

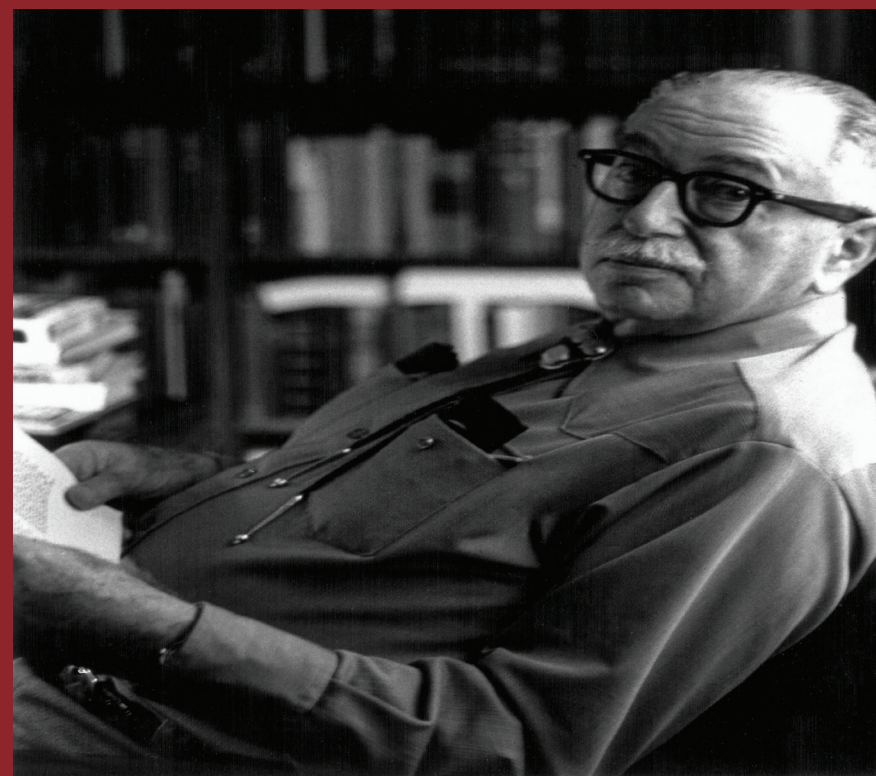
"THE UNUSUAL AND THE GRAND have always fascinated me, and always will." A. J. A. Symons's *The Quest for Corvo: An Experiment in Biography* captures as odd a human being as ever lived, one Frederick William Serafino Austin Lewis Mary Rolfe. Jacob A. Stein sent this book to the LSU Law Center with a letter. "Paul, here is a book that may give us an idea of how to write a bio of someone who is odd." Our subject is another Frederick, one Frederick Bernays Wiener, Brown University, 1927, Harvard Law School 1930. While alive, "Fritz" Wiener fascinated both of us. He seems to have stepped out of a Shakespeare play set in the Old Hall of Lincoln's Inn. He admired Justice Holmes. Stupidity was not his strong suit. He faced death during the Battle of Okinawa. He was odd, yes, but extraordinary in the annals of legal history, military law, constitutional advocacy, the Selden Society. His treatise *Effective Appellate Advocacy* was so popular it was literally stolen off library shelves.

In time, society passed Colonel Wiener by. He realized he was an artifact of the law. The Warren Court was too much for him. "New King, new law, new Justices, new masters, et cetera."—Yearbook, 5 Edward II (1311). He turned in his morning coat. His friends threw a big party for him at the Army Navy Club. He packed his bags and moved way out West. In short, our man of interest is quite a fellow, with Doris Merchant Wiener at his side, and two water turtles, Andy and Lauri, sunning themselves on the windowsill in Arizona sunshine. Ah, retirement. What could be better?

"Action and passion," the Colonel would declaim, following Holmes. Fritz's stage was the Supreme Court. Oral argument, "emitting the sound effects," was his strong suit. This is his story—mustachio, cut-away, and all.

