The rage that a parent experiences in such circumstances has rarely been so well expressed as in a letter from Rachel Abrams to a friend, beginning: "I am sitting here going mad, crawling out of my skin, feeling this worm of rage turning, turning inside me, and I don't know what to do with it."

For those interested in the more formalistic aspects of Ordeal by Scandal, there are many pages—and, grim news, they make up the bulk of the book—dealing with lawyers. Discussions and arguments with lawyers, the cost of lawyers, the odd language and bizarre reasoning of lawyers, and the rather dubious ethical and moral standards of lawyers, particularly Walsh's lawyers. It is they who have turned Washington into Kalkaland, and almost all the important moves in these Ordeals by Scandal are made by them, not by the victims, even though it is the victims' reputations, careers, and freedom that are actually at stake. Even corporate executives—who have altogether too much to do with lawyers in their work—cannot imagine the

extent of lawyers' hegemony over both procedures and content of policy in Washington, and in that regard Walsh is simply an extreme case of a little-recognized problem: the way issues are turned into legalistic debates. In Elliott Abrams's case, despite all the threatening talk about "criminal acts," they finally got him to admit to withholding information from Congress in two instances: once when, in keeping with the promise of the American government to the Sultan of Brunei, Abrams failed to tell a committee about Brunei's promise of money for the contras, and on another occasion when he failed to say that he knew that Oliver North had ongoing contacts with the private American network that also gave help to the contras. Pretty small potatoes, and indeed the judge in the case was so unimpressed that he refused to assess a fine, and directed Elliott to perform "community service" by giving advice to Washington lawyers:

It will inevitably be asked, as many of us wondered at the time: Well, if it's such small potatoes, why didn't he fight it? And one of his lawyers—on Elliott's account, only one—clearly wanted to fight it, and was willing to fight it to the end even if Elliott ran out of money to pay him. And Rachel Abrams wanted to fight it, too. If she'd had her druthers, she'd have dueled with Craig Gillen with submachine guns and nuclear warheads. But it's not that kind of a fight; it's a legalistic debate in which Walsh and Gillen would have charged Elliott with a dozen or so of these petty offenses, and they were willing to bet that a jury would compromise on at least a

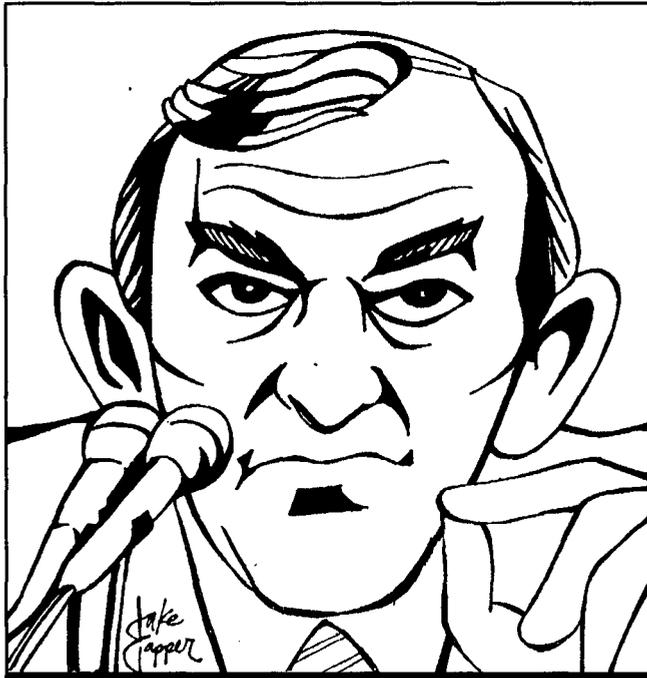
couple of them, and convict. If they were right—and some pretty smart Washington lawyers thought they were—then Elliott would have put himself and his family through a year of Kafkaland, with his career on hold and his finances in ruin and his children traumatized and confused. It may be that psychologically (and obviously only in this limited sense) such an ordeal is more difficult than the gulag, for in the gulag the lines are clearly drawn and you must fight just to survive. In Kafkaland the lines are not clear, and the Special Prosecutor's steel mace is wrapped in a genteel glove of legalisms.

To understand Abrams's real choice, you must relive the events and the absurd decisions he'd had to endure before reaching the crucial moment.

He is obviously of two minds on this question, as he is obviously ambivalent about all those lawyers who nudged him toward accommodation with Walsh and Gillen rather than toward confrontation. And he is much too soft on the lawyers. He praises Leonard Garment, as if Garment had not permitted poor Bud McFarlane to testify without immunity at a time when McFarlane was so distraught that he could not possibly reconstruct what had happened. Such lawyers, with rare exceptions, treated Iran-contra as just another legal case, in which sweet reasonableness would eventually bring about an equitable outcome. But it was not that at all, it was war, and it had to be fought, not

can recover legal expenses from the government only if they are not indicted, a ghastly inversion of logic that greatly strengthens the Special Prosecutor (the threat of indictment becomes far more menacing). To achieve anything like fairness in these political wars, at least three steps are required. First, the government should pay legal expenses for any official who is either not indicted or found innocent. Walsh, after all, has an unlimited budget, which guarantees the corruption of the Special Prosecutor's office. Victims should at least get the chance to defend their honor without bankrupting themselves. Second, there must be some oversight; the Special Prosecutor should justify his existence and periodically convince an appropriate judicial body (I suppose the Federal Appeals Court in Washington) to renew his mandate.

The third major change has to do with the media, and it is odd that Abrams does not discuss it: a change in the definition of libel. He complains, as has everyone involved in a Washington scandal, of the outrageous lies about him in the press and on television. (In his case, it was falsely "reported," *inter alia*, that he had known about the Saudi contributions to the contras and had lied about it; and that he had met with the representatives of the Sultan of Brunei, using a false name.) But he does not go on to point out that it is virtually impossible to win a libel suit in this country because here, unlike every other civilized country, you must demonstrate that the journalist who libeled you wrote (or spoke) with full knowledge that it was



negotiated. The Garments of this world didn't act as if they understood that (or, worse still, they opted for appeasement instead of standing and fighting with every available weapon). Alas, because almost all the lawyers treated it as a normal procedure, the Special Prosecutor is still with us.

As North and Poindexter showed, Walsh can be beaten, but it is hardly a fair fight, and it is an enormously costly one. As things stand today, only people with deep pockets can afford the luxury of going to the mat with the Special Prosecutor; even top officials

libelous. That is an unbearable burden for most plaintiffs, and a commodious escape hatch for most journalists. We need to go back to the traditional definition of libel: if it is false and damaging, it is libel, and the court should do what it can to make you whole again, by making the libelers pay you a fair settlement and make public amends for their crime.

The re-establishment of reasonable standards for libel should extend to members of Congress. There must be some limit on the amount of damage some of these McCarthyites dole out in the ostensible fulfillment of their official responsi-

bilities, and since much of their dirty work is done in tandem with the media, the two belong in the same category. Elliott singles out Sen. William Cohen of Maine for his egregious repetition of statements Cohen knew to be false, and my own singularly unpleasant experience with this slick solon during the Iran-contra hearings abundantly confirms Abrams's judgment. Cohen asked McFarlane if he knew that "Mr. Ledeen entered the country carrying large amounts of cash," and McFarlane replied that he did not. During the next break in the hearings, Cohen told inquiring journalists that he had misspoken, so they didn't write it, but despite numerous requests, Cohen would never publicly correct the record. Nor, for that matter, did Elizabeth Drew, who was commenting on PBS, and exulted at the "revelation" about me. Although she knew within minutes that Cohen's implied accusation was a lie, she permitted the false impression to stand. If I had been able to sue Cohen, and had there been reasonable standards for

libel, I have little doubt that both would have quickly retracted and apologized (indeed, I doubt Cohen would have had the gall to smear me in the first place). Toward the end of *Undue Process*, Elliott convinces himself that this sort of thing is unique to Washington, and urges would-be public servants either to stay in the private sector or to limit their public service to local government. Here again, I think he misunderstands the true nature of the problem and the dimensions of our peril. I think that *Ordeal by Scandal* has become a fixture of American public life, because it is actively promoted by two classes fighting for supremacy in our political system: the lawyers and the journalists. Elliott wants the Special Prosecutor abolished, and I emphatically agree, but that won't cure the disease; it would only shift the venue of the *Ordeal* to federal courthouses. The other changes would still be necessary.