"What kind of biography do you have in mind?" Jake asked Paul. "I don't know," replied "Boswell Baier" (Doris's term of endearment). "Maybe I can help you." A few weeks later, Alphonse James Albert Symons's *The Quest for Corvo* shows up in Paul's mail. He reads it. Ideas fill his head. Jacob A. Stein, Washington, D.C.'s "Legal Spectator," is Paul's muse. This book is the result. The appendix, *Printed in Black Ink*, consists of samples of Frederick Wiener's peppery book reviews and his arresting scholarship.

Jake calls it a ramble. Paul rather thinks of Boswell's *Life of Johnson*. Whatever the reader's judgment, both of us agree that that Frederick Wiener, LL.B., and Samuel Johnson, LL.D., would get along just fine. "No man but a blockhead ever wrote, except for money."



Paul R. Baier

Written in Water

Written in Water: An Experiment in Legal Biography is unlike any other legal biography ever written because Fritz Wiener was unlike any other lawyer in the history of American law. Roscoe Pound, Dean of the Harvard Law School during Frederick Wiener's tenure as Note Editor of the *Harvard Law Review*, laid it down that, "The law must be stable, but it cannot stand still." The tension between anchor and sail in constitutional law is a vital part of this off-Broadway production. Colonel Wiener was a fiery foil to the Warren Court. Jurisprudence invades the book. So does constitutional advocacy—"law in the making." Our protagonist is the only lawyer in the history of the Supreme Court of the United States to lose a case with a published opinion against him, only to turn the Court around on rehearing and win. This is *Reid v. Covert II*, "The Murdering Wives Case." The sound recording of Frederick Wiener's peroration in *Covert II* is the taproot of this experiment in legal biography.

After Colonel Wiener's death in 1996, age 90, his son Thomas Freud Wiener, Doctor of Science, MIT, and Doris Merchant Wiener, Colonel Wiener's "best friend and most perceptive critic," offered his legal papers to his LSU friend and accidental biographer P. R. Baier. On research trips to Phoenix, our professor producer excavated 17 boxes of them. One discovery astounds. It is a legal-size envelope with the caption, double underscored in red ink in Fritz Wiener's crisp printing, WRITTEN IN WATER. It contains sample chapters of Colonel Wiener's draft *autobiography!*