Our system of government is built on a theory of conflict in which every

branch of government and every component of the political system is expected to fight for its rights and prerogatives. When any element abandons the fight, or is prevented from fighting, dangerous shifts in the balance of power are produced. For the past two decades, the executive has surrendered at several key battlefields, Elliott's case—which saw Ronald Reagan abandon his people to the mercies of Congress and then the Special Prosecutor—being one of the more dramatic. So the balance has shifted against the executive branch, to the benefit of the legislature, the judiciary, and the media. It may be that this state of affairs is largely the product of divided government, and that the problem will go away if there is a Democratic administration and a Democratic Congress. But I doubt it. (Remember Bert Lance?) If some future President doesn't even the scales, the usurpation of power will continue and spread, to the detriment of all Americans. □

Round One

In we went to the conference room, where a small crowd was assembled. On their side was the notetaker—an FBI agent who would testify against me if I got something wrong or changed my story—Gillen, and three other lawyers who worked for him. Walsh came in late.

We started without him, and I quickly saw what they were about. They had a wide variety of documents: memos of meetings and phone calls, State Department cables, CIA cables, personal notes of various officials. They figured they'd show me these, and I'd see the jig was up. Oh please, Mr. Gillen, Sir, I give up, I'll change my ways sir, I confess.

But what they had was trash. The first subject of discussion was a man named Felix Rodriguez, and we spent hours on him. I had testified repeatedly that I had known of him as a Bay of Pigs veteran who had gone down to El Salvador under U.S. government auspices to help the Salvadoran air force. Their documents indicated he had also helped the private contra arms supply

network, and had played a role as well in handling the legal U.S. government humanitarian aid program that had been in effect from August 1985 to the spring of 1986, prior to the congressional decision in October 1986 to arm the contras.

That might, if it were true, make him a key link between the Salvadoran and U.S. governments, the official and legal U.S. contra aid efforts, and the private supply network. But it was news to me. I had not known of any such triple role for Rodriguez, whom I had viewed as a minor figure—in fact I had no memory of ever meeting him. He had come to my attention because he had made trouble by bragging about his friendship with Vice President Bush and Bush's aide Don Gregg. I had been told that Gregg had helped place Rodriguez in El Salvador in the mid-1980s, and that Rodriguez had gone around announcing, in bars and restaurants, that he was very close to the Vice President. The conclusion people might draw was that Rodriguez represented a link between the private network and the U.S. Government—a relationship we had been trying carefully to prevent.

They showed me document after document about Rodriguez, and I repeated my denials. After about two hours of this, when Gillen asked me for the thousandth time if some new document refreshed my recollection, meaning "do you now, now at long last, admit you've been lying," I told him: "Look Mr. Gillen, you can ask me that question all day and the answer is not going to change. I have told you what I knew and what I believed. And that isn't going to change."

Okay. End of Topic One. What had I learned? That, as I had predicted, there were no secret documents affecting me. All the memos they had shown me, all the meetings they had shown me notes of, shared one curious characteristic: I had been absent from all of them. Meetings I hadn't gone to, conversations I hadn't been part of. From this comes an indictment?

I had learned one other thing, and it wasn't a surprise: they were after Don Gregg, and therefore they were after George Bush as well.