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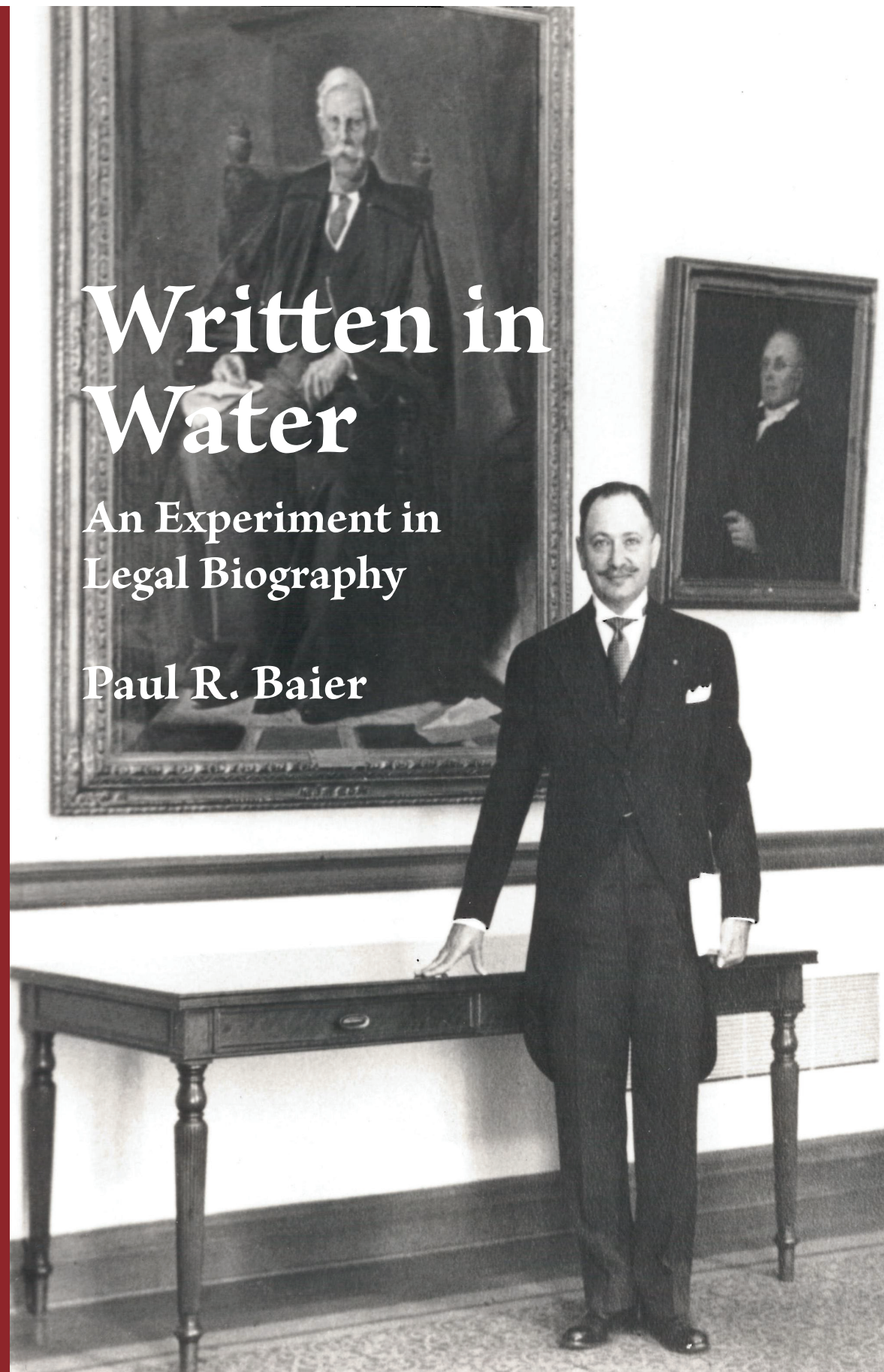
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Written in Water

An Experiment in Legal Biography

Paul R. Baier



PAUL R. BAIER is the Judge Henry A. Politz Professor of Law, LSU Law Center, Baton Rouge. He has taught Constitutional Law at LSU for over forty years. He is the editor of Justice Hugo Black's memoirs (Random House, 1986). Born Cincinnati Ohio, birthplace of Chief Justice William Howard Taft. Graduated Walnut Hills High School, University of Cincinnati. Grave digger, Spring Grove Cemetery ("Alas, poor Yorik! I knew him well, Horatio"). Thence to Harvard Law School. A year inside the Supreme Court as a "Judicial Fellow" made him a scriptwriter and stage director. Paul's play, "Father Chief Justice": Edward Douglass White and the Constitution, has been in production for fourteen years, playing most recently in the Coolidge Auditorium, Library of Congress, and the Social Law Library, John Adams Courthouse, Boston. Professor Baier met Jacob A. Stein, Esq., Stein, Mitchel & Muse, when Jake was writing the foreword to the American Bar Association's revised edition of Frederick Wiener's *Effective Appellate Advocacy*. They collaborated a bit on Jake's foreword, "There was a giant in the land" (Fritz). Thereafter, Paul cast Jake as Justice Oliver Wendell Holmes, Jr., in the Washington, D.C., "off-Broadway," run of "Father Chief Justice." Paul also cast Jake as his muse in the writing of *Written in Water*. Jake advised Paul to read Hazlitt. Jacob A. Stein, Washington, D.C.'s *Legal Spectator*, makes a guest appearance himself on the stage of *Written in Water*. He adds verve. Paul is grateful to him.