—from *Undue Process*

LINCOLN AT GETTYSBURG: THE WORDS THAT REMADE AMERICA

Garry Wills

Simon & Schuster / 317 pages / \$23

reviewed by PETER L. WELSH

Since the broadcast two years ago of Ken Burns's PBS series, *The Civil War*, many Americans seem to have taken a genuine interest in what Churchill called the "noblest and least avoidable of all the great mass conflicts of which till then there was record." One presumes that this is all for the good—perhaps most American college graduates will now know at least roughly when the Civil War took place. And studying the words and deeds of a genuine statesman like Lincoln also cannot help but be edifying. With the good, however, comes the bad: we also get interpretive thoughts on Lincoln's political philosophy from the likes of Mario Cuomo and Gore Vidal. In this latter category—tendentious Lincoln analyses—falls Garry Wills's *Lincoln at Gettysburg*.

There are, as best I can tell, two strong points to this essentially disappointing book. The first is the author's painstaking analysis of the inspiration, structure, and style of Lincoln's rhetoric. It deserves only qualified praise, however, because the analysis is in parts too painstaking; the wonders of Lincoln's rhetoric are, as Jane Austen would say, pointed out with a minuteness which leaves beauty entirely behind. Wills has a Ph.D. in classical antiquity from Yale, and brings a wide knowledge to bear. In particular, he applies the Greek conception of the funeral oration—*epitaphios logos*—to Lincoln's essentially epitaphic Gettysburg Address.

This is not an arbitrary vantage point. At the time of Gettysburg, America was self-consciously attempting to revive the glory that was Greece. From architecture

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to education to civic discourse there had developed in nineteenth-century America a strong interest in Greek antiquity. Indeed, Lincoln was preceded on the platform at Gettysburg by Edward Everett, who had taught Greek at Harvard to, among others, Ralph Waldo Emerson. Everett gave a two-hour speech infused with explicit references to the funeral orations of antiquity. Lincoln's three-minute Address, though less explicitly classical, was nevertheless more faithful to the Greek model of



funeral oratory. Pointing to its "two major sections—*epainesis*, or praise for the fallen, and *parainesis*, or advice for the living"—and several subsections, Wills makes a good case that the Gettysburg Address follows the structure of most Greek funeral orations very closely.

The other strong point of *Lincoln at Gettysburg* is the section "Emancipation" in chapter four, in which Wills gives Lincoln's rationale for the incompleteness of the Emancipation Proclamation.

Lincoln was faulted by Abolitionists—and is faulted even now—for freeing only those slaves in regions that "are this day in rebellion against the United States." As Wills explains, however, Lincoln limited the Proclamation's scope largely out of respect for the restraints imposed by the Constitution:

Lincoln had often said that he would do nothing individually to disturb slavery in its protected area—because it was protected there by the Constitution. . . . Its own language he thought shamefaced and provisional, meant to exist only as slavery was "in the course of extinction." But it was the enactment of the whole (single) people, and could be changed only by the whole people—through the amendment process. As the South could not unilaterally secede, the North could not unilaterally emancipate.

As a consequence, Lincoln issued the Proclamation only out of strict military necessity:

By virtue of the power in me vested as Commander-in-Chief, of the Army and Navy of the United States in time of actual armed rebellion against authority and government of the United States, and as a fit and necessary war measure for suppressing said rebellion . . .

As he only rarely does elsewhere in the book, Wills here presents and seriously examines Lincoln's own justifications, revealing Lincoln's profound respect for the intentions of the Founding Fathers—and contradicting the book's central thesis.

That thesis is summarily expressed by one word in the subtitle—"Remade." The argument is that Lincoln, at Gettysburg and elsewhere, was not entirely faithful to the Founders on the crucial question of the day. At Gettysburg, Lincoln maintained that the Declaration of Independence's "all men are created equal" was meant to include, in principle, Negroes as well as whites and that the Declaration, so conceived, provided the moral foundation to the American regime. In doing so, Wills contends, Lincoln was perpetrating a "giant (if benign) swindle" intended to "cleanse the Constitution" of "its official sins and inherited guilt" and, thereby, effect a second founding of the American regime: