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The Clerks of the Four Horsemen (Part I)

BARRY CUSHMAN

Recent years have witnessed a flowering of scholarship concerning the Supreme Court clerkship. Yet most of this literature focuses on the more modern Justices. And for the Justices who served in the years between Justice Horace Gray's appointment in 1882, when the Supreme Court clerkship was created, and Franklin D. Roosevelt's appointment of Hugo Black in 1937, the literature leans heavily toward those generally thought to be "liberal": Oliver Wendell Holmes, Jr., Louis D. Brandeis, Harlan Fiske Stone, and Benjamin N. Cardozo.

This tendency is not surprising for several reasons. First, Holmes, Brandeis, Stone, and Cardozo are of particular interest, as they are typically regarded as among the greatest Justices of the twentieth century. Second, the extensive biographical literature on each of them, as well as the large collection of private papers left by all but Cardozo, gives the researcher ample material with which to work. And third, there is a substantial remembrance literature generated by their former clerks.

Law clerks to the early twentieth century Justices known collectively as the "Four Horsemen"—Willis Van Devanter, James

Clark McReynolds, George Sutherland, and Pierce Butler—thus have received little attention. With the exception of Sutherland, these more "conservative" contemporaries of Holmes and Brandeis are typically rated as judicial "failures."¹ The biographical literature on each of them is not nearly as thick,² and the remaining private papers are neither as extensive nor as revealing.³ And only two of the thirty-five young men who clerked for these Justices ever published a recollection of his time served in chambers.

The more notable of these remembrances was that of John Knox, who clerked for Justice McReynolds during the 1936 Term.⁴ Knox was born in Des Moines, Iowa in 1907, and raised in the Chicago suburb of Oak Park, Illinois. He received his undergraduate degree from the University of Chicago in 1930, his L.L.B. from Northwestern University in 1934, and an L.L.M. from Harvard in 1936. He had begun to write letters to Justice Holmes during his lonely and miserable adolescence, and started to favor other Justices with his correspondence during his years as a law student. Among these was Justice Van Devanter, and when McReynolds informed his colleague in late 1935 of his need

for a clerk for the coming term, Van Devanter arranged an interview for his persistent young pen pal. Knox kept a diary of his experiences during his clerkship year, and between 1952 and 1963 converted the diary into a 978-page typewritten memoir. He tried without success to have the memoir published, and in 1978 deposited the manuscript with several libraries. There it languished in obscurity until 2002, when Professors Dennis Hutchinson and David Garrow brought out a splendid edition published by the University of Chicago Press.⁵

Knox's memoir is largely an exposé of McReynolds' tempestuous and cruel mistreatment of his messenger, Harry Parker; of his maid and cook, Mary Diggs; and, of course, of Knox himself. Knox reported that all of the employees of the "sadistically inclined" McReynolds "lived in a reign of terror and were crushed under foot without any hesitation on his part."⁶ By the end of his clerkship, Knox had concluded that McReynolds was "the most contemptible and mediocre man I ever came into contact with," "unbelievably stingy," and "gravely unbalanced." His "selfishness and vindictiveness" were "unbelievable."⁷

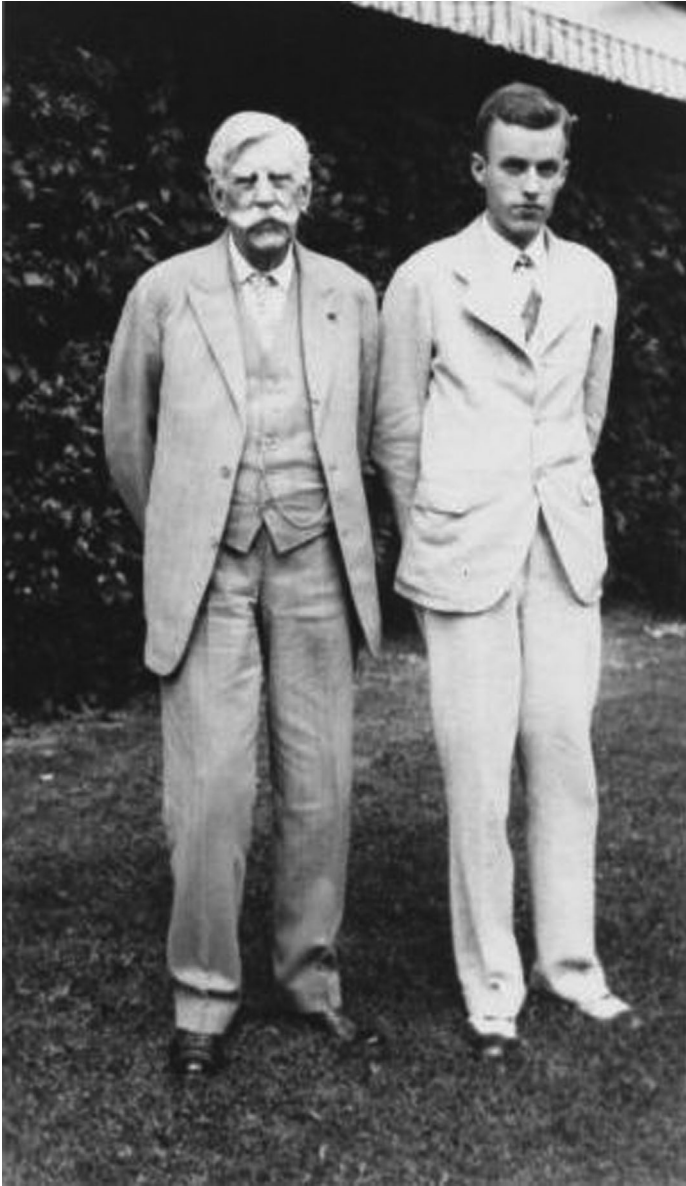
There is good reason to believe that Knox's unpleasant tour of duty clerking for McReynolds was representative of the Justice's treatment of his other clerks.⁸ On the other hand, we can be reasonably confident that Knox's experience was not representative of the experiences of those who clerked for Van Devanter, Sutherland, and Butler. For example, when Arthur Mattson, who clerked for Van Devanter for five years, was preparing to leave his post to pursue a legal career in New York, he wrote to his boss:

You have been so good to me during the nearly five years I have been in your employment, and my association with you has been such a fine thing in my life, that I would be ungrateful not to tell you of my deep appreciation. Your uniform kind-

ness, consideration, and patience is something I shall never forget. You have been at once a kind and just employer and a good father to me. Perhaps I can best show my appreciation by striving always in the years to come to reflect your kind manner and sweet disposition, your noble character and your profound knowledge of law and men. They will be treasured memories of mine always.⁹

Three of Van Devanter's other clerks remained with him for stretches of three, nine, and eleven years, which suggests that they, too, found the association agreeable.¹⁰ Like Van Devanter,¹¹ Sutherland was uniformly regarded as a nice fellow,¹² and the fact that each of his four clerks remained with him for multiple terms similarly suggests that they also found the experience personally rewarding.¹³ Butler, who employed two law clerks in his chambers at all times, retained one of them during his entire tenure at the Court, and another for nine terms.¹⁴ Here again, the likelihood of job satisfaction seems high.

Knox's duties while working for McReynolds also were not typical of the duties of all of the Four Horsemen's clerks. The tasks that McReynolds expected Knox to perform were more secretarial than legal. They included typing, taking dictation, responding to social invitations, and answering the telephone. The only lawyerly duties that Knox undertook throughout the year were the preparation of summaries of petitions for *certiorari* and some occasional legal research. McReynolds never asked Knox to produce "lengthy typewritten opinions regarding various points of law."¹⁵ Only once, early in the term, did McReynolds ask Knox to write a draft of a majority opinion. Knox worked at the task feverishly while McReynolds was away from Washington for a few days, and upon McReynolds' return, proudly presented his work product to his boss. McReynolds



John Knox (right), began writing to Oliver Wendell Holmes, Jr., (left) during his lonely adolescence and visited him at his summer home in Beverly Farms in 1930. In law school, Knox began corresponding with other Justices, including Willis Van Devanter, who recommended him as a clerk to James C. McReynolds in late 1935.

responded by ostentatiously tossing the opinion into the wastebasket.¹⁶

By contrast, Butler's long-term clerk John F. Cotter "wrote first drafts of many opinions, expressing the justice's views so accurately that the drafts often required few changes."¹⁷ Butler's clerks also summarized petitions for *certiorari*, and the Justice

encouraged his clerks to offer criticism and suggestions as they assisted him in the research and writing of opinions.¹⁸ William D. Donnelly, who served as a Butler clerk for nine years, described his duties as also including "the preparation of notes . . . on some of the argued cases prior to the conferences of the Court," and assistance

“in the writing of opinions in assigned cases,” including “[p]reparation of detailed statements of fact from the records,” “analysis of briefs,” and “research on points not briefed by the parties.”¹⁹ Not much is known about the duties of clerks for Justices Van Devanter and Sutherland,²⁰ but it does appear that the clerks of at least one of the Four Horsemen were not simply legally trained stenographers, but instead shouldered substantial lawyerly responsibility.

There is an additional respect in which the Knox story was not representative, and it is to the illumination of that dimension that the balance of this article is devoted. One reason for the greater interest in the men who clerked for Holmes, Brandeis, Stone, and Cardozo concerns the highly successful careers they pursued following their clerkships. Many of these alumni clerks rose to positions of great distinction in law practice, business, law teaching, or government service.²¹ Consider just a sample from the list of Holmes’s alumni: Francis Biddle, Attorney General of the United States;²² Tommy Corcoran, drafter of key New Deal legislation and Franklin Roosevelt’s right-hand man;²³ James H. Rowe, assistant attorney general and Franklin Roosevelt’s administrative assistant;²⁴ H. Chapman Rose, undersecretary of the treasury and partner with Jones Day in Washington;²⁵ Harvey Hollister Bundy, assistant secretary of state and chairman of the Carnegie Endowment for International Peace;²⁶ Irving Olds, chairman of the board of directors of United States Steel;²⁷ George L. Harrison, president of New York Life Insurance Company²⁸ and the Federal Reserve Bank of New York, and chairman of the board of RCA;²⁹ Augustin Derby, Harvard law professor;³⁰ W. Barton Leach, Harvard law professor;³¹ Arthur Sutherland, Harvard law professor;³² Mark DeWolfe Howe, Harvard law professor;³³ Stanley Morrison, Stanford law professor;³⁴ Chauncey Belknap, founding partner of Patterson, Belknap and president of the New York State Bar Association;³⁵ John

Lockwood, a partner at Milbank, Tweed and chief legal advisor to the Rockefeller family;³⁶ Donald Hiss of Covington & Burling;³⁷ Lloyd Landau of Root, Clark, Bruckner & Ballantine in New York;³⁸ Erland F. Fish, president of the Massachusetts State Senate;³⁹ Laurence Curtis, “an influential member of the Massachusetts Senate” and Republican Congressman from Massachusetts;⁴⁰ and Justice Day Kimball of the Supreme Court of Bermuda.⁴¹

The Brandeis alumni include Dean Acheson, Secretary of State;⁴² Judge Henry Friendly of the United States Court of Appeals for the Second Circuit;⁴³ Calvert Magruder, Harvard law professor and later Chief Judge of the United States Court of Appeals for the First Circuit;⁴⁴ James M. Landis, dean of the Harvard Law School and chairman of the Securities and Exchange Commission;⁴⁵ Harry Shulman, dean of Yale Law School;⁴⁶ Henry Hart, Harvard law professor;⁴⁷ Paul Freund, Harvard law professor;⁴⁸ Willard Hurst, Wisconsin law professor and the dean of American legal history;⁴⁹ Nathaniel Nathanson, Northwestern law professor;⁵⁰ David Reisman, Harvard sociologist;⁵¹ Thomas Austern, of Covington & Burling;⁵² Adrian Fisher, general counsel to the Atomic Energy Commission;⁵³ and W. Graham Claytor, president of Amtrak.⁵⁴

Stone’s clerks include Judge Harold Leventhal of the United States Court of Appeals for the District of Columbia Circuit;⁵⁵ Judge Eugene Nickerson of the United States District Court for the Eastern District of New York;⁵⁶ Herbert Wechsler, Columbia law professor;⁵⁷ Walter Gellhorn, Columbia law professor;⁵⁸ Louis Lusky, Columbia law professor; Milton Handler, Columbia law professor;⁵⁹ Warner W. Gardner, founding partner of Shea & Gardner;⁶⁰ Alfred McCormack, a partner at Cravath and Director of Intelligence in the Military Intelligence Service during World War II;⁶¹ Alexis Coudert, of Coudert Brothers;⁶² Wilbur Friedman, chair of the tax department at

Proskauer Rose;⁶³ Howard C. Westwood, a partner at Covington & Burling;⁶⁴ Adrian Leiby, a partner at LeBoeuf, Lamb,⁶⁵ and Thomas Harris, chairman of the Federal Election Commission.⁶⁶ Cardozo's Supreme Court career was much briefer, but he nevertheless could claim as alumni Joseph Rauh, Jr., a leading civil rights lawyer and for years the national chairman of Americans for Democratic Action,⁶⁷ and Alan Stroock of Stroock, Stroock & Lavan.⁶⁸

Consider, by contrast, the post-clerkship career of John Knox. After leaving McReynolds, he failed the bar examination three times before finally passing the Illinois exam in March of 1939. Following his second failure, he was fired from Mayer, Meyer, Austrian, & Platt after less than a year of employment. He then parlayed a family friendship into a job with the Chicago firm of Loesch, Scofield, Loesch, & Burke. When the firm began to crumble in 1942, Knox

began a two-year stint at the War Production Board before being canned in late 1944. By early 1945 he was in New York working in the war-depleted ranks of Cravath, Swaine, & Moore, but was let go in less than two years. For most of 1947 he negotiated and drafted theatrical contracts for the Marquis Georges de Cuevas, the grandson-in-law of John D. Rockefeller, Sr. When that work dried up in November, Knox returned to Chicago and spent the next nine years trying unsuccessfully to save his family's mail-order business selling self-help books to salesmen. In 1956 he took a job as a claims adjuster for the Allstate Insurance Company, and remained in their employ until his retirement in 1973. For the remainder of his life he lived in poor health and straitened financial circumstances. He died in 1997 at the age of eighty-nine, a lonely and childless bachelor.⁶⁹ In 1962, at the age of fifty-five, Knox wrote in his diary, "[i]n many ways I am a pathetic failure."⁷⁰ The following



Willis Van Devanter employed seven clerks during his twenty-six years on the Court, two of whom came from his native Wyoming. Four ended up making careers in the Washington civil service, one enjoyed a successful practice on Wall Street, and one lived an eventful life on the Wyoming frontier.

year he complained that he had “no money, am thousands of dollars in debt and just hanging on to the status quo by a thread.”⁷¹ As Professors Hutchinson and Garrow put it, Knox “had become a pudgy, sour, and chronically ill middle-aged man with no career accomplishments and bitter recriminations, mostly directed at himself.”⁷²

How representative was Knox’s post-clerkship career? Until recently, it was not easy to know. But the proliferation of online sources now has made it possible to reconstruct at least the outlines of the lives of the men who clerked for the Four Horsemen. From these and other biographical data one can discern that most of their clerks went on to enjoy successful careers, apparently happy family and social lives, and active participation in the affairs of their communities. To be sure, none of them became Attorney General of the United States or Secretary of State. But one is nevertheless impressed by how entirely uncharacteristic was the life of John Knox.

The Van Devanter Clerks

Justice Van Devanter was appointed to the Court in 1910 and did not retire until 1937, but during his tenure he employed only seven clerks. Not all of his clerks went to law school, and, with one exception, those who did attended local Washington schools. Four ended up making careers in the Washington civil service, one enjoyed a successful practice on Wall Street, and one lived an eventful life on the Wyoming frontier. In the text, I focus only on four of these clerks; summaries of the careers of the others may be found in the endnotes.

Richard H. Repath clerked for Van Devanter during the 1910 term.⁷³ He was born in May of 1861 in Plymouth, England.⁷⁴ As a young man Repath served as secretary to Wyoming’s Territorial Governor Francis E. Warren, and then to Republican Secretary of State and Acting Governor Amos Barber after

Wyoming had been admitted as a state and Governor Warren had been elected to the United States Senate.⁷⁵ An incident late in Barber’s tenure as Governor made Repath into something of a hero in Wyoming Republican circles. The disputed gubernatorial election of 1892 pitted Barber against Democrat Thomas Osborne. Before the contested vote had been fully canvassed, the Republican *Wyoming Tribune* later recalled, Osborne “forcibly entered the capitol and landed in the outer room of the executive chambers where he was met by R.H. Repath, the private secretary of Governor Barber, who barred his further progress. Osborne tried to get into the next room but the secretary stood in his way and the two men encountered each other in a rough and tumble manner. Repath proved to be the ablest athlete and threw his adversary to the floor and held him in that position by sitting on his head for two hours and a half. The newly elected governor while in this undignified and uncomfortable position swore, pleaded, and begged by turns, but the loyalty of the secretary to the state induced him to hold the intruder a prisoner until someone should come to take charge of him.”⁷⁶

Repath was also the clerk of the Supreme Court of Wyoming from its organization in 1890 until August of 1897.⁷⁷ In addition, he gave private instruction in Pitman’s Phonetic Shorthand on the side.⁷⁸ After concluding his tenure at the Wyoming Supreme Court, Repath worked for a year as a special agent in the General Land Office protecting public lands and timber before going to Washington to serve as the stenographer for Van Devanter, who was serving as an assistant attorney general in the Department of the Interior.⁷⁹ When Van Devanter was appointed to the United States Court of Appeals for the Eighth Circuit in 1903, Repath became Judge Van Devanter’s secretary.⁸⁰ He continued in this position until 1910, when Van Devanter was appointed to the Supreme Court of the United States.⁸¹

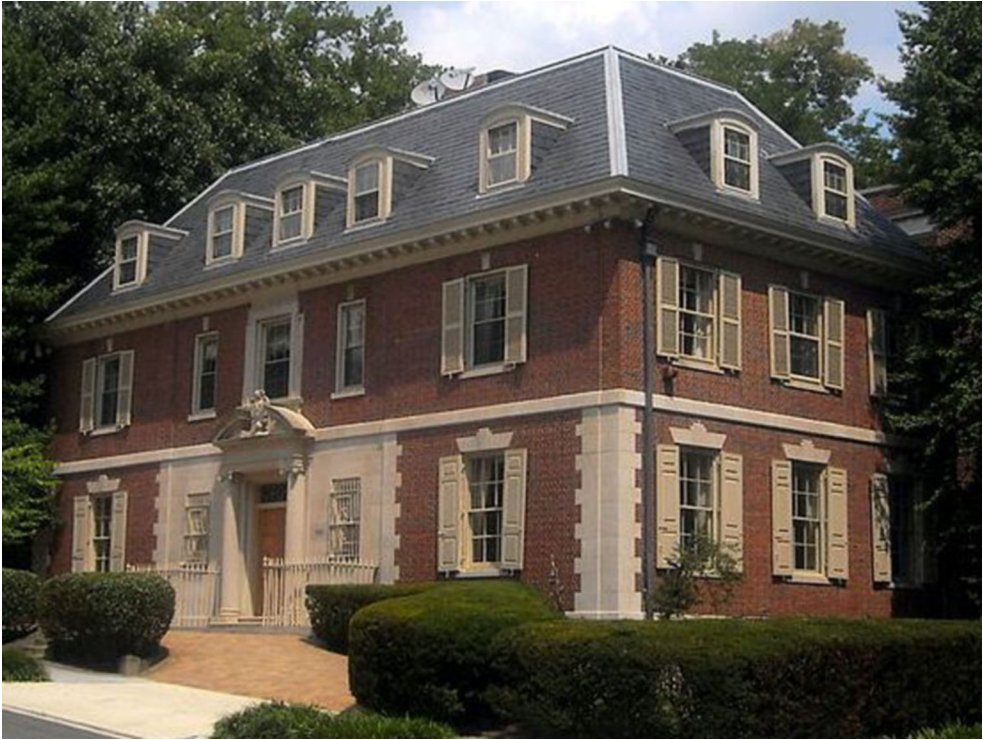
After completing the 1910 Term of Court with Van Devanter in Washington, Repath returned to Cheyenne to serve as secretary to United States District Court Judge John A. Riner.⁸² Repath found the hot, humid weather of Eastern summers uncomfortable,⁸³ and cited concern for his health and a desire to enjoy the company of his many friends in Wyoming as reasons for leaving his prestigious post with Van Devanter.⁸⁴ Repath remained with Judge Riner until that jurist resigned after thirty-one years of service in 1921, whereupon Repath took a secretarial post with Riner's successor, Judge Thomas Blake Kennedy.⁸⁵ Kennedy would serve until 1957, and Repath remained with the judge for the remainder of his own career.⁸⁶

Repath died of a heart ailment at the age of seventy-nine in 1943. He never married,⁸⁷ but he had an active social life as a leader and participant in the affairs of the Knights Templar,⁸⁸ the Masons,⁸⁹ and other organizations.⁹⁰ He also served on the executive committee of St. Mark's Episcopal Church in Cheyenne.⁹¹ In the 1890s he was a member of the Cheyenne Club, a vigilante group organized by a collection of gentlemen ranchers devoted to the suppression of cattle rustling in Wyoming. In the summer of 1892, Repath successfully persuaded Owen Wister not to go hunting in western Wyoming for fear that marauding rustlers would delight in putting a bullet or two in the young author.⁹² But for Repath, we might never have had *The Virginian*.⁹³

George Howland Chase III clerked for Van Devanter during the 1923 Term.⁹⁴ Chase was born in Germantown, Pennsylvania in 1898, and raised in Washington, D.C. He was graduated from St. Paul's School in Concord, Massachusetts in 1916, from Princeton University in 1920, and from Harvard Law School in 1923.⁹⁵ During World War I he served as a second lieutenant in the field artillery of the U.S. Army, stationed at Camp Zachary Taylor in Louisville.⁹⁶ Following his clerkship with Van Devanter, Chase spent a

year with the Washington firm of McKenney and Flannery. In 1925 he began a stint of more than six years as an associate with the Washington office of Cravath, de Gersdorff, Swaine & Wood,⁹⁷ and was admitted to the Supreme Court bar in 1928.⁹⁸ The following year he was married to Bryn Mawr graduate Mary Chandler Hale, the niece of Maine's U.S. Senator Frederick Hale and the granddaughter of the late Senator Eugene Hale.⁹⁹ After leaving Cravath, he became assistant general counsel to the Federal Reserve Board, which he served for three decades preceding his retirement in 1962. He served as president of the D.C. Family and Child Services, as a member of the D.C. Charitable Solicitation Advisory Council, and as a member of the board of the Washington Institute of Foreign Affairs. He held club memberships at Chevy Chase and Burning Tree. He was at his summer home in Prospect, Maine, when he became ill in 1981, and he died in October of that year at the age of eighty-three. He was survived by his wife, Mary.¹⁰⁰ Sadly, he was preceded in death by his only child, Eugenia Chase Guild, who died in 1954.¹⁰¹ He was remembered as a "greatly beloved" man of "unusual charm, affectionate and humorous in his only special and delightfully characteristic way." He was also "an accomplished golfer" who had played with members of the Supreme Court and with former Secretary of State Robert Lincoln, the son of President Abraham Lincoln.¹⁰²

In the early 1970s, Mr. and Mrs. Chase offered their mansion on Embassy Row in Washington to the federal government for use as the official residence of the Chief Justice of the United States Supreme Court. The property was valued at \$340,000, and the Chases offered an additional \$500,000 for its maintenance. The Senate Judiciary Committee was slow to respond, and the couple withdrew the offer in 1973, saying in a letter to the Committee that they had "waited long enough." The Chases instead gave the mansion as a joint gift to their respective alma maters,



George Howland Chase clerked for Van Devanter during the 1923 Term, and eventually went on to become assistant general counsel to the Federal Reserve Board, which he served for three decades. After his retirement, he and his wife offered their mansion to the federal government for use as the official residence of the Chief Justice of the United States Supreme Court. The property was valued at \$340,000, and the Chases offered an additional \$500,000 for its maintenance. The couple withdrew their offer in 1973 when the Senate Judiciary Committee was too slow in responding.

Princeton and Bryn Mawr. The schools accepted the gift and later sold the property.¹⁰³

James W. Yokum shared clerking duties with Chase during the 1923 Term, and continued with Van Devanter for the 1924 Term.¹⁰⁴ Yokum was born in Montgomery, Alabama, apparently sometime between 1895 and 1898—he supplied four different years of birth on various employment documents. He attended high school at the Emerson Institute in Washington, D.C., and was a private first class in the United States Army Signal Corps during World War I. He studied law in the evening for one year at National University and for two years at Georgetown while working as a clerk in the Bureau of Indian Affairs and in the General Accounting Office, where he was regarded by his superiors as “[c]apable but impulsive, restless, and somewhat lacking in thoroughness.” He left the

GAO and Georgetown in 1923 to accept the position with Van Devanter, and, though he never completed his law degree, he was admitted to the Florida Bar. After his service with Van Devanter, Yokum spent three years in the private practice of law in Miami, a year as an assistant trust officer with Bank of America in New York, and three years as a corporate attorney for AT&T, also in New York.

At this point, regrettably, Yokum’s career began a downward spiral that came near to rivaling the misfortunes of John Knox. In the spring of 1932, Yokum was appointed a field examiner into War Risk Insurance claims for the Veteran’s Administration, and stationed in Indianapolis. In November of that year the VA launched an investigation into his conduct, which it was alleged may have involved “criminal features . . . in connection

with the misuse of tax exemption certificates.” Yokum offered to resign in order to keep his record clear, but it was decided instead that he would be suspended without pay pending resolution of the investigation. In January of 1933 the charges against Yokum were sustained, and he was discharged with prejudice. (Yokum later attributed his dismissal to “absence without leave”). Thereafter Yokum scuffled from one temporary gig to another: six weeks as an attorney with the Reconstruction Finance Corporation in August and September of 1933, four months as an auditor in the Agriculture Department from October of 1933 to January of 1934, and two months as an assistant clerk in the Procurement Division of the Treasury Department. Meanwhile, in September of 1933 he was notified that “after careful consideration . . . your previous record will not be regarded as constituting a bar to your reinstatement, if officially requested, subject to such further tests as the Comm. may consider necessary,” and by the end of the following March he had been reinstated by the Civil Service as a permanent clerk in the Bureau of Internal Revenue. His principal duty there was the examination of estate tax returns. Yokum remained with the Bureau until the fall of 1941, when he resigned “for personal reasons.”

A year later Yokum received a war service appointment as an attorney for the Yards and Docks Bureau of the Department of the Navy. There he was “assigned primarily to administrative work” because of his “special talents” for that sort of duty, and because “[i]n strictly legal matters . . . his work was hardly above ‘Unsatisfactory.’” While receiving high ratings for administrative capability and an overall assessment of “Good,” he was given low marks for “Accuracy of final results,” “Amount of Acceptable Work Produced,” and “Dependability.” In October of 1944 he was transferred to serve as a trial examiner for the Safety Section of the Civil Aeronautics Board, from which he resigned

“because of illness” in February of 1945. In August he returned to the workforce as an attorney for the Disabled American Veterans, whom he represented before the Veterans Administration and the Departments of the Army and Navy in cases involving claims for federal benefits. By June of 1946 he had again resigned due to illness, but in March of 1948 he submitted a successful application for a position as a trademark renewal examiner in the Patent Office. Here he performed “the least difficult assignments in examination of applications for renewal of registrations and republications of trade-marks” until his performance began to unravel about three weeks into his tenure.

In April of 1948, Yokum’s wife of fourteen years passed away. Thereafter he became highly erratic in his attendance at work, and was absent without notice or explanation to his superiors for weeks at a time. In late June, his supervisor wrote that “Mr. Yokum has proved to be of no value as an examiner. His failure to be present on the job has made it impossible for him to be productive at all.” The letter added that “any hopes for reliable service from Mr. Yokum are wholly without foundation,” and requested that he be terminated. Yokum then was sent a letter demanding that, on pain of termination, he return to work by July 2 and show sufficient cause for his unauthorized absence. In late July a letter was sent to the room that Yokum had occupied at the VA Hospital in Perry Point, Maryland since July 7. The letter informed Yokum that he had failed to satisfy the demand set out in the previous communication, and that he was thereby separated from service. Yokum appealed his termination in a letter detailing his distressing personal and financial circumstances, but his appeal was denied in a letter dated September 20.

After his dismissal from the Patent Office, Yokum appears to have gone for more than a decade without gainful employment. In May of 1960 he secured a job as a file clerk with the Veterans Administration, and

the following February he transferred to the VA's Engineering Division as an engineering aide. His employment application made no mention of his brief tenure at the Patent Office. At the end of October, the VA terminated him for being absent without leave. He does not appear to have worked thereafter. Yokum was an active member of the American Legion in Washington, D.C. He died in 1963 and is buried in Arlington National Cemetery.¹⁰⁵

John T. McHale was Van Devanter's last clerk, serving the Justice from the 1926 term through Van Devanter's retirement at the end of the 1936 Term.¹⁰⁶ McHale was born in 1888 and married Ellen Berger at the age of twenty-six.¹⁰⁷ In his youth he was an outstanding tournament pool player known as the "Roxbury Kid."¹⁰⁸ From 1907 to 1912 he worked as a messenger and clerk in the Ordnance Department of the Washington Navy Yard. By 1912 his superiors had become very dissatisfied with his performance owing to his frequent absences from work, which they noted often occurred on the day after payday, and they recommended that he be discharged. At McHale's request he was permitted to resign, so that his separation from service would not damage his future prospects. McHale regrouped, attended (but did not graduate from) Georgetown Law School, and was admitted to the bar in Virginia and the District of Columbia, where he engaged in a probate practice.¹⁰⁹ From 1917 to 1919 he worked as a clerk at the War Trade Board, after which he became a claims examiner for the Bureau of War Risk Insurance in the Treasury Department. By 1924 he had risen to the rank of Chief of the Converted Insurance Section of the Veteran's Bureau. He resigned that position in May of 1925 to resume law practice, this time in Palatka, Florida.¹¹⁰ The following year McHale returned to Washington to work for Van Devanter as a stenographic assistant for three years before his promotion to the position of law clerk in 1929.¹¹¹ After Van Devanter's retirement

McHale clerked for McReynolds for the 1937 term¹¹² before joining the Motor Carrier Division of the Interstate Commerce Commission.¹¹³ He remained at the I.C.C. for the remainder of his career.¹¹⁴ He died in 1947, leaving a widow and four children.¹¹⁵ McHale's final year at the Court was not his most cherished. In January of 1938 McReynolds' messenger Harry Parker wrote to John Knox that the Justice had gotten "worse." "Mr. McHale is having a hard time. I am sure he would not stay if he could get anything else to do. . . . You are lucky you got out and don't have to go through what we have to it is next to hell."¹¹⁶

The McReynolds Clerks

Of all of the Four Horsemen, Justice McReynolds was the most prolific employer of clerks. During his tenure, which stretched from 1914 to 1941, the difficult Justice retained the services of no fewer than eighteen young legal assistants. This was apparently not by design. Chester Newland, who interviewed seven of McReynolds' former clerks, reports that the Justice "was plagued with troubles in locating and retaining clerks. . . . Because of his strong language and asperity toward his subordinates, the atmosphere was too demeaning for some of his assistants."¹¹⁷ McReynolds' notoriously offensive personality probably compromised his ability to recruit the most outstanding law graduates. Most of his clerks attended local Washington schools, and many went on to comparatively quiet careers in the Washington civil service. But that was certainly not the trajectory of all of the McReynolds alumni.¹¹⁸

The Early Clerks¹¹⁹

Newman Blaine Mallan clerked for McReynolds during the 1916 Term.¹²⁰ A native of the District of Columbia,¹²¹ Blaine



James C. McReynolds (pictured here in 1939 on his seventy-seventh birthday) employed eighteen clerks during his twenty-six Terms of service. His notoriously offensive personality probably compromised his ability to recruit the most outstanding law graduates, but his clerks mainly went on to respectable careers in government service, private practice, business, and the military.

was the son of Dr. Thomas F. Mallan and Adele Blaine Mallan, and the grandnephew of James G. Blaine, the Plumed Knight of Maine who nearly won the presidency in 1884.¹²² He attended Western High School, of which he would later become alumni association president;¹²³ Cornell University, where he studied engineering for one year;¹²⁴ and the University of Virginia School of Law, from which he received his law degree in 1914.¹²⁵ After completing his studies at Mr. Jefferson's University, Mallan returned to the District of Columbia, where he was admitted to practice in early 1915.¹²⁶ His social affiliations included memberships in the West End Citizen's Association,¹²⁷ the Farmington Country Club in Charlottesville, Virginia, and the Chevy Chase Club.¹²⁸ He was a member of the Delta Tau Delta fraternity, and an enthusiastic participant in their alumni

affairs.¹²⁹ Mallan also was active in the affairs of the Washington, D.C. chapter of the University of Virginia alumni association,¹³⁰ and in April of 1916 he headed up the committee on arrangements for an alumni banquet in Washington that Justice McReynolds appears to have attended.¹³¹ It may be that this occasion led to Mallan's commencement of service with the Justice that fall.

After leaving McReynolds, Mallan served in France as a lieutenant, junior grade in the Navy during World War I.¹³² He engaged in a small private practice,¹³³ was admitted to the Supreme Court bar,¹³⁴ and by 1925 he was general counsel of the Seven Oaks Golf and Country Club.¹³⁵ He became engaged to Frederica McKenney, the daughter of a prominent Washington lawyer, in the fall of 1924,¹³⁶ and they were married the following May.¹³⁷ In January of 1927, Mallan



Blaine Mallan is the only clerk that McReynolds selected from his alma mater, the University of Virginia School of Law. He served during the 1916 Term before going to fight in France as a lieutenant, junior grade, in the Navy. Mallan then made his career practicing law in Washington.

was appointed by President Calvin Coolidge to serve as people's counsel of the Public Utilities Commission. The appointment required Senate confirmation, however, and there was an immediate backlash from local civic groups whose members had not been consulted, and who had favored another candidate.¹³⁸ Members of the House and Senate District Committees were likewise disgruntled that they had been left out of the loop. Representative Thomas L. Blanton of Texas led the charge against Mallan at the Capitol, urging his House colleagues to encourage their counterparts in the Senate to withhold confirmation. Blanton maintained that Mallan had been appointed "in behalf of the utility interests," and was an "inexperienced lawyer."¹³⁹ The office had been created so that the residents of the District would have

"an outstanding lawyer" "looking after the people's interests," someone who would be "capable of combating the high class lawyers of the public utilities." Blanton had expected the President to appoint a "capable, able and willing man," but in Mallan he had chosen "a young fellow, personally all right, but who as a lawyer is unknown to the legal fraternity, so I am informed."¹⁴⁰

It turned out, however, that Mallan was not altogether "personally all right." In October of 1923, at the age of thirty, he had narrowly escaped death by leaping from his car before it plunged over a fifty-foot embankment at Connecticut Avenue and Albemarle Street Northwest. Police had arrived at the scene and arrested Mallan for operating an automobile while drunk.¹⁴¹ Mr. Mallan had failed to appear in court on the designated date, and a bench warrant had issued for his arrest. Mr. Mallan and his friends insisted that he was innocent of the charge, but the opposition energetically publicized that incident, and Coolidge was forced to withdraw the nomination.¹⁴²

From this point forward, Mallan kept a low profile. We know that he was divorced by 1935, but only because of the activities of his former wife.¹⁴³ He continued to engage in a small law practice,¹⁴⁴ and in 1932 was sued for \$10,425 by a real estate agent for allegedly backing out of an agreement to sign a ten-year lease at the Army and Navy Hotel.¹⁴⁵ He died of a heart attack at the age of sixty-three in 1955, and left neither a widow nor children. His obituary made no mention of his service with Justice McReynolds.¹⁴⁶

T. Ellis Allison was born in Washington, D.C. in 1894, and graduated from the City's Business High School in 1910. Before coming to McReynolds he had been a secretary and clerk to the District of Columbia referee of bankruptcy, librarian of the D.C. Bar Association, and secretary to the chief judge of the U.S. Court of Appeals for the District of Columbia Circuit. During this period he attended evening classes at

Georgetown, receiving his law degree and admission to the bar in 1918.¹⁴⁷ Allison's tenure with McReynolds was rather curious. He began clerking for the Justice in the midst of the 1916 Term, on March 1, 1917. His employment with McReynolds was terminated in late August of that year, at which point he began a ten-day stint as a stenographer with the Justice Department. On September 11 of that year he resumed his duties with McReynolds, and stayed with the Justice throughout the 1917 Term and for most of the 1918 Term. He resigned his post on April 20, 1919 to take a job as an attorney in the Bureau of Internal Revenue, though his employment record reveals that he had initiated the application process several months earlier.¹⁴⁸ That October he was married to Minnie Esther Gorman of Washington, D.C. The couple had no children. Allison stayed with the Bureau until 1925,¹⁴⁹ at which time he entered private practice. One of his principal clients was the Laundrymen's Association of Washington, and his practice focused principally on trade association and federal taxation issues. McReynolds undoubtedly beamed with pride when Allison returned to government service in 1934 as an assistant examiner and later a unit chief for the National Recovery Administration. Though his employment with the N.R.A. lasted only six months, he then returned to the Treasury Department, where he helped to draft other welfare legislation, including the Social Security Act, which Justice McReynolds maintained was unconstitutional. Allison would remain at Treasury for the remainder of his highly successful career, which earned him the Department's Albert Gallatin Award for distinguished service. He retired in 1959, and died in Washington in 1974 at the age of eighty-one.¹⁵⁰

Harold Lee George clerked for McReynolds from April 23 to August 13, 1919, and again from April 12 to June 27, 1920.¹⁵¹ Born in Somerville, Massachusetts in 1893, George received his LL.B. from the National University in 1917.¹⁵² The United States entered the

War shortly after his graduation, however, and George attended Officer's Candidate Camp at Fort Myer, Virginia and was commissioned a second lieutenant in the Cavalry later that year. Because the Aviation Section of the Signal Reserve Corps needed pilots, George retrained as an airman and saw action in France as a bombardier.¹⁵³ Somewhere along the line he also managed to win a national competition in typing and shorthand,¹⁵⁴ which must have appealed to McReynolds, who insisted that all of his clerks be equipped with these skills.¹⁵⁵

Here, however, there is an interesting lacuna in George's resume. His entry in *Who Was Who in America* makes no mention of his clerkship with McReynolds.¹⁵⁶ Neither did a 1942 *Washington Post* profile of George, which instead skipped ahead from the end of the War to 1920, when George "threw his law books in an attic trunk and entered the Regular Army from the Reserve."¹⁵⁷ Perhaps it was his experience with the Justice that led him to this decision. George went on to enjoy a distinguished career as an officer.¹⁵⁸ He was promoted to major in 1936, and as a lieutenant colonel in August of 1941 he and three other officers devised plans for American air power during World War II.¹⁵⁹ By 1942, George had risen to the rank of brigadier general in charge of the Air Transport Command.¹⁶⁰ The *Post* profile romantically described him as having "the combined characteristics of a big airline executive and a stunt flyer," and as "[d]ramatic, with courageous vision and the hard-headed ability to implement his dreams."¹⁶¹ He attained the rank of lieutenant general in 1944, and by the conclusion of his military career in 1946 he had been awarded the Air Medal, the Distinguished Service Medal, the Distinguished Flying Cross, and the Legion of Merit.¹⁶² He then moved to southern California, where he became an executive with a series of companies in the airline and aerospace industries, including Hughes Aircraft.¹⁶³ He was elected to the Beverly Hills City Council and served two terms as the

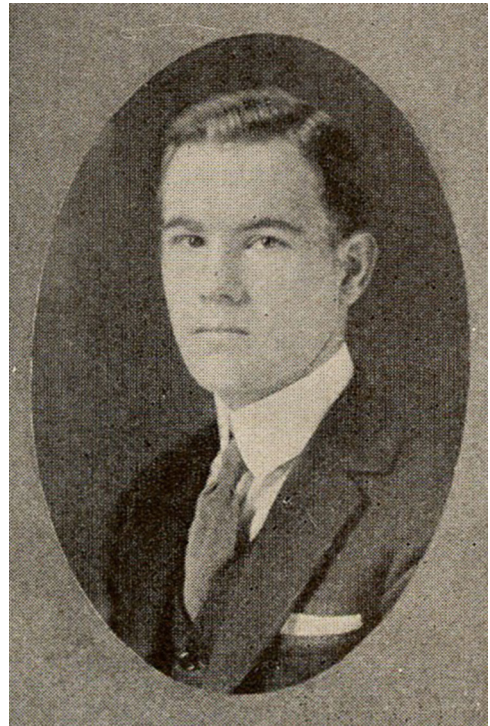
City's mayor. He died in 1986 at the age of ninety-three, survived by his wife and four children.¹⁶⁴

General George's otherwise sparkling resume contained at least two unfortunate incidents. In September of 1926 then-Lieutenant George broke several ribs crashing his plane near Aberdeen, Maryland.¹⁶⁵ Two years later his wife sued him for divorce after he told her that "he loved another woman toward whom he felt duty bound to provide a home, while she, his wife, would have to live elsewhere." She alleged that Lieutenant George had begun to treat her cruelly shortly after their marriage in 1917, and that the couple had become estranged after he informed his wife of the other woman. She had later returned to live with her husband, but "again left him after his declaration of love for the other woman."¹⁶⁶ This was undoubtedly an unpleasant episode that George wished to forget; but if his entry in *Who Was Who* is any indication, his clerkship with McReynolds also was not an experience that he recalled fondly.

Norman Burke Frost clerked for McReynolds for three days during April of the 1919 Term; for the full 1920 Term, during which he was treated for chronic indigestion; and for six weeks in the midst of the 1921 Term.¹⁶⁷ Frost was born in Montgomery County, Maryland, in 1897, and attended the Washington Preparatory School. In 1918 he married Mary Demova King, with whom he had three children. Frost served in the American Expeditionary Forces in 1918 and 1919, and was attached to the staff of the Ambassador Henry White at the Paris Peace Commission. He took his L.L.B. from Georgetown in 1921, and was admitted to the D.C. Bar in 1922. He was associate counsel to the London Landreau Arbitration between the United States and Peru in 1922.¹⁶⁸ Later that year he formed the Washington firm of Frost and Towers with Frederic Towers.¹⁶⁹ The firm, which expanded to a five-lawyer practice in 1955, counted among its clients President Abraham's Lin-

coln's son Robert Todd Lincoln, the former Secretary of War who had helped Frost to get started in practice and with whom Frost shared a close social friendship; the estate of Robert Todd Lincoln's widow and the daughter of Senator James Harlan, Mary Harlan Lincoln; and Sperry Rand, Textron, and other Fortune 500 companies.¹⁷⁰ His practice ranged from tax matters¹⁷¹ to government contracts,¹⁷² patents,¹⁷³ torts,¹⁷⁴ workers' compensation,¹⁷⁵ and a variety of contract, corporate, and trust matters.¹⁷⁶ Frost continued to enjoy a successful Washington law practice with Frost, Towers, Hayes & Beck until his death at the age of seventy-five in 1973, the year that the firm merged with Baker & Hostetler.¹⁷⁷

One of Frost's more interesting negotiations occurred early in his practice. In October



Norman B. Frost was McReynolds' clerk for October Term 1920, but he also filled in on two other occasions when the Justice needed him—April 9 to April 11, 1920, and January 19 to March 1, 1922. He went on to enjoy a successful career with the Washington firm of Frost, Towers, Hayes & Beck.

of 1927, a little over a year after Robert Todd Lincoln's death, Mary Harlan Lincoln was contacted by Myra Pritchard and her attorney. Ms. Pritchard was the granddaughter of Myra Bradwell, the famous editor of the *Chicago Legal News* who had been denied admission to the Illinois bar because of her sex, and her husband, Judge James Bradwell. Ms. Pritchard had in her possession several letters that Mary Todd Lincoln had written to the Bradwells in the 1870s, before, during, and after Mrs. Lincoln's commitment to an insane asylum by her son, Robert. Relying upon these missives, Ms. Pritchard had produced for intended serial publication a 111-page manuscript entitled "The Dark Days of Abraham Lincoln's Widow, as Revealed by Her Own Letters." Mrs. Lincoln's letters from this period did not reveal the former first lady at her best, and they contained some rather unfavorable recriminations against Robert. Mary Harlan Lincoln, who objected to the publication of the content of some of the more inflammatory letters, engaged the assistance of Frost and Towers. The young attorneys were aware that their friend and former client Robert Todd Lincoln had attempted to collect and destroy all of the letters that his mother had written relating to her mental illness. After meeting with Ms. Pritchard and reviewing the materials, Frost and Towers successfully negotiated the purchase of the letters and the manuscript, along with a non-publication agreement, for \$22,500.¹⁷⁸ Mary Harlan Lincoln apparently destroyed the originals,¹⁷⁹ but Towers retained copies, which were discovered in a steamer trunk nearly eighty years later.¹⁸⁰

In 1943 and 1944, Frost was the chairman of the United States Air Force Price Adjustment Board, and in 1944 he was honored with the Exceptional Civilian Service award. He served as an officer or director of several corporations, and was a trustee of two charitable foundations. Frost was an Episcopalian, a Mason, and a member of several professional organizations. He was also a

member of several clubs, including Burning Tree and Chevy Chase,¹⁸¹ and was an avid golfer.¹⁸² Indeed, in 1945 he secured a patent for his own design of a golf glove for players using the Varden grip.¹⁸³ And this was neither his only nor his most sophisticated invention. Five years earlier, he and Harry F. Vickers of Detroit had secured a patent for an Apparatus for Controlling the Movement of Heavy Masses, such as machine tool tables, guns, gun turrets, and torpedo tubes.¹⁸⁴ In 1951, Frost's daughter Norma married Wilson Patrick Hurley, the son of President Hoover's Secretary of War Patrick J. Hurley.¹⁸⁵ His daughter Betty married Webb Cook Hayes III, the great-grandson of President Rutherford B. Hayes.¹⁸⁶ Both Frost's *Washington Post* obituary and his entry in *Who Was Who* mention his service as a law clerk at the U.S. Supreme Court, but neither makes any mention of Justice McReynolds.¹⁸⁷

The 1921 Term was a banner year for McReynolds: including Frost, he appears to have gone through four clerks during the course of that term. Carlyle Baer attended James Milliken University in Decatur, Illinois, and worked as the assistant to the district superintendent of the Public Service Corporation of Northern Illinois from 1910 to 1915. That year he resigned to attend law school at Cumberland University, from which he received his law degree in 1916.¹⁸⁸ During World War I he served as an ensign in the Navy.¹⁸⁹ In 1917 he was made an honorary consul of Haiti, in which post he served from Chicago.¹⁹⁰ During this same period he also worked briefly as a legal research assistant to Glenn Plumb, counsel to the Brotherhood of Railway Engineers,¹⁹¹ and as Chicago's Commissioner of Deeds.¹⁹² In 1919 Baer began working as an adviser to the Bulgarian envoy to the United States in Washington.¹⁹³ He left that post to join McReynolds, whom he served for just over two months, beginning November 15, 1921 and resigning effective January 18, 1922. He then returned to service with the Bulgarian envoy.¹⁹⁴ By 1925 he had

become the law librarian of the Sydney Fuller Smith Library of the Sigma Nu Phi legal fraternity in Washington.¹⁹⁵ He held the post at least until 1936.¹⁹⁶ In 1933 he was named honorary consul of Bulgaria,¹⁹⁷ and in 1937 he was elevated to honorary consul general. He served in that capacity until 1941, when the circumstances of the Second World War required his resignation.¹⁹⁸ For this service he was decorated by Bulgaria's King Boris III.¹⁹⁹ During World War II, Baer went to work for the Justice Department as a special inspector in the Immigration and Naturalization Service. He later worked as a research analyst and legal assistant in the Department's Lands Division,²⁰⁰ and remained with the Justice Department until his retirement.²⁰¹ He was secretary-treasurer of the American Society of Bookplate Collectors and Designers, and published several books on the subject.²⁰² He died in Washington at the age of seventy-nine in 1969.²⁰³

Andrew P. Federline, who worked as a stenographic clerk for McReynolds from March 1 to June 30, 1922,²⁰⁴ was a member of the District of Columbia Bar and of the Bar of the Supreme Court of the United States.²⁰⁵ Early in his career he served as secretary to Robert Todd Lincoln.²⁰⁶ For a number of years he was legislative and legal counsel to the American Automobile Association, and in the 1920s then-Secretary of Commerce Herbert Hoover tapped Federline to serve as the secretary of the committee charged with drafting the Uniform Vehicle Code.²⁰⁷ In the 1940s and 1950s, he worked as Washington counsel to organizations representing salesmen and saleswomen.²⁰⁸ By 1956 Federline was working as a highway safety consultant,²⁰⁹ and he published a fascinating article on the need for standardization in truck and truck body lighting in *Power Wagon: The Motor Truck Journal*.²¹⁰ He died in Bethesda, Maryland, in May of 1977.²¹¹

Tench Tilghman Marye, also a member of the storied McReynolds Class of 1921,²¹² was a descendant of Lieutenant Colonel

Tench Tilghman, who served as an aide to General George Washington during the Revolutionary War. He was born in Washington in 1889,²¹³ graduated from its Western High School in 1905, took his A.B. from George Washington University in 1909,²¹⁴ and received his L.L.B. from Georgetown in 1911.²¹⁵ From 1909 to 1912 he worked as a stenographer for a Washington law firm before leaving to practice law from 1912 to 1917.²¹⁶ He also served as an instructor in law at Georgetown from 1915 until 1917, when he enlisted as a private in the Marine Corps Reserve and was later commissioned as a second lieutenant in the Navy's Office of the Judge Advocate General.²¹⁷ After his honorable discharge in 1919, he worked for a year as a legal assistant to the general counsel of the War Finance Corporation²¹⁸ before moving to San Francisco to work for less than a year in the editorial department of the Bancroft-Whitney legal publishing company.²¹⁹ His tenure with McReynolds lasted only three months, from March 1, 1922 to May 31 of that year.²²⁰ It appears that he was hired only to complete the 1921 Term, and either was not asked or did not agree to remain longer. After leaving McReynolds, Marye was admitted to the Supreme Court bar²²¹ and returned to a small but active private practice representing clients in probate, property, employment, contract, and personal injury matters.²²² In 1933, he married the former Delores Powell of Florence, South Carolina. Ms. Powell had been married twice before, and had two sons from those marriages. In early 1934, with sponsorship from Senator Harry Byrd and Representative Howard W. Smith, Marye joined fellow McReynolds alumnus T. Ellis Allison as an examiner in the Review Division of the National Recovery Administration, where he provided analyses of codes of fair competition and executive orders. Within months he would be promoted to unit chief of the division. In early 1936, Marye moved from the defunct N.R.A. to the Social Security Board and then to the Federal

Security Agency, where he remained until the summer of 1943. He then was called back to active duty with the Army, which he served in London and later in occupied Berlin as an attorney under Charles Fahy in the Legal Division of the War Department's Office of Military Government (OMGUS). After his discharge at the rank of lieutenant colonel in the summer of 1947, he remained in Germany as a civilian judge trying civil and criminal cases in a special tribunal of OMGUS, and later for the State Department's High Commission of Germany (HICOG). Somewhere along the line he had his left thumb amputated.²²³ The widely traveled Marye spoke and read five languages—French, Spanish, German, Italian, and Russian—and he was very keen to remain in Europe after his term of service with HICOG concluded in 1952. Unfortunately, that could not be arranged, so the Maryes returned to the United States and settled in Glen Ellyn, Illinois, where Tench worked as a hearing examiner for the Social Security Administration until his retirement in March of 1959.²²⁴ They then returned to Washington, where Tench worked for the Legal Aid Society, mostly as a volunteer.²²⁵ The Maryes retired to Melbourne, Florida in April of 1971, and were killed in a single-car accident in Rowland, North Carolina that December.²²⁶

The Later Clerks

John T. Fowler, Jr., clerked for McReynolds from the 1922 Term through the 1926 Term.²²⁷ Fowler was a native Washingtonian²²⁸ who attended Strayer's Business College and married Cora Wood in 1912 at the age of twenty-two.²²⁹ He worked for the Southern Railway Company in various capacities from 1908 to 1921, excepting the years 1918 to 1920, when the Railway was under the control of the U.S. Railroad Administration and Fowler worked as the Administration's assistant chief in the Pas-



A native Washingtonian, John T. Fowler, Jr., clerked for McReynolds from the 1922 Term through the 1926 Term. In 1934 Fowler (pictured) became an attorney in the office of the assistant solicitor general, and joined Stanley F. Reed and Paul Freund in co-authoring the petition for a writ of certiorari in one of the *Gold Clause Cases*.

senger Rate Department.²³⁰ He took his law degree from Georgetown in 1921.²³¹ Later that year he entered practice with Howard Boyd and Charles Galloway,²³² where he represented a twenty-five-year-old bricklayer named Albert E. Pickles, who had "soured on his name" and wished to change his surname to "Sickles." Mr. Pickles's petition stated that "his real name is a great source of annoyance not to mention material for byplay."²³³ Fowler was admitted to the Supreme Court Bar in 1925,²³⁴ and after his clerkship with McReynolds he took a job in the Admiralty Division of the Department of Justice.²³⁵ In 1932 he was appointed special assistant to the Attorney General.²³⁶ In 1934 he became an attorney in the office of the assistant solicitor general,²³⁷ and joined Stanley Reed and Paul Freund in co-authoring the petition for a writ

of certiorari in one of the *Gold Clause Cases*,²³⁸ the ultimate government victory in which caused McReynolds to exclaim from the bench, "This is Nero at his worst. The Constitution is gone."²³⁹ During his career with the Justice Department, Fowler served as acting assistant solicitor general on several occasions.²⁴⁰ He retired from the Department due to illness after more than three decades of service in 1952, by which time he had become the Department's chief opinion attorney and editor of the Official Opinions of the Attorney General of the United States.²⁴¹ He was an active Mason,²⁴² and volunteered with the Red Cross.²⁴³ Fowler retired to Denver, where he died at the age of sixty-three in 1953. He left a widow and two children.²⁴⁴

Chester Gray, another McReynolds short-timer, clerked for the Justice for just one month during the 1925 Term. Gray was born in 1898 in Pittsburgh, where he attended public schools and Martin's Business College. He began his work life as an office boy for the Carnegie Steel Company, becoming proficient in shorthand by the age of sixteen. Following his service as a clerk in the Office of Naval Intelligence during World War I, ironically enough, he served for nearly two years as confidential secretary to then-assistant secretary of the Navy and future McReynolds nemesis Franklin D. Roosevelt. He then worked as a secretary for the Treasury Department for almost two years and for the Department of Justice for one year. Gray attended the Emerson Institute in Washington and received his law degree in 1925 from the National University Law School, where the editors of the yearbook predicted that he would become "Dean of Northwestern University." He was admitted to the District of Columbia bar later that year. Gray's tenure with McReynolds lasted only from February 25, 1926 to March 23, 1926. His departure before the conclusion of the 1925 Term suggests that the position with the Justice may not have been a good fit. After leaving McReynolds, Gray married the former Ruth

Hungerford of Wilkes-Barre, Pennsylvania, and worked briefly in private practice before joining the Washington, D.C. Corporation Counsel's office in 1928. He worked continuously in that office for the remainder of his career. By 1938 he had risen to the position of chief trial counsel, and in 1956 he became the District of Columbia's chief legal officer. He died of a coronary thrombosis at the age of sixty-seven in 1965. He was a Fellow of the American College of Trial Lawyers and a member of many professional associations. A Methodist and a Mason, Gray was survived by his wife, a daughter, and two grandchildren.²⁴⁵

At Gray's death District Commissioner Walter N. Tobriner remarked, "'The District of Columbia will feel a deep loss in the passing of Chester Gray. . . . For the greater portion of his life he served the city with an unflagging zeal and tremendous learning in the law. . . . The Commissioners have lost a most valuable servant and the community a protector of the rights of all.'"²⁴⁶ The *Washington Post* praised Gray's "extraordinary tact and patience" as "indispensable assets," and opined that "Chester Gray's long and dedicated service to the District of Columbia richly deserved" Tobriner's "warm tribute."²⁴⁷ Gray consistently received strong performance evaluations, which characterized him as "a prodigious worker" of "exceptional competence" and "devotion to duty" who handled even the most difficult cases with "outstanding" "diligence, tact, and professional skill." He also was credited with inculcating "high standards of practice of the law and public service" among his subordinates while engendering "extremely high" morale among his staff. A memorandum in his employment file observed that he had "guided the District of Columbia through many stormy incidents, untied numerous legal knots, drafted much important legislation, handled major litigation of the community, and ably and brilliantly defended in court the District, its officers and employees." The



Maurice J. Mahoney clerked for McReynolds for seven Terms (1927–1933), making him his longest-serving clerk. Born in the small town of Blythe, Georgia, Mahoney's Southern upbringing may have helped him to get along with the Kentucky-born Justice.

memorandum praised Gray for driving loan sharks out of the District, and for contributing “substantially to the legal position taken in *Berman v. Parker*,” the Supreme Court’s landmark 1954 eminent domain decision.²⁴⁸

Not everyone took such a favorable view of Gray. Earlier in 1965, the local ACLU had called for Gray’s removal over dissatisfaction with his enforcement of the District’s fair housing law,²⁴⁹ which Gray had drafted.²⁵⁰ Critics also charged that the District’s fair employment law, drafted in part by Gray, was insufficiently tough, and denounced his failure to pursue injunctive relief rather than exclusively criminal penalties against violators.²⁵¹ George Washington University Professor Monroe Freedman mounted a bumper-sticker campaign calling for Gray’s ouster.²⁵² When Tobriner was named president of the District’s Board of Commissioners in 1961, “the Democratic Central Committee asked him to fire . . . Gray, considered by some

Democrats to be too reactionary for the 1960s.”²⁵³ At the same time, the House of Representatives District Committee, headed by Democrat John L. McMillan of South Carolina, launched an investigation into whether the District Commissioners had exceeded their authority by banning racial discrimination in housing, employment, and at barbershops.²⁵⁴ Each of these prohibitions had been enacted based on Gray’s legal opinions that the Commissioners in fact possessed such authority.²⁵⁵

Gray’s obituary in the *Washington Post* opined that it was “ironic” that “most of the criticism directed against Mr. Gray’s office in recent months has been mounted by civil rights groups charging that the office drags its feet on regulatory interpretations in the civil rights field,” because Gray’s associates thought that he would “be longest remembered . . . for his work with the so-called ‘lost’ segregation laws before the United States Supreme Court.”²⁵⁶

The litigation referred to, *District of Columbia v. John R. Thompson Co.*, involved the questions of a) whether the Legislative Assembly of the District of Columbia had been authorized by the Organic Act of 1871 to enact an 1873 law prohibiting certain businesses from refusing to serve persons on the basis of race, and b) whether that law had survived subsequent enactments, including congressional statutes reorganizing the District’s government. The case was a prosecution by information against the Thompson restaurant chain, which refused to serve African-Americans. The Municipal Court had quashed the information on the ground that the Act had been repealed by subsequent legislation, but the Municipal Court of Appeals had reversed on that count. On cross-appeal the Circuit Court of Appeals for the District of Columbia held that the Act had been repealed and that the information should be dismissed. Chester Gray argued the case for the District before the Supreme Court on *certiorari*, and a unanimous Bench, Justice

Jackson not participating, held that the law was valid and still in effect.²⁵⁷

The *Post* obituary remarked that “Mr. Gray argued the validity of the ‘lost’ laws and was vindicated in the landmark opinion that reversed the United States Court of Appeals,”²⁵⁸ and a memorandum in Gray’s employment file credited Gray with taking up “the cudgels against discrimination.” “He researched the law, concluded that the enactments of 1872 and 1873 prohibiting discrimination in restaurants were still valid, though they had lain dormant for seventy-five years, and fought through all the courts. . . . Thus, Mr. Gray, through persistent effort, made the first great contribution to the striking down of race barriers in the Nation’s Capital.”²⁵⁹ When Gray died, the *Washington Post* editorialized that “[w]hat the city needs . . . is precisely the kind of legal pioneering Chester Gray displayed more than a decade ago when he discovered and disinterred and breathed life into those ‘lost’ segregation laws in the Thompson Restaurant case.”²⁶⁰

Philip Elman, who argued the case for the United States as *amicus curiae*, offered a different assessment. In an interview published in 1987, Elman recalled that “Vernon West, corporation counsel of the District of Columbia, and his deputy, Chester Gray, were old-line southerners who didn’t believe in the case and had brought it only in response to a lot of pressure. They were perfectly willing to drop the case after losing it in the court of appeals.” Elman reported that “Somebody, probably [Attorney General Herbert] Brownell, called the corporation counsel of the District of Columbia and said, ‘We want you to file a petition for *certiorari*.’ This was a new administration; the Eisenhower group had just come in. The D.C. officials weren’t sure what was going to happen to them, so they were quick to do what they were told to do by the new Attorney General.” Elman’s argument before the Court “went very well,” Elman reported, and his boss was “pleased with the

way I handled it.” But “Chester Gray, who argued for the District of Columbia,” Elman concluded, “didn’t make a very strong argument.”²⁶¹

Maurice J. Mahoney holds the McReynolds clerkship endurance record. Mahoney’s tour of duty began with the 1927 term and, with the exception of a brief stint at the Department of Justice in the summer of 1929, ran through the 1933 term.²⁶² Mahoney’s southern roots may have helped in his relations with the Justice. He was born in 1899 and raised in Blythe, Georgia, where he was educated in the public schools. Following his graduation from high school in 1915, Mahoney remained in his hometown to work as a clerk, telegraph operator, and station agent for the Georgia & Florida Railroad. In 1917 he moved to Macon to attend Mercer University and to enroll in shorthand and bookkeeping courses at Georgia-Alabama Business College. He then relocated to Savannah to work as a clerk, stenographer, and secretary in the office of the president of the Central of Georgia Railway. In 1921 Mahoney departed for Washington, D.C., where for the next five years he worked as an accountant and assistant to the Auditor of the District’s Supreme Court, which in 1936 was renamed the District Court for the District of Columbia. During this time he took evening law classes at Georgetown, from which he received his law degree in 1925. He then practiced law in Washington for two years before joining McReynolds for the 1927 Term. After two terms with McReynolds, Mahoney left to join the staff of the Admiralty Division at the Department of Justice, but within a month he resigned and “returned to Justice McReynolds at his urgent request.”²⁶³ Following his clerkship, Mahoney worked for several years as a highly regarded attorney in the Tax Division of the Department of Justice.²⁶⁴ In 1943, he formed the firm of Mahoney & Mahoney with his brother Lawrence, who headed the firm’s Atlanta office while Maurice took charge of the

Washington branch.²⁶⁵ One of Mahoney's largest clients was the Copperweld Steel Company,²⁶⁶ which he served as assistant treasurer,²⁶⁷ and in 1949 he became the company's Executive Secretary.²⁶⁸ He held this position until his retirement in 1964,²⁶⁹ though he continued to practice law until at least 1976.²⁷⁰ Mahoney died in 1978, leaving a widow, two children, and nine grandchildren.²⁷¹

J. Allan Sherier clerked for McReynolds during the 1935 Term,²⁷² immediately after taking his L.L.B. from George Washington



A native of Utah and the son of an outspoken advocate of polygamy, Milton S. Musser clerked for McReynolds during the 1938–39 Terms. He joined the Army Corps of Engineers in 1941, supervising internal security at construction sites in the Western Hemisphere. In 1943 he was moved to the office of the Inspector General, where he conducted special investigations involving, among others, alleged fraud in the construction of the Pan American highway. After he had established a law practice in Los Angeles, the Army recalled Musser from the Reserves in 1951 to active duty as an investigator with the Inspector General. Headquartered in Panama, he conducted investigations throughout Central and South America.

University Law School. Sherier was a fourth-generation Washington native.²⁷³ His father, Joseph T. Sherier, practiced law in Washington for fifty-five years before passing away in 1960 at the age of seventy-nine. The senior Sherier had attended Columbian University Law School at night while working a day job as secretary to American Federation of Labor president Samuel Gompers.²⁷⁴ Allan learned secretarial skills at Strayer's Business College, and worked as his father's secretary and law clerk while attending law school. After his clerkship with McReynolds, Allan went into a general law practice with his father at the small Washington firm of Leckie & Sherier, where periodic Martindale-Hubbell listings indicate that Allan retained his affiliation from at least 1938 through 1955.²⁷⁵ He enlisted in the Naval Reserve as a chief yeoman in the Office of Naval Intelligence in January of 1941, but received an inaptitude discharge within five months because he was "unable to adapt himself to naval discipline" and was "temperamentally unsuited for military service." He re-entered private practice until 1943, when he took a war service appointment as an attorney for the War Department's Office of the Chief of Engineers. In 1944 he became dissatisfied with his position and resigned, explaining that "I feel that my experience and educational background justify my seeking more important and suitable employment." He obtained a transfer to the Legal Division of the Reconstruction Finance Corporation's (RFC) Defense Plants Section, and remained as an attorney with the RFC until 1952. After a brief stint with the Small Defense Plants Administration, Sherier joined the legal office of the Small Business Administration (SBA) in 1953. Save for a hiatus to serve as general counsel to the House Small Business Committee in 1961 and 1962, he remained with the SBA until 1965. That October, Sherier resigned "[t]o pursue the private practice of law or to become affiliated again with the legislative branch of the Federal Government." Before the year was

out the fifty-two-year-old would meet an untimely end when he choked to death while having a Friday dinner at an Arlington restaurant. Twice divorced, he was survived by his third wife and two daughters.²⁷⁶

Milton Shipp Musser clerked for McReynolds during the 1938 and 1939 Terms.²⁷⁷ Musser came from an extraordinary family of polygamous members of the Church of Jesus Christ of Latter-day Saints. His grandfather, Amos Milton Musser, was born in Lancaster County, Pennsylvania in 1830. Amos's father died when Amos was two, leaving a widow and four young children. Amos's mother, Ann Barr Musser, remarried and the family moved to Quincy, Illinois. It was there that Ann was converted to the Mormon faith, and after her second husband died, she took the family to the Mormon settlement of Nauvoo, Illinois in 1846. By that time many of the Latter-day Saints had begun their westward journey, and Amos and his family, along with the other remaining Mormons, were driven across the Mississippi by an Illinois mob shortly after their arrival in Nauvoo. Amos worked as a clerk in an Eddysville, Iowa store for five years before being baptized and beginning his own trek to the Great Salt Basin in 1851.²⁷⁸

Amos arrived in Salt Lake City later that year at the age of twenty-one. He worked briefly as a clerk in the Church's General Tithing Office before embarking in 1852 on a five-year mission to India, during which he traveled widely. Upon his return to Utah he became intensely involved in the spiritual and temporal affairs of his people, serving in a variety of leadership positions throughout the late nineteenth century. He was a prolific writer and publisher, and a staunch defender in speech, writing, and deed of the principle of plural marriage. He married four wives, with whom he had twenty-six children, and served a six-month sentence for unlawful cohabitation in 1885. When he died in 1909 he left two widows, sixteen surviving children, twenty-two grandchildren, and four great-grandchildren.²⁷⁹

Milton's father was Joseph White Musser. Joseph, who pursued a struggling business attempting to develop oil and gas properties, was a prominent polygamist long after the Church had formally renounced the practice in the 1890 Woodruff Manifesto. This husband to four wives claimed that high officials of the Church had encouraged him to practice polygamy in order to keep it alive in the years following the issuance of the Manifesto. He openly advocated plural marriage in the fundamentalist magazine, *Truth*, of which he was the publisher. His arrest by federal officers in 1944 led to a term in prison. Joseph remained convinced throughout his life that his advocacy and practice of plural marriage would be justified, in heaven if not on earth. His personal papers are said to depict "a religious zealot, a loving father who regretted his absence from home, a tender and apologetic husband, a hard-working businessman, and a dreamer." He died in 1954.²⁸⁰

Milton's mother was Ellis Shipp Musser, whose own mother was the well-known Dr. Ellis Reynolds Shipp, the first female physician in Utah. Early in the early twentieth century the younger Ellis moved to Heber City, Utah, where she taught school. She met Joseph there, and their courtship began. They engaged in a substantial correspondence before Ellis reached a firm decision to enter into a polygamous marriage with Joseph. Their correspondence, which began shortly after their meeting and continued until Joseph's death, was often addressed with code names such as Ruth and Samuel or Child and Guide. Later in life Ellis expressed regrets about her polygamous union. It had deprived her of the steady companionship of a husband, she said, and her children of the presence of their father. As the nominal head of four households, Joseph was constantly shuttling from one home to another. His leadership of a fundamentalist religious sect called for him to preach and publish tracts. These tasks also took time away from his family, as did his prison term. And his unsuccessful efforts to

place his family on secure financial footing also necessitated a great deal of travel. The family's financial situation required other sources of income, and, with five children to raise, Ellis rose to the challenge. At a time when comparatively few women entered business, she earned extra income as an insurance agent. Her success enabled her to support two of her sons on Church missions and to help her children through school.²⁸¹

In 1944, the year of Joseph's arrest, Ellis was excommunicated by the Mormon Church. Though she never lost her faith, this shocking experience embittered her toward plural marriage, and toward what she felt was hypocrisy on the part of some Church officials who had, she claimed, accepted her tithes and the missionary labors of her sons while fully aware that she was a plural wife, yet never rallied to her support when the family was in need.²⁸²

Ellis was an avid proponent of higher education. She received a Bachelor of Arts degree from the University of Utah in 1907. In her later life she took courses at the University of California at Berkeley, and at the age of seventy she was the oldest student at the University of Utah. She took great pride and pleasure in the accomplishments of her children.²⁸³

Her son Milton was born in Salt Lake City in 1911, and graduated from Latter-day Saints High School. Milton also attended LDS Junior College and LDS Business College, where he learned shorthand²⁸⁴—a necessity for a McReynolds clerk²⁸⁵—and business fundamentals. In 1930, he began a two-year Church mission in the British Isles, working in his second year in the European Mission Office in Liverpool. Upon his return to the United States, Musser matriculated at George Washington University, where he received first his bachelor's degree, and then his law degree in 1938. He served on the staff of the *George Washington Law Review* and was a member of Sigma Chi, from which he received the Balfour Province Award as

“the most representative undergraduate” in the Fraternity's Eastern Province, “In token of his excellence in scholarship, personality, Fraternity service and student activity.” In 1932, Musser was employed as a secretary and clerk to the Reconstruction Finance Corporation, and in 1933 and 1934 he worked as a legislative researcher on the staff of Utah Senator William H. King, who had defeated George Sutherland for the seat in 1916. From 1934 to 1938, Musser served as a law clerk to District of Columbia municipal court judge Nathan Cayton.²⁸⁶

It was at this point that Musser went to work for McReynolds for two terms.²⁸⁷ One might think that a promotion from clerk to a municipal court judge to clerk for a Supreme Court Justice would merit notice. But young Musser found the experience so distasteful that it is not even mentioned in the Biographical Note to the Musser Family Papers Finding Aid at the Utah Historical Society.²⁸⁸ On April 18, 1940, fellow McReynolds clerk John Knox wrote in his diary that he had received “a long and confidential letter” from Gertrude Jenkins, Justice Harlan Fiske Stone's secretary. “Concerning my old boss, Justice McReynolds, Gertrude wrote: ‘He certainly is a mess. . . . Musser hates him and is leaving the end of this year.’”²⁸⁹

After a year of practice with the Washington firm of Roberts & McInnis, Musser enlisted in the Army. He served on active duty from April of 1941 to November of 1945, rising to the rank of lieutenant colonel. He began with the Army Corps of Engineers, supervising internal security at construction sites in the western hemisphere. In 1943 he was moved to the office of the Inspector General, where he conducted special investigations involving, among others, alleged fraud in the construction of the Pan American highway.²⁹⁰ After his release from active duty, Musser settled in southern California. He worked for a year as assistant trust counsel at the head office of Security-First National Bank, and then joined

with Woodrow S. Wilson to form Musser & Wilson, a private law firm specializing in tax, corporate, probate, and trust matters. In 1948 and 1949 he taught Securities and Conflict of Laws at Southwestern University Law School.²⁹¹

The Army recalled Musser from the Reserves to active duty as an investigator with the Inspector General in 1951. Though his first assignments took him to various parts of the United States and Europe, he was later headquartered in Panama. From this office he conducted investigations throughout Central and South America, where he frequently met with heads of government, their military chiefs, and the United States' ambassadors and other consular officials. He received strong performance reviews and several commendations and awards, and was disappointed when his application for integration in the regular Army as a Colonel in the Judge Advocate General Corps was declined in 1958. Musser concluded his military career in 1959 with an assignment in Washington, D.C., whereupon he returned to private practice with Musser & Wilson.²⁹² The firm's clients included Lawrence Welk, Liberace, and Betty White.²⁹³ Musser continued to practice until 1968.²⁹⁴ After Milton's death in 1986,²⁹⁵ his law partner Wilson married Milton's widow, Laveda, with whom Musser fathered three children.²⁹⁶

Musser's successor, and McReynolds' last clerk, was Raymond Wallace Radcliffe, who served for the portion of the 1940 Term preceding McReynolds' retirement in February of 1941.²⁹⁷ Radcliffe was born in 1914 in Washington, the son of Dr. and Mrs. Lewis Radcliffe. Dr. Radcliffe was a naturalist and conservationist who was serving as the director of the Oyster Institute of America at his death in 1950 at the age of seventy. His previous positions included deputy commissioner of the Bureau of Fisheries and executive secretary of the Sponge Institute. His son Raymond graduated from the old Central High School, took a degree from

Strayer's Business College in 1936, and earned his L.L.B. and L.L.M. from National University in 1941 and 1943, respectively. In 1942 Raymond married Mary Denison Hope of Chattanooga, Tennessee. Before joining McReynolds, Raymond worked as a secretary for a variety of commercial concerns, a law clerk and stenographer for a Washington lawyer and the Public Roads Administration, an adjudicator for the Social Security Board, and an assistant clerk in the War Department. After McReynolds' retirement Raymond returned to his position in the War Department, resigning in November of 1941 to take a job as a personnel investigator for the Civil Service Commission. In 1946 he left to embark on a career as a real estate broker in Prince George's County. In 1966 he established his own real estate firm, which he continued to operate until his death of a heart ailment at the age of sixty-seven in 1982. Radcliffe was a member of the Izaak Walton League "Hall of Fame," an honor bestowed upon him for his work in conservation. A widower, he left one daughter.²⁹⁸

Author's Note: Thanks to Patty Cushman, Clare Cushman, and Dennis Hutchison for helpful comments, and to Patrick Bottini, Carli Conklin, Anna Crandall, Trez Drake, Jessica Ettinger, Samantha Glass, Dwight King, Beth Klein, Lisa Meissner, and Chris O'Byrne for indispensable research assistance.

ENDNOTES

¹ Albert P. Blaustein & Roy M. Mersky, *Rating Supreme Court Justices*, 58 A.B.A. J. 1183 (1972); ALBERT P. BLAUSTEIN & ROY M. MERSKY, *THE FIRST ONE HUNDRED JUSTICES: STATISTICAL STUDIES ON THE SUPREME COURT OF THE UNITED STATES* 32-51 (1978); William G. Ross, *The Ratings Game: Factors That Influence Judicial Reputation*, 79 MARQ. L. REV. 401, 445-49 (1996). Sutherland has slipped in more recent years. In the 1972 Blaustein and Mersky poll he was included among fifteen "near great" Justices, placing him in the top twenty-seven of all time. In the 1993 poll Sutherland fell to fifty-ninth out of 106,

placing him in the forty-fourth percentile. Van Devanter placed 100th, Butler 103rd, and McReynolds dead last.

² There is no published biography of Van Devanter. There are, however, two unpublished dissertations covering various aspects of his early career. See Lewis L. Gould, "Willis Van Devanter in Wyoming Politics, 1884–1897" (unpublished Ph.D. dissertation, Yale University, 1966); and M. Paul Holsinger, "Willis Van Devanter: The Early Years, 1859–1911" (unpublished Ph.D. dissertation, University of Denver, 1964). See also James Joseph McArdle, "The Political Philosophy of Willis Van Devanter" (unpublished M.A. thesis, University of Wyoming, 1955); and James O'Brien Howard, "Constitutional Doctrines of Mr. Justice Van Devanter" (unpublished M.A. thesis, University of Iowa, 1937).

The closest thing that we have to a published biography of McReynolds is James E. Bond's slender volume, *I DISSENT: THE LEGACY OF CHIEF [SIC] JUSTICE JAMES CLARK MCREYNOLDS* (1992). A number of unpublished dissertations have been written about McReynolds. Among the more useful are Barbara Barlin Schimmel, "The Judicial Policy of Mr. Justice McReynolds" (unpublished Ph.D. dissertation, Yale University, 1964); Stephen Tyree Early, Jr., "James Clark McReynolds and the Judicial Process" (unpublished Ph.D. dissertation, University of Virginia, 1954); Doris Ariane Blaisdell, "The Constitutional Law of Mr. Justice McReynolds" (unpublished Ph.D. dissertation, University of Wisconsin, 1952); and John B. McGraw, Jr., "Justice McReynolds and the Supreme Court: 1914–1941" (unpublished Ph.D. dissertation, University of Texas, 1949). See also Robert D. Hill, "James Clark McReynolds: Prosecutor and Judge" (unpublished S.B. thesis, Harvard University, 1942); and STIRLING PRICE GILBERT, *JAMES CLARK MCREYNOLDS (1862–1946): JUSTICE OF THE SUPREME COURT OF THE UNITED STATES OF AMERICA* (1946).

There are two book-length studies of Sutherland's jurisprudence, and while each contains some biographical information, neither purports to be a biography. See HADLEY ARKES, *THE RETURN OF GEORGE SUTHERLAND: RESTORING A JURISPRUDENCE OF NATURAL RIGHTS* xii (1994); JOEL FRANCIS PASCHAL, *MR. JUSTICE SUTHERLAND: A MAN AGAINST THE STATE* vii (1951). Alpheus T. Mason, *The Conservative World of Mr. Justice Sutherland, 1883–1910*, 32 AM. POL. SCI. REV. 443 (1938) covers Sutherland's early career. The best unpublished dissertation on Sutherland is Jane J. Mansbridge deLong, "Brandeis and Sutherland: Apostles of Individualism" (unpublished Ph.D. dissertation, Harvard University, 1970). Also useful are James Morrill Banner, Jr., "Mr. Justice Sutherland and the Social Welfare" (unpublished M.A. thesis, Columbia University, 1961); and Jay Benson

Saks, "Mr. Justice Sutherland: A Study in the Nature of the Judicial Process" (unpublished Ph.D. dissertation, Johns Hopkins University, 1940). Recent helpful discussions include Samuel R. Olken, *Justice Sutherland Reconsidered*, 62 VAND. L. REV. 639 (2009); Samuel R. Olken, *The Business of Expression: Economic Liberty, Political Factions, and the Forgotten First Amendment Legacy of Justice George Sutherland*, 10 WM. & MARY BILL RTS. J. 249 (2002); and Samuel R. Olken, *Justice George Sutherland and Economic Liberty: Constitutional Conservatism and the Problem of Factions*, 6 WM. & MARY BILL RTS. J. 1 (1997).

There is no real biography of Butler. DAVID J. DANIELSKI, *A SUPREME COURT JUSTICE IS APPOINTED* (1964) and FRANCIS JOSEPH BROWN, *THE SOCIAL AND ECONOMIC PHILOSOPHY OF PIERCE BUTLER* each contains some biographical data, but the former is principally about Butler's appointment to the Supreme Court, while the latter is a study of Butler's jurisprudence. In 1944 *The Catholic Educational Review* published a three-part article sketching Butler's life and career. See Richard J. Purcell, *Mr. Justice Pierce Butler*, 42 THE CATHOLIC EDUCATIONAL REVIEW 193–215, 327–41, 420–32 (April, June, and September, 1944). See also Richard J. Purcell, *Mr. Justice Pierce Butler (1866–1939)*, 10 THE RECORDER 33 (1940). The best unpublished dissertation on Butler is David Schroeder, "More Than a Fraction: The Life and Work of Justice Pierce Butler" (unpublished Ph.D. dissertation, Marquette University, 2009). Also instructive is David R. Stras, *Pierce Butler: A Supreme Technician*, 62 VAND. L. REV. 695 (2009).

³ See Willis Van Devanter Papers, Manuscript Division, Library of Congress; James Clark McReynolds Papers, University of Virginia School of Law; George Sutherland Papers, Manuscript Division, Library of Congress; Pierce Butler and Family Papers, Minnesota Historical Society.

⁴ The other is a slim and not particularly revealing essay by Norris Darrell, who clerked for Justice Butler during the 1923 and 1924 Terms. See Norris Darrell, "Some Personal Reminiscences," in "Reminiscences by Alumni Who Graduated Fifty Years or More Ago from the University of Minnesota Law School" (Minneapolis, 1976) (unpublished manuscript on file with the University of Minnesota Law School). For an abridged version of this essay, see "Appendix: Reminiscences of Two University of Minnesota Law Graduates: Norris Darrell," in Robert A. Stein, *In Pursuit of Excellence: A History of the University of Minnesota Law School, Part III: The Frazier Years—A Time of Excellence and Innovation*, 62 MINN. L. REV. 1161, 1202–04 (1978). See also 3 ROBERT T. SWAINE, *THE CRAVATH FIRM AND ITS PREDECESSORS 1819–1948* 175 (1948).

⁵ DENNIS J. HUTCHINSON & DAVID J. GARROW, EDS., *THE FORGOTTEN MEMOIR OF JOHN KNOX* vii-ix, xv-xviii, 5–8 (2002).

⁶ John Knox, *John Knox Diary* (Jan. 22, 1941) (unpublished manuscript available at Knox MSS, Special Collections, University of Virginia, folder 10240-g).

⁷ HUTCHINSON & GARROW, *supra* note 5, at 246.

⁸ See *infra* n.116 and accompanying text; n.289 and accompanying text.

⁹ Arthur Mattson to Willis Van Devanter, July 25, 1929, Van Devanter MSS, LC, Files M-S, quoted in TODD C. PEPPERS, *COURTIERS OF THE MARBLE PALACE: THE RISE AND INFLUENCE OF THE SUPREME COURT LAW CLERK* 69 (2006).

¹⁰ See *infra* note 93, note 94, and note 106 and accompanying text.

¹¹ See Schroeder, “More Than a Fraction,” *supra* note 2, at 79, 128, 150, 153, 180, 234; HUTCHINSON & GARROW, *supra* note 5, at 58. Even those who were critical of Van Devanter’s jurisprudence conceded that he was “courteous” and “likeable.” See DREW PEARSON & ROBERT S. ALLEN, *THE NINE OLD MEN* 198 (1936).

¹² See PASCHAL, *supra* note 2, at 115–17, 233; Jay S. Bybee, *George Sutherland*, in CLARE CUSHMAN, ED., *THE SUPREME COURT JUSTICES: ILLUSTRATED BIOGRAPHIES 1789–2012*, 316–17 (3d ed. 2012); Schroeder, “More Than a Fraction,” at 150–51; TIMOTHY HALL, *SUPREME COURT JUSTICES: A BIOGRAPHICAL DICTIONARY* 281 (2001). Pearson and Allen were even more lavish in their assessment of Sutherland’s temperament, characterizing the Justice as “suave” and “gentle,” blessed with “amiability,” an “inoffensive good nature,” an “agreeable manner,” and a “sweetness of disposition.” PEARSON & ALLEN, *supra* note 11, at 159, 200, 201, 199.

¹³ See Barry Cushman, *The Clerks of the Four Horsemen, Part II*, 40 J. SUP. CT. HIST (2015).

¹⁴ See *id.* Butler clearly was liked and admired by many, including his longtime clerk John F. Cotter. See Schroeder, “More Than a Fraction,” *supra* note 2, at 21–22, 38–40, 50 n.112, 55–56, 79, 82, 90 n.220, 150–54, 167–68, 180–81, 228–29, 233–35, 237–38, 240; Richard J. Purcell, *Mr. Justice Pierce Butler (1866–1939)*, 10 *THE RECORDER* 33, 36–37 (May 1, 1940); Richard J. Purcell, *Mr. Justice Pierce Butler*, *THE CATHOLIC EDUCATIONAL REVIEW* 426–31 (September, 1944); DANELSKI, *supra* note 2, at 9, 11.

¹⁵ HUTCHINSON & GARROW, *supra* note 5, at 119 n.2.

¹⁶ *Id.* at 130–36. McReynolds apparently also pulled this stunt with others of his clerks. *Id.* at 134.

¹⁷ Chester H. Newland, *Personal Assistants to the Supreme Court Justices: The Law Clerks*, 40 *ORE. L. REV.* 312 (1961); see also Employment Record of John

Francis Cotter, National Personnel Records Center, Valmeyer, Illinois, on file with the author (hereinafter “Cotter Employment Record”).

¹⁸ *Id.*; see also Cotter Employment Record.

¹⁹ William D. Donnelly to Hugo L. Black, Aug. 27, 1937, Box 442, Hugo Black MSS, Library of Congress, quoted in PEPPERS, *supra* note 9, at 93.

²⁰ See PEPPERS, *supra* note 9, at 69.

²¹ See I. Scott Messinger, *The Judge as Mentor: Oliver Wendell Holmes, Jr., and His Law Clerks*, 11 *YALE J. L. & HUM.* 119, 120 (1999).

²² Barrett McGurn, *Law Clerks—A Professional Elite*, 1980 *Y. B. SUP. CT. HIST. SOC.* 98, 101.

²³ W. Barton Leach, *Recollections of a Holmes Secretary*, 1941 *HARV. L. SCH. BULL.* 12, 13.

²⁴ McGurn, *supra* note 22, at 101.

²⁵ *Id.* at 102; Messinger, *supra* note 21, at 141 n.90.

²⁶ PEPPERS, *supra* note 9, at 225.

²⁷ McGurn, *supra* note 22 at 102; Norman Dorsen, *Law Clerks in Appellate Courts in the United States*, 26 *MOD. L. REV.* 265, 267 (1963).

²⁸ McGurn, *supra* note 22, at 102.

²⁹ Leach, *supra* note 23, at 12; Messinger, *supra* note 21, at 142 n.90.

³⁰ Messinger, *supra* note 21, at 142 n.90.

³¹ McGurn, *supra* note 22, at 102.

³² *Id.*

³³ Messinger, *supra* note 21, at 142 n.90.

³⁴ McGurn, *supra* note 22, at 102.

³⁵ *Id.*; Messinger, *supra* note 21 at 121, 140.

³⁶ *John Lockwood, 89; Advised Rockefeller*, *N.Y. TIMES*, Sept. 1, 1993.

³⁷ Messinger, *supra* note 21, at 141 n.90.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Leach, *supra* note 23, at 12–13; Messinger, *supra* note 21, at 142 n.90.

⁴¹ Messinger, *supra* note 21, at 142 n.90. Others include Charles K. Poe of the Seattle firm of Poe, Falknor & Emery; Howard Stockton of Warren, Garfield, Whiteside & Lamson in Boston; Leland Duer of Duer & Taylor in New York; Vaughn Miller of Miller, Martin, Hitching & Tipton in Chattanooga; Robert Benjamin of Parker, Duryee, Benjamin, Zunino & Malone in New York; Robert Wales of Miller, Gorham, Wescott & Adams in Chicago; Messinger, *supra* note 21, at 141 n.90; Charles Denby, Jr., Assistant Administrator, Lend-Lease Administration; Messinger, *supra* note 21, at 142 n.90; James M. Nicely, Vice-President of the First City National Bank; Messinger, *supra* note 21, at 142 n.92; and, of course, Alger Hiss. Messinger, *supra* note 21, at 142 n.90.

⁴² McGurn, *supra* note 22, at 98; Dorsen, *supra* note 27, at 267.

⁴³ McGurn, *supra* note 22, at 102; Dorsen, *supra* note 27, at 267.

⁴⁴ McGurn, *supra* note 22, at 102; Dorsen, *supra* note 27, at 267.

⁴⁵ McGurn, *supra* note 22, at 98; Dorsen, *supra* note 27, at 267.

⁴⁶ PEPPERS, *supra* note 9, at 220.

⁴⁷ *Id.*

⁴⁸ McGurn, *supra* note 22, at 102.

⁴⁹ PEPPERS, *supra* note 9, at 220.

⁵⁰ McGurn, *supra* note 22, at 102.

⁵¹ *Id.*

⁵² *Id.*; Myron H. Bright & David T. Smorodin, *A Flawed Tale*, 16 *Loy. L.A. L. Rev.* 205, 216, n.40 (1983).

⁵³ McGurn, *supra* note 22, at 102.

⁵⁴ Bright & Smorodin, *supra* note 52, at 220, n.56.

⁵⁵ McGurn, *supra* note 22, at 102.

⁵⁶ PEPPERS, *supra* note 9, at 232.

⁵⁷ McGurn, *supra* note 22, at 101.

⁵⁸ Blaustein & Merksy, *supra* note 1, at 1184.

⁵⁹ Milton Handler & Michael Ruby, *Justice Cardozo, One-Ninth of the Supreme Court*, 10 *Cardozo L. Rev.* 235, 236 (1988).

⁶⁰ PEPPERS, *supra* note 9 at 232.

⁶¹ Alfred McCormack, *A Law Clerk's Recollections*, 46 *COLUM. L. REV.* 710 (1946).

⁶² McGurn, *supra* note 22, at 102.

⁶³ PEPPERS, *supra* note 9, at 232.

⁶⁴ *Id.*; Howard C. Westwood, *Expert in Airline Law*, 84, *N.Y. TIMES*, March 21, 1994.

⁶⁵ PEPPERS, *supra* note 9, at 232.

⁶⁶ Thomas Harris, 83, *Elections Official and Labor Lawyer*, *N.Y. TIMES*, Feb. 11, 1996.

⁶⁷ McGurn, *supra* note 22, at 102; MICHAEL E. PARRISH, *CITIZEN RAUH: AN AMERICAN LIBERAL'S LIFE IN LAW AND POLITICS* (2010).

⁶⁸ *A Personal View of Justice Benjamin N. Cardozo: Recollections of Four Cardozo Law Clerks*, 1 *Cardozo L. Rev.* 5, 20 (1979).

⁶⁹ HUTCHINSON & GARROW, *supra* note 5, at 272–77; 3 SWAINE, *supra* note 2, at 175; *John Knox*, *CHI. TRIB.*, March 3, 1997, *Metro Chicago*, p. 5.

⁷⁰ Knox Diary, December 28, 1962, Knox Papers, Box 20, Georgetown University Library, quoted in HUTCHINSON & GARROW, *supra* note 5, at 272.

⁷¹ Knox Diary, June 18, 1963, Knox Papers, Box 20, Georgetown University Library, quoted in HUTCHINSON & GARROW, *supra* note 5, at 272.

⁷² HUTCHINSON & GARROW, *supra* note 5, at 272.

⁷³ Willis Van Devanter's clerks' dates of service were provided by the Supreme Court of the United States Library in correspondence dated June 26, 2002 (hereinafter Supreme Court Library Correspondence). While there is no complete list of all Supreme Court law clerks, the Library maintains unofficial internal files relating to clerks' service at the Court, which it recognizes may contain incomplete and unverified information.

⁷⁴ Richard H. Repath Death Certificate (on file with the author).

⁷⁵ JOHN W. DAVIS, *WYOMING RANGE WAR: THE INFAMOUS INVASION OF JOHNSON COUNTY* 259 (2010); T.A. LARSON, *HISTORY OF WYOMING* 288 (2d ed. 1990); *Session Laws of the State Legislature of Wyoming* 7 (1890); *Well Known Cheyenne Man Expires*, *WYOMING STATE TRIB.*, Jan. 11, 1943, p. 1.

⁷⁶ *A Dip Into History*, *WYOMING TRIB.*, Oct. 22, 1904, p. 2.

⁷⁷ 7 *Wyo.* iii (1900); 4 *Wyo.* iii (1898); *Session Laws of the State of Wyoming* 3 (1897); *Senate Journal of the Fourth State Legislature of Wyoming* 457 (1897); *Session Laws of the State of Wyoming* 3 (1895); *Annual Report of the State Auditor of Wyoming for the Year Ending September 30, 1892* App. p. iv (1892); *Session Laws of the State of Wyoming* 7 (1890); *Locals*, *WYOMING COMMONWEALTH*, Oct. 19, 1890; CHRISTINE BOLD, *THE FRONTIER CLUB: POPULAR WESTERNS AND CULTURAL POWER, 1880–1924* 78 (2013).

⁷⁸ *See, e.g., Advertisement*, *CHEYENNE DAILY SUN*, June 5, 1894, p. 4; *Advertisement*, *CHEYENNE DAILY SUN*, May 14, 1893, p. 4; *Advertisement*, *CHEYENNE DAILY SUN*, April 6, 1892, p. 4; *Advertisement*, *CHEYENNE DAILY SUN*, June 9, 1891, p. 2.

⁷⁹ *Short Items*, *CHEYENNE DAILY LEADER*, May 5, 1903, p. 3; *Centered on Wyoming*, *LARAMIE BOOMERANG*, Aug. 30, 1897, p. 8; Employment Record of Richard H. Repath, National Personnel Records Center, National Archives at St. Louis (on file with the author).

⁸⁰ *Short Items*, *CHEYENNE DAILY LEADER*, May 5, 1903, p. 3.

⁸¹ *See, e.g., Leaving for St. Paul*, *WYOMING TRIB.*, Apr. 30, 1910, p. 6; *Personals*, *CHEYENNE DAILY LEADER*, May 31, 1908, p. 4; *Complete Court Session*, *WYOMING TRIB.*, Sept. 26, 1906, p. 5; *Personal Mention*, *CHEYENNE DAILY LEADER*, Nov. 9, 1905, p. 3.

⁸² *Repath Leaves Van Devanter to Go with Judge Riner*, *WYOMING TRIB.*, Sept. 19, 1911, p. 3. Professor Peppers notes that upon Repath's return to Wyoming, he nevertheless "continued to perform services and favors for the justice—paying dues owed to a local Masonic lodge, cleaning out the justice's old Eighth Circuit chambers, and closing bank accounts." PEPPERS, *supra* note 9, at 69, citing Repath to Van Devanter, November 14 and 22, 1916, and January 31, 1917, Willis Van Devanter Papers, General Correspondence File, Manuscript Division, Library of Congress.

⁸³ *See Repath Says It's Hot*, *WYOMING TRIB.*, July 31, 1908, p. 4. Compare Wayne Ford, *Man Says It's Too Hot to Fish*, *ATHENS-BANNER HERALD*, July 16, 2011, available at http://onlineathens.com/stories/071611/oco_857876345.shtml.

⁸⁴ *Repath Leaves Van Devanter to Go With Judge Riner*, WYOMING TRIB., Sept. 19, 1911, p. 3.

⁸⁵ *T.B. Kennedy Chosen to Succeed Riner as U.S. District Judge*, SHERIDAN DAILY ENTERPRISE, Oct. 18, 1921, p. 3; *Repath's Nephew Killed, Is Rumor*, WYOMING STATE TRIB., Aug. 13, 1918, p. 1; *Visiting List*, CHEYENNE DAILY LEADER, Jan. 31, 1917, p. 3.

⁸⁶ *Society*, WYOMING REPORTER, Nov. 9, 1926, p. 6; *General Breakdown Suffered by Kennedy, Illness Is Not Serious*, LARAMIE DAILY BOOMERANG, Sept. 5, 1922, p. 7; *Cheyenne City Directory*, 247, R.L. Polk & Co. (1942); *Cheyenne City Directory*, 224, R.L. Polk & Co. (1939–40); *Cheyenne City Directory*, 195, R.L. Polk & Co. (1937–38); *Cheyenne City Directory*, 180, R.L. Polk & Co. (1933–34); *Cheyenne City Directory*, 188, R. L. Polk & Co. (1929–30); *Cheyenne City Directory*, 198, R.L. Polk & Co. (1928); *Cheyenne City Directory*, 162, R. L. Polk & Co. (1926).

⁸⁷ *Well Known Cheyenne Man Expires*, WYOMING STATE TRIB., Jan. 11, 1943, p. 1; Richard H. Repath Death Certificate (on file with the author).

⁸⁸ See, e.g., PROCEEDINGS OF THE GRAND COMMANDERY OF THE KNIGHTS TEMPLAR AND APPENDANT ORDERS OF THE STATE OF VERMONT 105 (1942); PROCEEDINGS OF THE ANNUAL CONCLAVE OF THE GRAND COMMANDERY OF KNIGHTS TEMPLAR OF THE STATE OF INDIANA 48 (1934); PROCEEDINGS OF THE GRAND COMMANDERY, KNIGHTS TEMPLAR, AND APPENDANT ORDERS, OF THE DISTRICT OF COLUMBIA, ANNUAL CONCLAVE 738 (1914); *Respected Pioneer Is Called to Rest*, WYOMING REPORTER, Nov. 9, 1926, p. 1; *Wyoming Commandery Has Installation of Officers*, CHEYENNE STATE LEADER, Dec. 28, 1917, p.8; *Knights Hold Election*, NATRONA COUNTY TRIB., Apr. 3, 1913, p. 2; *Knight Templars Elect and Install Officers*, CHEYENNE STATE LEADER, Dec. 14, 1909, p. 1; *Commandery Elects Officers for the Year*, CHEYENNE, DAILY LEADER, Apr. 3, 1908, p. 5; *Knight Templar Officers*, WYOMING TRIB., Dec. 18, 1906, p. 6.

⁸⁹ See, e.g., *One Hundred Masons Come for Reunion*, WYOMING STATE TRIB. & CHEYENNE STATE LEADER, June 7, 1921, p. 1; *Installation of Officers by Lodge Perfection*, CHEYENNE STATE LEADER, March 5, 1918, p. 2; *Masons Install Officers for 1918*, CHEYENNE STATE LEADER, Dec. 23, 1917, p. 8; *Officers of the R.A.M.*, LARAMIE REPUBLICAN, Apr. 8, 1910, p. 3; *R.A.M. Officers*, WYOMING TRIB., Dec. 18, 1896, p. 1.

⁹⁰ See, e.g., *Well Known Cheyenne Man Expires*, WYOMING STATE TRIB., Jan. 11, 1943, p. 1; *Country Club Being Given Business Tone*, WYOMING TRIB., March 10, 1917, p. 4; *The Committees*, WYOMING

TRIB., Feb. 6, 1910, p. 2; *How the Club Is Growing*, CHEYENNE DAILY LEADER, June 11, 1907, p. 4.

⁹¹ *Fund of \$25,000 To Be Raised For Memorial*, LARAMIE DAILY BOOMERANG, Nov. 1, 1922, p. 7.

⁹² BOLD, *supra* note 77, at 78.

⁹³ OWEN WISTER, *THE VIRGINIAN* (1902). Repath's successor, Frederick H. Barclay, clerked for Van Devanter during the 1911, 1912, and 1913 terms. Supreme Court Library Correspondence. Barclay was born in Illinois in February of 1869. THIRTEENTH CENSUS OF THE UNITED STATES—POPULATION, Precinct 8, Washington, District of Columbia, Roll T624_153, p. 12A, Enumeration District 0148, FHL Microfilm 1374166 (1910). He later moved to Newcastle, Wyoming, *Repath Leaves Van Devanter to Go with Judge Riner*, WYOMING TRIB., Sept. 19, 1911, p. 3, and received his law degree from Columbian University in Washington in 1901. *Graduates of Columbian*, WASH. POST, May 24, 1901, p. 10. Prior to his service with Van Devanter, he worked for twelve years as a copyist, clerk, and assistant attorney in the Department of the Interior. Employment Record of Frederick H. Barclay, National Personnel Records Center, National Archives at St. Louis (hereinafter "Barclay Employment Record") (on file with the author); *Answer of Mr. Hitchcock: Secretary of the Interior Says Mallon Has No Title to Mine Land*, WASH. POST, Oct. 30, 1903, p. 5. After leaving Van Devanter at the age of forty-five, he took a job as an attorney with the Interstate Commerce Commission. Barclay Employment Record; TWENTY-NINTH ANNUAL REPORT OF THE INTERSTATE COMMERCE COMMISSION, 29 I.C.C. 193 (1915). The following year he married Alice Strong, and the happy couple took up residence at, of all places, the Wyoming apartment building in Washington, D.C. *Married at Pelham*, Oct. 6, 1915, p. 7. By 1920, at the age of fifty-one, Barclay had risen to the post of Senior Examiner with the I.C.C. Barclay Employment Record; 36th ANNUAL REPORT OF THE INTERSTATE COMMERCE COMMISSION, 36 I.C.C. 238 (1922). He periodically served on the vestry of the Episcopal Church of the Ascension. *Episcopal Churches Elect Officers at 1932 Meeting: Congregations in Washington Dioceses, Comprising Units in Capital, Virginia, and Maryland, Select Wardens and Vestrymen for the Year*, WASH. POST, March 29, 1932, p. 5; *Church Offices Filled: Wardens and Vestrymen Named by Episcopal Congregations*, WASH. POST, April 10, 1917, p. 9. Alice, who was two years older than Frederick, died in 1933. Frederick remained with the I.C.C. in Washington until his death from pneumonia at the Home for Incurables in the summer of 1940. Barclay Employment Record; SIXTEENTH CENSUS OF THE UNITED STATES—POPULATION, Washington, District of Columbia, Roll T627_571, p. 1A, Enumeration District 1–537 (1940); E-mail from Michael Vreeland, Parish

Administrator, Church of the Ascension and St. Agnes, Washington, D.C. to Dwight King, Research Librarian, Notre Dame Law Library (September 30, 2013) (on file with author).

⁹⁴ Supreme Court Library Correspondence; Employment Record of George Howland Chase III, National Personnel Records Center, National Archives at St. Louis (hereinafter “Chase Employment Record”) (on file with the author). Chase was preceded by Mahlon D. Kiefer, who clerked for Van Devanter from the 1914 Term through the 1922 Term. Employment Record of Mahlon D. Kiefer, National Personnel Records Center, National Archives at St. Louis (hereinafter “Kiefer Employment Record”) (on file with the author); Supreme Court Library Correspondence. Kiefer was born on a farm near Hershey, Pennsylvania in 1881. In 1899 he moved to Brooklyn, New York, where until 1901 he studied stenography and typewriting at Brown’s Business College. Thereafter he worked as a stenographer for various firms in New York City, including the Equitable Assurance Society and the Harper & Brothers publishing company. In 1904 he moved to Washington, where he attended law classes at George Washington University for one term before enrolling in the National University Law School, from which he received his L.L.B. in 1907 and his L.L.M. in 1909. While a student he worked as a copyist and clerk for the Department of Justice, and as clerk for the Solicitor of the Treasury in the Office of the Attorney General. In 1913 he left Treasury to perform legal work in the office of the Solicitor of the Department of Commerce and Labor, before joining Van Devanter in August of 1914. Kiefer Employment Record; *Law Students in Debate*, WASH. POST, March 25, 1907, p. 9; REGISTER OF THE OFFICE OF THE ATTORNEY GENERAL 17 (No. 2 of 1911). When Kiefer resigned to take a higher-paying position in the Justice Department in September of 1923, Justice Van Devanter wrote to him, “I shall be very sorry to lose you—extremely sorry. I had not counted on that, and hardly know where to turn. But I do not want to stand in the way of your doing better. That is all that could reconcile me to your going. You have always been very efficient in your work, and very good to me personally. I have formed a very sincere and strong attachment for you. Of course there is no hope of any promotion if you stay with me. The place and the compensation are fixed by law, and I cannot make any change in either. . . . Of course, I wish you well and shall always be interested in you and in your progress.” Willis Van Devanter to M.D. Kiefer, Sept. 20, 1923, Kiefer Employment Record.

Following his clerkship with Van Devanter, Kiefer became a Special Assistant to the Attorney General in the Prohibition Division of the Justice Department. Kiefer Employment Record; see, e.g., *Taylor v. U.S.*, 286 U.S. 1, 3 (1932); *Go-Bart Importing Co. v. U.S.*, 282 U.S. 344,

347 (1931); *U.S. v. Norris*, 281 U.S. 619, 620 (1930); *Commercial Credit Co. v. U.S.*, 276 U.S. 226, 227 (1928); *U.S. v. Berkeness*, 275 U.S. 149, 150 (1927); *Lambert v. Yellowley*, 272 U.S. 581, 586 (1926); *Steele v. U.S.*, 267 U.S. 505 (1925); *Delaney v. U.S.*, 263 U.S. 586, 587 (1924). After the Prohibition Division was abolished following ratification of the Twenty-First Amendment, Kiefer continued to work in the Criminal Division of the Justice Department, specializing in cases involving liquor, kidnapping, and international extradition. It was Kiefer who wrote the Department’s position memorandum on the many legal consequences of Prohibition repeal, in which he argued among other things that all pending prosecutions for violations of the National Prohibition Act must be dismissed. He reached the age of mandatory retirement in 1951. Kiefer Employment Record; *The Department Says Good-by to Kief*, WASH. EVE. STAR, May 1, 1951; see, e.g., *U.S. v. One 1936 Model Ford V-8 DeLuxe Coach*, 307 U.S. 219, 220 (1939); *Myers v. U.S.*, 305 U.S. 670 (1938); *Wainer v. U.S.*, 299 U.S. 92 (1936); *U.S. v. Constantine*, 296 U.S. 287, 288 (1935). A Republican who was married but had no children, Kiefer died in 1965 in Sarasota, Florida. Kiefer Employment Record; WASH. POST AND TIMES HERALD, June 23, 1965, p. B9.

⁹⁵ *George H. Chase, 83, Ex-Reserve Board Aide*, NEW YORK TIMES, Oct. 28, 1981, p. B4; *George H. Chase, 83*, WASH. POST, Oct. 28, 1981, p. C10; Chase Employment Record.

⁹⁶ 62–2 ALUMNI HORAE 79 (1982).

⁹⁷ *George H. Chase, 83, Ex-Reserve Board Aide*, NEW YORK TIMES, Oct. 28, 1981, p. B4; *George H. Chase, 83*, WASH. POST, Oct. 28, 1981, p. C10; 3 SWAINE at 121; *Chicago, Milwaukee, & St. Paul Ry. Co.*, 44 I.C.C. VALUATION REP. 441 (1933); *Atchison, Topeka, & Santa Fe Ry. Co. v. U.S.*, 284 U.S. 248, 249 (1932); *Stashine Products Co., Inc. v. Station WGBB of Freeport, New York*, 188 I.C.C. 271 (1932).

⁹⁸ 1927 J. SUP. CT. U.S. 189 (1928).

⁹⁹ *Mary Chandler Hale Wed*, WASH. POST, Oct. 6, 1929, p. 31; *Miss Mary Hale To Be the Bride of Mr. G.H. Chase*, WASH. POST, July 9, 1929, p. 7.

¹⁰⁰ *George H. Chase, 83, Ex-Reserve Board Aide*, NEW YORK TIMES, Oct. 28, 1981, p. B4; *George H. Chase, 83*, WASH. POST, Oct. 28, 1981, p. C10; 5 D.C. REG. 259 (1959); Chase Employment Record.

¹⁰¹ *Mary Hale Chase*, WASH. POST, Feb. 19, 1988, 1988 WLNR 2532613.

¹⁰² 82 PRINCETON ALUMNI WEEKLY 47 (1982).

¹⁰³ *George H. Chase, 83, Ex-Reserve Board Aide*, NEW YORK TIMES, Oct. 28, 1981, p. B4; 97 ANN. REP. A.B.A. 183 (1972).

¹⁰⁴ Supreme Court Library Correspondence. During the 1924 Term Yokum shared clerking duties with J. Arthur Mattson, who clerked for Van Devanter from the 1924

Term through the 1928 Term. Supreme Court Library Correspondence. Mattson was born in Helena, Montana in 1901, and attended the University of Montana before taking his law degree from Georgetown in 1924. *Arthur Mattson: Corporation Lawyer Was Once Aide to Van Devanter*, N.Y. TIMES, Sept. 17, 1994, p. 42. During law school he represented the *Billings Gazette*, the *Great Falls Tribune*, the *Helena Gazette*, and the *Sioux Falls Argus Leader* in the Congressional Press Gallery. 1922–3 CONG. DIR. 465, 466 (1922); 1923–1 CONG. DIR. 471, 472 (1923); 1924–1 CONG. DIR. 478, 481 (1924). Following his graduation he was admitted to practice in Montana, 1924–1926 MONTANA ATTORNEY GENERAL REPORTS AND OPINIONS 11 (1926), and in the District of Columbia. *The Legal Record*, WASH. POST, Oct. 20, 1924, p. 11. Mattson married Ruth C. Galbreath, and they moved to New York in 1929. He engaged in a Wall Street practice specializing in issues of corporation, estate, federal tax, and Swiss law. *Arthur Mattson: Corporation Lawyer Was Once Aide to Van Devanter*, N.Y. TIMES, Sept. 17, 1994, p. 42; *Suite Demand Shows Activity in Many Zones*, N.Y. HERALD TRIB., Sept. 19, 1929, p. 43. See, e.g., *Leake v. Commissioner*, 1 T.C.M. 623 (1943); *Escher v. Commissioner*, 78 F. 2d 718 (3d Cir. 1935); *U.S. v. Henry Prentiss, Co., Inc.*, 288 U.S. 73, 77 (1933). He was the co-author of *A Digest of the Law of Switzerland*. Mattson served as an officer or director of several corporations, and belonged to a few clubs. He died at the young age of 42 in September of 1944, leaving a widow but no children. *Arthur Mattson: Corporation Lawyer Was Once Aide to Van Devanter*, N.Y. TIMES, Sept. 17, 1994, p. 42.

¹⁰⁵ Employment Record of James W. Yokum, National Personnel Records Center, National Archives at St. Louis (on file with the author); Employment Record of James W. Yokum, National Personnel Records Center, Valmeyer, Illinois (on file with the author); *Washington Organization News of the Week*, WASH. POST, Nov. 27, 1938, p. 5; <http://public.mapper.army.mil/ANC/ANCWeb/PublicWMV/ancWeb.html>.

¹⁰⁶ Supreme Court Library Correspondence.

¹⁰⁷ *Licensed to Marry*, WASH. POST, Dec. 19, 1915, p. 20.

¹⁰⁸ *McHale in the Lead*, BOSTON DAILY GLOBE, April 4, 1905, p. 8.

¹⁰⁹ Employment Record of John T. McHale, National Personnel Records Center, National Archives at St. Louis (hereinafter “McHale Employment Record”) (on file with the author); *District Court News*, WASH. POST, Jan. 5, 1917, p. 5.

¹¹⁰ McHale Employment Record; *News of the Personnel of the Government Departments*, WASH. POST, Oct. 18, 1925, p. B10.

¹¹¹ PEPPERS, *supra* note 9, at 69.

¹¹² James Clark McReynolds’ clerks’ dates of service were provided by the Supreme Court of the United States Library in correspondence dated June 26, 2002 (hereinafter Supreme Court Library Correspondence). While there is no complete list of all Supreme Court law clerks, the Library maintains unofficial internal files relating to clerks’ service at the Court, which it recognizes may contain incomplete and unverified information.

¹¹³ *The Federal Diary*, WASH. POST, Oct. 26, 1938, p. X16.

¹¹⁴ FEDERAL REGISTER, Thursday, July 11, 1946, p. 7622.

¹¹⁵ *Obituary I – No Title*, WASH. POST, Nov. 18, 1947, p. B2.

¹¹⁶ Harry Parker to John Knox, Jan. 20, 1938, (unpublished manuscript available at Knox MSS, Special Collections, University of Virginia, folder 10240-a).

¹¹⁷ Newland, *supra* note 17, at 306–07.

¹¹⁸ Here again I discuss some of the clerks in the endnotes.

¹¹⁹ Leroy E. Reed, the first McReynolds clerk, joined the Justice for the 1914 Term. Supreme Court Library Correspondence. He attended Georgetown University, *G. U. Fraternity at Banquet*, WASH. POST, May 7, 1913, p. 3, and was admitted to the bar of the District of Columbia in 1913. *Admitted to the Bar*, WASH. POST, Oct. 14, 1913. Beginning in 1910 he worked as a stenographer in the office of the U.S. Solicitor General, and became a confidential clerk in the Department of Justice under Attorney General Wickersham. In 1912 he transferred to the State Department, where he became secretary to the chief of the Latin American Bureau. In 1913 he became a confidential clerk to the new Attorney General McReynolds. He left the Department at the end of 1913 to become private secretary to Wickersham in New York, but in April of 1914 returned for a brief stint at Justice before resigning in October to assume his duties as secretary to the new Justice McReynolds. REGISTER OF THE OFFICE OF THE ATTORNEY GENERAL 11 (No. 2 of 1911); *McReynolds Aid Resigns*, CHRISTIAN SCIENCE MONITOR, Dec. 13, 1913, p. 22; *Reed Secretary to McReynolds*, WASH. POST, Oct. 24, 1914, p. 5; Employment Record of Leroy E. Reed, National Personnel Records Center, National Archives at St. Louis (on file with the author). Shortly after he concluded the clerkship with McReynolds, Reed married Helena Doocy, a 1914 graduate of the Washington College of Law who went on to a distinguished career as a lawyer and trust officer for the Lincoln National Bank and as an assistant U.S. attorney for the District of Columbia specializing in the collection of fines and civil debts. When Mrs. Reed retired in 1963 she was presented with the Justice Department’s “sustained superior performance award.” By that time she had been widowed for forty-four years: Leroy Reed perished in the flu epidemic of 1919. *She*

Worked and 'Uncle Sam' Collected, WASH. POST, July 3, 1963, p. B6; *Washington Woman Named An Assistant U.S. Attorney*, WASH. POST, March 17, 1943, p. B1.

¹²⁰ Supreme Court Library Correspondence. Mallan was preceded by S. Milton Simpson, who clerked for McReynolds during the 1915 term, and for the bulk of the of the 1919 term, from October 1, 1919 to April 3, 1920. Employment Record of Stephen Milton Simpson, National Personnel Records Center, National Archives at St. Louis (hereinafter "Simpson Employment Record") (on file with the author). Simpson was born in Brooklyn in 1892. After attending George Washington University he graduated from Georgetown University Law School in 1913, and was admitted to the D.C. bar later that year. Supreme Court Library Correspondence; *S. Milton Simpson, Lawyer Here, Dies*, WASH. POST, May 30, 1965, p. B3; 1 THE MARTINDALE-HUBBELL LAW DIRECTORY 459, 82nd Annual Edition (Martindale-Hubbell, Inc. 1950), *microformed on LLMC Martindale-Hubbell, Directories* (1950) No. 92-001A F15. Following his graduation he worked as deputy clerk of the Commerce Court. 1913-3 CONG. DIR. 342. He served as confidential clerk to then-Attorney General McReynolds for the three months preceding the Justice's appointment to the Court in March of 1914. He then served as private secretary to Assistant Attorney General Underwood until rejoining McReynolds as his private secretary in November of 1915. After leaving McReynolds in September of 1916, Simpson worked as a law clerk, stenographer, and attorney in the Department of Justice until June of 1918, when he became an aviation cadet in the Army Signal Corps. In early 1919 he returned to the Justice Department, and from April to October of that year he served as special assistant to U.S. Attorney for the Southern District of New York. After his second stint as Justice McReynolds' law clerk, he served from 1920 to 1922 as an attorney in the Office of the Solicitor of Internal Revenue. Simpson Employment Record; *S. Milton Simpson, Lawyer Here, Dies*, WASH. POST, May 30, 1965, p. B3; *Fort Smith & Western R.R. Co. v. U.S.*, 253 U.S. 206 (1920); *San Pedro, Los Angeles, & Salt Lake R.R. Co. v. U.S.*, 247 U.S. 307 (1918); *Chicago & Northwestern Ry. Co. v. U.S.*, 246 U.S. 512 (1918); 1 THE MARTINDALE-HUBBELL LAW DIRECTORY 459, 82nd Annual Edition (Martindale-Hubbell, Inc. 1950), *microformed on LLMC Martindale-Hubbell, Directories* (1950) No. 92-001A F15. In 1923 he became associated with the Washington office of Root, Clark, Ballantine & Bushby and its successor firms, where he would maintain a tax and real estate development practice until his death in 1965. *S. Milton Simpson, Lawyer Here, Dies*, WASH. POST, May 30, 1965, p. B3. See, e.g., 1 THE MARTINDALE-HUBBELL LAW DIRECTORY 1594, 74th Annual Edition (Martindale-Hubbell, Inc. 1942), *microformed on LLMC Martindale-Hubbell,*

Directories (1942) No. 92-001A F11; *Estate of Allen v. Commissioner*, 6 T.C. 597 (1946); *Van Clief v. Helvering*, 135 F. 2d 254 (D.C. Cir. 1943); *Hawaiian-Philippine Co. v. Commissioner*, 35 B.T.A. 173 (1936); *Prairie Oil & Gas Co. v. Commissioner*, 29 B.T.A. 113 (1933); *Brady v. Commissioner*, 22 B.T.A. 596 (1931); *Hawaiian Sugar Co. v. Commissioner*, 13 B.T.A. 683 (1928); *Appeal of Manville Jenckes Co.*, 4 B.T.A. 765 (1926). It does not appear that Simpson ever became a partner in the firm: his Martindale-Hubbell entries list him as either "Tax Counsel" or a "Resident Associate" in the Washington office, and his obituary characterizes him as the firm's "Washington representative." None of his Martindale-Hubbell listings mentioned his service as secretary to Justice McReynolds. He died in 1965, survived by his wife, four children, and eight grandchildren. THE MARTINDALE-HUBBELL LAW DIRECTORY 459, 82nd Annual Edition (Martindale-Hubbell, Inc. 1950), *microformed on LLMC Martindale-Hubbell, Directories* (1950) No. 92-001A F15; 1 THE MARTINDALE-HUBBELL LAW DIRECTORY 623, 87th Annual Edition (Martindale-Hubbell, Inc. 1955), *microformed on LLMC Martindale-Hubbell, Directories* (1955) No. 92-001A F19; 1 THE MARTINDALE-HUBBELL LAW DIRECTORY 850, 92nd Annual Edition (Martindale-Hubbell, Inc. 1960), *microformed on LLMC Martindale-Hubbell, Directories* (1960) No. 92-001A F22; 1 THE MARTINDALE-HUBBELL LAW DIRECTORY 1289, 97th Annual Edition (Martindale-Hubbell, Inc. 1965), *microformed on LLMC Martindale-Hubbell, Directories* (1965) No. 92-001A F29; *S. Milton Simpson, Lawyer Here, Dies*, WASH. POST, May 30, 1965, p. B3.

¹²¹ *Mallan Rites to Be Held on Monday*, WASH. POST AND TIMES HERALD, July 16, 1955, p. 24.

¹²² *President Names Blaine Mallan to Aid Utilities Board*, WASH. POST, Jan. 13, 1927, p. 1.

¹²³ *Western Alumni Plan to Be Merry*, WASH. POST, June 1, 1922, p. 7.

¹²⁴ *Mallan Rites to Be Held on Monday*, WASH. POST AND TIMES HERALD, July 16, 1955, p. 24; *President Names Blaine Mallan to Aid Utilities Board*, WASH. POST, Jan. 13, 1927, p. 1.

¹²⁵ *Mallan Rites to Be Held on Monday*, WASH. POST AND TIMES HERALD, July 16, 1955, p. 24.

¹²⁶ *Admits 98 to D.C. Bar*, WASH. POST, Jan. 22, 1915, p. 14; *The Legal Record*, WASH. POST, Feb. 2, 1915, p. 10.

¹²⁷ *West End Citizens Meet*, WASH. POST, April 9, 1916, p. 13.

¹²⁸ *Mallan Rites to Be Held on Monday*, WASH. POST AND TIMES HERALD, July 16, 1955, p. 24.

¹²⁹ See *Delta Tau Delta Dine*, WASH. POST, April 18, 1915, p. 14 (Mallan speaks at alumni dinner held in House restaurant at Capitol); *Delta Tau Delta Men Give Luncheon*, WASH. POST, Sept. 24, 1915, p. 6 (Mallan

serves as chair of the local alumni chapter's entertainment committee).

¹³⁰ *Mallan Rites to Be Held on Monday*, WASH. POST AND TIMES HERALD, July 16, 1955, p. 24.

¹³¹ *College Men to Feast: Washington U.V. Alumni Banquet to Be Notable Affair*, WASH. POST, April 9, 1916, p. 12.

¹³² *Mallan Rites to Be Held on Monday*, WASH. POST AND TIMES HERALD, July 16, 1955, p. 24; *President Names Blaine Mallan to Aid Utilities Board*, WASH. POST, Jan. 13, 1927, p. 1.

¹³³ See, e.g., *Rent Body Is Reversed*, WASH. POST, July 15, 1924, p. 18; *Taylor v. Maddux*, Marshall & Co., 55 App. D.C. 254 (1925).

¹³⁴ 1919 J. SUP. CT. U.S. 80 (1919).

¹³⁵ *Display Ad 85—No Title*, WASH. POST, March 8, 1925, p. 72; WASH. POST, March 8, 1925, p. 74.

¹³⁶ *Engagements and Weddings of Interest*, WASH. POST, Nov. 2, 1924, p. SO2; *President Names Blaine Mallan to Aid Utilities Board*, WASH. POST, Jan. 13, 1927, p. 1.

¹³⁷ *Capital Society Events*, WASH. POST, April 30, 1925, p. 7.

¹³⁸ *Secret Naming of Officials Is Protested to Capper*, WASH. POST, Jan. 16, 1927, p. 22; *President Names Blaine Mallan to Aid Utilities Board*, WASH. POST, Jan. 13, 1927, p. 1.

¹³⁹ *House Committee Urged to Oppose Naming of Mallan*, WASH. POST, Jan. 20, 1927, p. 22.

¹⁴⁰ *Mallan Too Little Known as Lawyer, Blanton Declares*, WASH. POST, Jan. 27, 1927, p. 22.

¹⁴¹ *Kin of Blaine Escapes Death in Auto Plunge*, WASH. POST, Oct. 9, 1923, p. 8.

¹⁴² *Senate to Inquire Into Intoxication Charge on Mallan*, WASH. POST, Jan. 23, 1927, p. 2; *President Recalls Mallan Nomination for Utilities Post*, WASH. POST, Jan. 25, 1927, p. 1.

¹⁴³ *Mrs. Nina Gore Vidal Is Wed to Hugh Auchincloss, Broker*, WASH. POST, Oct. 9, 1935, p. 1; *Mrs. Mallan Is Engaged to E.E. Rapley*, WASH. POST, Oct. 24, 1939, p. 14. The Mallans were still together in 1933. See WASH. POST, July 16, 1933, p. 23.

¹⁴⁴ See, e.g., *Stern v. Ruzicka*, 44 F. Supp. 726 (D.D.C. 1942); *Standard Slag Co. v. Commissioner*, 62 App. D.C. 8 (1933); *Marx v. Maybury*, 284 U.S. 691 (1931); *Condon v. Mallan*, 58 App. D.C. 371 (1929); *Todd v. State of Washington*, 277 U.S. 611 (1928); *Edgar Estates Corp. v. U.S.*, 65 Ct. Cl. 415 (1928); *Auto Crash Basis of Suit*, WASH. POST, May 26, 1928, p. 22.

¹⁴⁵ *\$10,425 Suit Is Filed Against Blaine Mallan*, WASH. POST, Sept. 20, 1932, p. 7.

¹⁴⁶ *Mallan Rites to Be Held on Monday*, WASH. POST AND TIMES HERALD, July 16, 1955, p. 24.

¹⁴⁷ *T. E. Allison, Retired U.S. Attorney*, WASH. POST, Oct. 31, 1974, p. C15; Employment Record of Thomas

Ellis Allison, National Personnel Records Center, Valmeyer, Illinois, on file with the author (hereinafter "Allison Employment Record").

¹⁴⁸ Supreme Court Library Correspondence; Allison Employment Record.

¹⁴⁹ Allison Employment Record; *T. E. Allison, Retired U.S. Attorney*, WASH. POST, Oct. 31, 1974, p. C15. See, e.g., *Milton Dairy Co. v. Willcuts*, 8 F. 2d 178 (D.C. Minn. 1925); *Red Wing Malting Co. v. Willcuts*, (D.C. Minn. 1925); *Walsh v. Capewell Horse Nail Co.*, 4 F. 2d 991 (2d Cir. 1925); *Hampton & L.F. Ry. Co. v. Noel*, 300 F. 438 (D.C. Va. 1924); *Coffee v. Exchange Bank of Lennox*, 296 807 (8th Cir. 1924); *Fox v. Edwards*, 287 F. 669 (2d Cir. 1923); *Catherwood v. U.S.*, 291 F. 560 (3d Cir. 1922).

¹⁵⁰ Allison Employment Record; *T. E. Allison, Retired U.S. Attorney*, WASH. POST, Oct. 31, 1974, p. C15. See, e.g., *S. Silberstein & Son v. U.S.*, 69 Ct. Cl. 412 (1930); *Belowsky v. Commissioner*, 7 B.T.A. 424 (1927); *Appeal of Inter-Urban Construction Co.*, 4 B.T.A. 1030 (1926).

¹⁵¹ Supreme Court Library Correspondence.

¹⁵² 10 WHO WAS WHO IN AMERICA 129 (1993); *Man of War: Harold Lee George*, WASH. POST, Nov. 12, 1942, p. B8; William Head, *George, Harold Lee*, in WALTER J. BOYNE, ED., AIR WARFARE: AN INTERNATIONAL ENCYCLOPEDIA 252 (2002).

¹⁵³ 10 WHO WAS WHO IN AMERICA 129 (1993); *Man of War: Harold Lee George*, WASH. POST, Nov. 12, 1942, p. B8.

¹⁵⁴ MARK CLODFELTER, BENEFICIAL BOMBING: THE PROGRESSIVE FOUNDATIONS OF AMERICAN AIR POWER, 1917–1945 55 (2010).

¹⁵⁵ HUTCHINSON & GARROW, *supra* note 5, at 9–11.

¹⁵⁶ 10 WHO WAS WHO IN AMERICA 129 (1993).

¹⁵⁷ *Man of War: Harold Lee George*, WASH. POST, Nov. 12, 1942, p. B8.

¹⁵⁸ 10 WHO WAS WHO IN AMERICA 129 (1993).

¹⁵⁹ JAMES C. GASTON, PLANNING THE AMERICAN AIR WAR: AN INSIDE NARRATIVE (1982); Walter J. Boyne, *World War II Aviation*, in BOYNE, ED., AIR WARFARE, *supra* note 152, at 706.

¹⁶⁰ *Man of War: Harold Lee George*, WASH. POST, Nov. 12, 1942, p. B8; Head, *George, Harold Lee*, in BOYNE, ED., AIR WARFARE, *supra* note 152, at 252; Harold Lee George, *The Air Transport Command, Army Air Forces*, 230 ANN. AM. ACAD. POL. & SOC. SCI. 89 (1943).

¹⁶¹ *Man of War: Harold Lee George*, WASH. POST, Nov. 12, 1942, p. B8.

¹⁶² *Id.*; Head, *George, Harold Lee*, in BOYNE, ED., AIR WARFARE, *supra* note 152, at 252.

¹⁶³ 10 WHO WAS WHO IN AMERICA 129 (1993). The *Boston Globe* placed the promotion to Lt. General in 1945. See *George of Somerville One of Three New Lieutenant Generals*, BOSTON GLOBE, April 12, 1945, p. 8. See also *Pan American Unit Plans for Annual Tea*,

L.A. TIMES, Sept. 15, 1953, p. B1; *Praises Given Camp Fund for Great Benefits*, L.A. TIMES, July 11, 1957, pp. B1, B8.

¹⁶⁴ *Harold L. George, Ex-Beverly Hills Mayor, Dies at 93*, L.A. TIMES, March 30, 1986, p. WS4.

¹⁶⁵ *Injured Flier Reports, Despite Broken Ribs*, WASH. POST, Sept. 10, 1926, p. 1.

¹⁶⁶ *Army Air Officer Sued by His Wife: Mrs. Anna V. George Says Lieutenant Told Her He Loved Another*, WASH. POST, Nov. 1, 1928, p. 22.

¹⁶⁷ Supreme Court Library Correspondence; Employment Record of Norman B. Frost, National Personnel Records Center, National Archives at St. Louis (hereinafter "Frost Employment Record") (on file with the author).

¹⁶⁸ 6 WHO WAS WHO IN AMERICA 149 (1993); *Norman B. Frost, Lawyer in D.C. Since 1923, Dies*, WASH. POST, Aug. 23, 1973, p. B12; *Norman B. Frost Heads Law Group*, WASH. POST, Oct. 8, 1929, p. 2; *N. B. Frost Chosen Director of Bank*, WASH. POST, April 19, 1930, p. 13.

¹⁶⁹ *N.B. Frost Chosen Director of Bank*, WASH. POST, April 19, 1930, p. 13.

¹⁷⁰ <http://www.fundinguniverse.com/company-histories/baker-hostetler-llp-history/>; S. Oliver Goodman, *Frost Made Counsel for Sperry Rand*, WASH. POST, Nov. 16, 1955, p. 27; *American Surety & Trust Co. v. Frost*, 117 F. 2d 283 (D.C. Cir. 1940); *Sperry Rand Corp. v. Sunbeam Corp.*, 285 F.2d 542 (7th Cir. 1951); CHARLES LACHMAN, *THE LAST LINCOLNS: THE RISE AND FALL OF A GREAT AMERICAN FAMILY* 366, 371, 402–03 (2008).

¹⁷¹ *See, e.g., Akers v. Commissioner*, 6 T.C. 693 (1946); *Seaboard Loan & Savings Assn. v. Commissioner*, 45 B. T.A. 510 (1941).

¹⁷² *See, e.g., Ralph Sollitt & Sons Construction Co. v. United States*, 80 Ct. Cl. 798 (1935); *Diamond v. United States*, 98 Ct. Cl. 943 (1943).

¹⁷³ *See, e.g., Altorfer v. Haag*, 74 F. 2d 120 (Ct. Cust. & Pat. App. 1934); *Standard Cap & Seal Corp. v. Coe*, 124 F.2d 278 (D.C. Cir. 1941).

¹⁷⁴ *See, e.g., Becker v. David*, 182 F.2d 243 (D.C. Cir. 1950); *Hoagland v. Chestnut Farms Dairy, Inc.*, 72 F.2d 729 (D.C. Cir. 1934).

¹⁷⁵ *See, e.g., Avignone Freres, Inc. v. Cardillo*, 117 F. 2d 385 (D.C. Cir. 1940); *Employers' Liability Assurance Corp., Ltd. v. Hoage*, (Ct. App. D.C. 1934).

¹⁷⁶ *See, e.g., Johnson v. Reily*, 100 F.2d 249 (D.C. Cir. 1947); *Lee v. Mitcham*, 98 F. 2d 298 (D.C. Cir. 1938); *Waterman Corp. v. Johnson*, 106 N.Y.S.2d 813 (1951); *Liberty National Bank v. Hicks*, 173 F.2d 631 (D.C. Cir. 1948).

¹⁷⁷ 6 WHO WAS WHO IN AMERICA 149 (1993); *Norman B. Frost, Lawyer in D.C. Since 1923, Dies*, WASH. POST, Aug. 23, 1973, p. B12; <http://www.fundinguniverse.com/company-histories/baker-hostetler-llp-history/>.

¹⁷⁸ JASON EMERSON, *THE MADNESS OF MARY LINCOLN* 141–45 (2007). The text of the agreement can be found at *id.* at 179–81.

¹⁷⁹ *Id.* at 148.

¹⁸⁰ *Id.* at 2, 148–50.

¹⁸¹ Frost Employment Record; 6 WHO WAS WHO IN AMERICA 149 (1993); *Norman B. Frost, Lawyer in D.C. Since 1923, Dies*, WASH. POST, Aug. 23, 1973, p. B12; *Norman B. Frost Heads Law Group*, WASH. POST, Oct. 8, 1929, p. 2; *N.B. Frost Chosen Director of Bank*, WASH. POST, April 19, 1930, p. 13; *New Members of the American Judicature Society*, 26 J. AM. JUD. SOC. 159 (1943).

¹⁸² *See, e.g., Stockhausen, Frost Gain at Chevy Chase*, WASH. POST, Sept. 19, 1954, p. 44; *84 Compete in Guest Golf*, WASH. POST, May 15, 1952, p. 18; Merrell W. Whittlesey, *Leo Walper, Burnett Win Pro-Amateur*, WASH. POST, Oct. 5, 1939, p. 21; *Corkran Advances in Isham Golf Cup*, N.Y. TIMES, Aug. 28, 1931, p. 18; *Corkran Advances to Golf Semi-Final*, N.Y. TIMES, July 31, 1931, p. 20; *Corkran Wins Medal in Golf at Ekwanok*, N.Y. TIMES, July 30, 1931, p. 14; *Mowry and Pond Tie for Ekwanok Medal*, N.Y. TIMES, July 31, 1930, p. 24; *Frost Gains Golf Final*, N.Y. TIMES, July 28, 1928, p. 11; Henry Litchfield West, *Holiday Cards at Local Clubs*, WASH. POST, July 5, 1928, p. 14; Henry Litchfield West, *From Tee to Green*, WASH. POST, June 17, 1928, p. M26; *Voigt Wins Golf Title of Capital Third Time*, WASH. POST, Sept. 30, 1927, p. 1; *Cox Defeated by Shorey for Title*, WASH. POST, July 11, 1927, p. 11; Harold Litchfield West, *From Tee to Green*, WASH. POST, July 18, 1926, p. M22; *Roland Mackenzie Is Beaten for Medal at Sherwood*, WASH. POST, July 17, 1926, p. 13; Henry Litchfield West, *Mackall's 73 Is Medal in Congressional Golf Club*, WASH. POST, June 25, 1926, p. 13; *Shorey Gets Low Golf Score*, WASH. POST, Apr. 30, 1925, p. 13; Henry Litchfield West, *Pair of Pros Beaten, 5 and 4*, WASH. POST, Apr. 27, 1925, p. 11; Henry Litchfield West, *Agnew, Golf Title Holder, Put Out of Potomac Play*, WASH. POST, Sept. 1, 1923, p. 12; Henry Litchfield West, *Rock Creek Links Concessions Set: H.D. Miller and N.B. Frost to Operate New Municipal Golf Course*, WASH. POST, March 8, 1923, p. 18.

¹⁸³ U.S. Pat. No. 2,379,430, issued to Norman Frost, July 3, 1945.

¹⁸⁴ U.S. Pat. No. 2,189,823, issued to Harry F. Vickers & Norman B. Frost, Feb. 13, 1940.

¹⁸⁵ *Norma Frost to Wed May 26*, N.Y. TIMES, March 28, 1951, p. 34.

¹⁸⁶ *Descendants of President Rutherford Birchard Hayes*, RUTHERFORD B. HAYES PRESIDENTIAL CENTER (Aug. 26, 2006), <http://www.rbhayes.org/>

hayes/content/files/hayes_genealogy_2010.pdf; LACHMAN at 403.

¹⁸⁷ 6 WHO WAS WHO IN AMERICA 149 (1993); *Norman B. Frost, Lawyer in D.C. Since 1923, Dies*, WASH. POST, Aug. 23, 1973, p. B12.

¹⁸⁸ Supreme Court Library Correspondence; *Carlyle Baer Dies, Ex-Justice Lawyer*, WASH. POST AND TIMES HERALD, Nov. 28, 1969, p. B16; *Butler Heads Sigma Nu Phi*, WASH. POST, Nov. 8, 1916, p. 4; Employment Record of Carlyle S. Baer, National Personnel Records Center, Valmeyer, Illinois, on file with the author (hereinafter “Baer Employment Record”).

¹⁸⁹ *Carlyle Baer Dies, Ex-Justice Lawyer*, WASH. POST AND TIMES HERALD, Nov. 28, 1969, p. B16.

¹⁹⁰ 1922–1 CONG. DIR. 431; 1921–2 CONG. DIR. 428; 1920–1 CONG. DIR. 375; 1919–1 CONG. DIR. 408; 1918–1 CONG. DIR. 384; 1917–3 CONG. DIR. 383.

¹⁹¹ Baer Employment Record.

¹⁹² Statutes of California xv (1919); Statutes of California xciii (1921).

¹⁹³ Baer Employment Record.

¹⁹⁴ *Id.*

¹⁹⁵ 18 LAW LIBR. J. 140 (1925).

¹⁹⁶ 29 LAW LIBR. J. 45 (1936); 27 LAW LIBR. J. 5 (1934); 26 LAW LIBR. J. 15 (1933); 25 LAW LIBR. J. 65 (1932); 23 LAW LIBR. J. 139 (1930); 21 LAW LIBR. J. 12 (1928).

¹⁹⁷ *Carlyle Baer Dies, Ex-Justice Lawyer*, WASH. POST AND TIMES HERALD, Nov. 28, 1969, p. B16; *Foreign Consular Officers in the United States*, Nos. 196–222 U. S.T. 122 (1933); 1936–1 CONG. DIR. 560; 1935–1 CONG. DIR. 554; 1934–1 CONG. DIR. 537.

¹⁹⁸ 1941–1 CONG. DIR. 454; 1940–2 CONG. DIR. 452; 1939–1 CONG. DIR. 445; 1938–1 CONG. DIR. 574; 1937–1 CONG. DIR. 564; Baer Employment Record.

¹⁹⁹ *Carlyle Baer Dies, Ex-Justice Lawyer*, WASH. POST AND TIMES HERALD, Nov. 28, 1969, p. B16.

²⁰⁰ Baer Employment Record.

²⁰¹ *Carlyle Baer Dies, Ex-Justice Lawyer*, WASH. POST AND TIMES HERALD, Nov. 28, 1969, p. B16.

²⁰² *Carlyle Baer Dies, Ex-Justice Lawyer*, WASH. POST AND TIMES HERALD, Nov. 28, 1969, p. B16; CARLYLE S. BAER, THOMAS SPARROW: EARLY MARYLAND ENGRAVER AND PATRIOT (1950); HETTIE GRAY BAKER & CARLYLE S. BAER, BOOKPLATES OF HETTIE GRAY BAKER (1947); CLARA THERESE EVANS & CARLYLE S. BAER, A CENSUS OF BOOKPLATE COLLECTIONS IN PUBLIC, COLLEGE, AND UNIVERSITY LIBRARIES IN THE UNITED STATES (1938); CARLYLE S. BAER, A COLLECTOR’S CRITICISM OF THE BOOKPLATES OF SARAH B. HILL (1934); AUSTRALIAN EX LIBRIS SOCIETY, CARLYLE S. BAER, & JOHN LANE MULLINS, BOOKPLATE ARTISTS, NUMBER ONE: ADRIAN FEINT (1934).

²⁰³ *Carlyle Baer Dies, Ex-Justice Lawyer*, WASH. POST AND TIMES HERALD, Nov. 28, 1969, p. B16.

²⁰⁴ Supreme Court Library Correspondence.

²⁰⁵ See Andrew P. Federline, *Variation in State Legislation Shows Need for Standardization in Truck and Truck Body Lighting*, 96 POWER WAGON 13 (May, 1956).

²⁰⁶ JASON EMERSON, GIANT IN THE SHADOWS; THE LIFE OF ROBERT T. LINCOLN 541 n.16, 545 n.100 (2012). Emerson does not specify the dates of Federline’s service to Lincoln, but it cannot have been later than 1926, the year of Lincoln’s death.

²⁰⁷ See Andrew P. Federline, *Variation in State Legislation Shows Need for Standardization in Truck and Truck Body Lighting*, 96 POWER WAGON 13 (May, 1956).

²⁰⁸ See *Three Units Form Salesmen Bureau*, N.Y. TIMES, Sept. 19, 1948, p. F7; *Salesmen to Ask Rail Tax’s Repeal*, N.Y. TIMES, Nov. 21, 1948, p. F5; *Advertising and Marketing*, N.Y. TIMES, Nov. 28, 1952, p. 37; *Traveling Salesmen Fight Stabilization*, N.Y. TIMES, Aug. 24, 1951, p. 30; *Salary Board Ruling on Salesmen Hailed*, N.Y. TIMES, Sept. 19, 1951, p. 44; *Salesmen Demand Rate Rise of 15%*, N.Y. TIMES, Aug. 27, 1952, p. 43.

²⁰⁹ See Andrew P. Federline, *Variation in State Legislation Shows Need For Standardization in Truck and Truck Body Lighting*, 96 POWER WAGON 13 (May, 1956).

²¹⁰ *Id.*

²¹¹ *Deaths*, WASH. POST, May 6, 1977, p. B6.

²¹² Supreme Court Library Correspondence; Employment Record of Tench T. Marye, National Personnel Records Center, Valmeyer, Illinois, on file with the author (hereinafter “Marye Employment Record”).

²¹³ *Tench Marye, Wife, Killed in Car Accident*, WASH. POST, Dec. 16, 1971, p. B6; Marye Employment Record.

²¹⁴ *Debate on Tariff: Young Men Will Support Important Question at University*, WASH. POST, March 16, 1906, p. D; Marye Employment Record.

²¹⁵ *Gold Lures Lawyers*, WASH. POST, June 6, 1911, p. 2; Marye Employment Record.

²¹⁶ Marye Employment Record. See, e.g., *De Prevost v. Young*, 48 App. D.C. 80 (1918); *U.S. v. Proctor Co.*, 1914 WL 24647 (Cust. App. 1914); *Sues Baltimore and Ohio for \$10,000*, WASH. POST, Oct. 27, 1912.

²¹⁷ *War Service by Faculty Members*, 6 GEO. L. J. 19 (1917); *Changes in the Faculty*, 4 GEO. L. J. 30, 31 (1915); Marye Employment Record; Military Record of Tench T. Marye, National Personnel Records Center, St. Louis, Missouri, on file with the author (hereinafter “Marye Military Record”).

²¹⁸ *Tench Marye, Wife, Killed in Car Accident*, WASH. POST, Dec. 16, 1971, p. B6; 1920–1 CONG. DIR. 295; Marye Employment Record; Marye Military Record.

²¹⁹ Marye Employment Record.

²²⁰ *Id.*

²²¹ 1922 J. SUP. CT. U.S. 44 (1922).

- ²²² *Tench Marye, Wife, Killed in Car Accident*, WASH. POST, Dec. 16, 1971, p. B6. See, e.g., *Mrs. Elsie K. Harrison Loses Divorce Suit Plea*, WASH. POST, Dec. 18, 1927, p. 16; *Briefs Filed in Allen Case by Attorneys*, WASH. POST, Nov. 18, 1929, p. 1; *Woman Seeks \$50,000, Alleging Hurts in Cab*, WASH. POST, Aug. 13, 1930, p. 5; *In the Matter of Paul Case*, 18 F.T.C. 151 (1934); *Knapp v. Dugan*, 59 App. D.C. 240 (1930); *Hackett v. White*, 59 App. D.C. 211 (1930); *Hurdle v. American Security & Trust Co.*, 59 App. D.C. 58 (1929); *Von Bruning v. Sutherland*, 58 App. D.C. 258 (1928); *Ben C. Jones & Co. v. West Publishing Co.*, 270 U.S. 665 (1926); *Dimock v. W.F. Roberts Co.*, 54 App. D.C. 20 (1923); *Sechrist v. Bryant*, 52 App. D.C. 286 (1923).
- ²²³ Marye Employment Record; *Tench Marye, Wife, Killed in Car Accident*, WASH. POST, Dec. 16, 1971, p. B6.
- ²²⁴ *Tench Marye, Wife, Killed in Car Accident*, WASH. POST, Dec. 16, 1971, p. B6; Marye Employment Record. See, e.g., *Irvin v. Hobby*, 131 F. Supp. 851 (D. C. Iowa 1955).
- ²²⁵ *Tench Marye, Wife, Killed in Car Accident*, WASH. POST, Dec. 16, 1971, p. B6. See, e.g., *Dendy v. United States*, 290 F. 2d 222 (2d Cir. 1961); *Phelps v. Williams*, 192 A. 2d (D.C. Cir. 1963); *Johnson v. Johnson*, 324 F.2d 884 (D.C. Cir. 1963); *Dent v. Virginia Mut. Life Ins. Co.*, 226 A. 2d 116 (D.C. Cir. 1967).
- ²²⁶ *Tench Marye, Wife, Killed in Car Accident*, WASH. POST, Dec. 16, 1971, p. B6.
- ²²⁷ Supreme Court Library Correspondence; Employment Record of John Thomas Fowler, National Personnel Records Center, Valmeyer, Illinois, on file with the author (hereinafter "Fowler Employment Record").
- ²²⁸ *James [Sic] Fowler, Justice Dept. Aide, Dies*, WASH. POST, July 30, 1953, p. 26.
- ²²⁹ *Licensed to Marry*, WASH. POST, July 3, 1912, p. 3; Fowler Employment Record.
- ²³⁰ Fowler Employment Record.
- ²³¹ *James [Sic] Fowler, Justice Dept. Aide, Dies*, WASH. POST, July 30, 1953, p. 26.
- ²³² Fowler Employment Record.
- ²³³ *Wants Change in Name: Too Many Jollies About Present One, Albert E. Pickles Says*, WASH. POST, Dec. 8, 1921, p. 13.
- ²³⁴ 1924 J. SUP. CT. U.S. 322 (June 8, 1925).
- ²³⁵ Fowler Employment Record; *Hughes Is Invited to Banquet of Bar*, WASH. POST, Feb. 16, 1930, p. 15; *U.S. v. Commonwealth & Dominion Line, Ltd.*, 278 U.S. 427 (1928); *U.S. Shipping Board Emergency Fleet Corp. v. Rosenberg Bros. & Co.*, 272 U.S. 202, 203 (1928); *Boston Sand & Gravel Co. v. U.S.*, 278 U.S. 41, 46 (1928).
- ²³⁶ 45 U.S.T. 11 (1933); *George E. Warren Corp. v. U.S.*, 22 C.C.P.A. 178 (1934); Fowler Employment Record.
- ²³⁷ Fowler Employment Record.
- ²³⁸ *Solicitor General Biggs Asks Final Gold Ruling*, 1 CORP. REORGANIZATIONS 155, 162 (1934).
- ²³⁹ *Biggest Barrier to U.S. Monetary Program Is Removed*, WASH. POST, Feb. 19, 1935, p. 1.
- ²⁴⁰ Fowler Employment Record.
- ²⁴¹ *Id.*; *James [sic] Fowler, Justice Dept. Aide, Dies*, WASH. POST, July 30, 1953, p. 26.
- ²⁴² *James [sic] Fowler, Justice Dept. Aide, Dies*, WASH. POST, July 30, 1953, p. 26; *Masonic Notes*, WASHINGTON POST, Feb. 21, 1926, p. A2.
- ²⁴³ *Business Help Asked in Drive for Red Cross*, WASH. POST, Sept. 17, 1937, p. 23.
- ²⁴⁴ *James [Sic] Fowler, Justice Dept. Aide, Dies*, WASH. POST, July 30, 1953, p. 26.
- ²⁴⁵ *Chester H. Gray Dead, Chief D.C. Legal Officer*, WASH. POST AND TIMES HERALD, Nov. 28, 1965, p. B10; *Gray Named Corporation Counsel Here*, WASH. POST AND TIMES HERALD, July 7, 1956, p. 29; *Recollections: Oliver Gasch*, 7 WASH. LAW. 22, 26 (1992); *The Docket*, 1925, pp. 79, 129; Employment Record of Chester H. Gray, National Personnel Records Center, National Archives at St. Louis (on file with the author); Military Record of Chester H. Gray, National Personnel Records Center, St. Louis, Missouri (on file with the author); Employment Record of Chester H. Gray, Office of Personnel, Government of the District of Columbia (on file with the author). Gray was preceded in death by his brother Charles, also a graduate of the National University Law School, who worked for thirty-four years as a hearings examiner for the Federal Maritime Commission and the Interstate Commerce Commission. *Retired ICC Examiner Charles B. Gray Dies*, WASH. POST AND TIMES HERALD, Dec. 2, 1963, p. B4.
- ²⁴⁶ *Chester H. Gray Dead, Chief D.C. Legal Officer*, WASH. POST AND TIMES HERALD, Nov. 28, 1965, p. B10.
- ²⁴⁷ *Command Post*, WASH. POST AND TIMES HERALD, Nov. 30, 1965, p. A22.
- ²⁴⁸ Employment Record of Chester H. Gray, Office of Personnel, Government of the District of Columbia (on file with the author).
- ²⁴⁹ *ACLU Attorneys Call for Removal of Corporation Counsel and Aide*, WASH. POST AND TIMES HERALD, May 23, 1965, p. A11; *City Heads Work in Secret on Fair Employment Rules*, WASH. POST AND TIMES HERALD, June 10, 1965, p. A22; *Commissioner Replies to Charges of Fair-Housing Non-Enforcement*, WASH. POST AND TIMES HERALD, Jan. 10, 1965, p. A8. See also *Complaints on Housing Fail Hurdle*, WASH. POST AND TIMES HERALD, Jul. 18, 1964, p. A4; *Fair Housing Sale Freeze is Ruled Out*, WASH. POST AND TIMES HERALD, Apr. 4, 1964, p. B1; *D.C. Heads Study Housing Law*, WASH. POST AND TIMES HERALD, July 14, 1963, p. B7. For Gray's response to these charges, see *Corporation Counsel Seeking New*

Ways to Get More Staff Help, WASH. POST AND TIMES HERALD, Nov. 1, 1965, p. A22.

²⁵⁰ *Action Is Urged on Fair Housing*, WASH. POST AND TIMES HERALD, May 20, 1963, p. B1; *3 Religious Leaders Ask Housing Edict*, WASH. POST AND TIMES HERALD, April 22, 1963, p. B3.

²⁵¹ *Job Discrimination Regulation Draws Praise and Criticism*, WASH. POST AND TIMES HERALD, June 12, 1965, p. B1; *City Bans Job Discrimination*, WASH. POST AND TIMES HERALD, June 11, 1965, p. A1; *Fair-Employment Order Lacks Clear Enforcement Procedures*, WASH. POST AND TIMES HERALD, June 11, 1965, p. A26; *Injunction Seen Key to Fair-Hiring Law*, WASH. POST AND TIMES HERALD, Jan. 25, 1965, p. B1; *District Fumbles Fair-Hiring Initiative*, WASH. POST AND TIMES HERALD, Dec. 23, 1964, p. A22; *Gray Disputed by Lawyers on Rights Powers*, WASH. POST AND TIMES HERALD, Nov. 8, 1964, p. B5; *Employment Opportunity*, WASH. POST AND TIMES HERALD, Sept. 2, 1964, p. A20; *Trade Bloc Hits FEPC Plan*, WASH. POST AND TIMES HERALD, Sept. 1, 1964, p. D1; *Gray Tells Plan to End Job Bars*, WASH. POST AND TIMES HERALD, Aug. 25, 1964, p. C2. For Gray's response to these charges, see *Corporation Counsel Counters His Critics*, WASH. POST AND TIMES HERALD, April 4, 1965, p. M1.

²⁵² *Bumper Stickers Knock D.C. Aides*, WASH. POST AND TIMES HERALD, April 24, 1965, p. B1.

²⁵³ *Bureaucratic Maze Cripples City Efficiency*, WASH. POST AND TIMES HERALD, Nov. 1, 1965, p. B1. See *Commission Post Goes to Tobriner*, WASH. POST AND TIMES HERALD, Jan. 31, 1961, p. A1.

²⁵⁴ *House Probe of City Heads' Rights Moves Voted*, WASH. POST AND TIMES HERALD, Aug. 7, 1964, p. C4.

²⁵⁵ *Id.*; *"Lost" Haircut Laws Still Hard to Find*, WASH. POST AND TIMES HERALD, Jan. 18, 1965, p. A18; *District Fumbles Fair-Hiring Initiative*, WASH. POST AND TIMES HERALD, Dec. 23, 1964, p. A22; *D.C. Commissioners Set Up Hearing for Open-Hiring Order*, WASH. POST AND TIMES HERALD, Aug. 5, 1964, p. B1; *Gray Drafting City Stand on Fair Employment Act*, WASH. POST AND TIMES HERALD, July 18, 1964, p. A11; *District Is Seen Free to Enact Racial Edicts*, WASH. POST AND TIMES HERALD, July 17, 1964, p. A19; *D.C. Can Cut Barber Permits in Race Cases*, *Counsel Rules*, WASH. POST AND TIMES HERALD, July 24, 1963, p. A5; *Lawyers Draft Housing Code*, WASH. POST AND TIMES HERALD, Oct. 3, 1962, p. C7.

Gray's civil rights record is further complicated by the fact that he was on the brief for the District of Columbia in *Bolling v. Sharpe*, 347 U.S. 497 (1954), *Segregation Is Legal, D.C. Insists to Court*, WASH. POST, Dec. 3, 1952, p. 18; that he delivered a legal opinion holding that the District Board of Education did not have power to

withdraw accreditation from a private school that denied admission to African-Americans, *Study Slated On Taxes as Racial Lever*, WASH. POST AND TIMES HERALD, July 10, 1964, p. C1; *Private School Accreditation Ruling Recalled*, WASH. POST AND TIMES HERALD, July 1, 1964, p. B1; that he was a member of the four-person special committee that unanimously recommended the creation of the District's Council on Human Relations in 1958, *Race Relations Body Proposed*, WASH. POST AND TIMES HERALD, March 1, 1958, p. B3; *Race Relations Committee Considered*, WASH. POST AND TIMES HERALD, Oct. 14, 1957, p. B1; and that he sponsored Hubert B. Pair for membership in the District Bar Association in 1959. *5 More Negroes Apply to Join Bar Group*, WASH. POST AND TIMES HERALD, Jan. 8, 1959, p. D5.

²⁵⁶ *Chester H. Gray Dead, Chief D.C. Legal Officer*, WASH. POST AND TIMES HERALD, Nov. 28, 1965, p. B10.

²⁵⁷ 346 U.S. 100 (1953); *Thompson Firm Files Brief in Race Suit*, WASH. POST, April 29, 1951, p. 15; *Arguments Concluded in Bias Case Against Cafes*, WASH. POST, Jan. 8, 1952, p. B1; *Restaurant Racial Case Considered*, WASH. POST, March 1, 1951, p. B1.

²⁵⁸ *Chester H. Gray Dead, Chief D.C. Legal Officer*, WASH. POST AND TIMES HERALD, Nov. 28, 1965, p. B10.

²⁵⁹ Employment Record of Chester H. Gray, Office of Personnel, Government of the District of Columbia (on file with the author).

²⁶⁰ *Command Post*, WASH. POST AND TIMES HERALD, Nov. 30, 1965, p. A16.

²⁶¹ Philip Elman, interviewed by Norman Silber, *The Solicitor General's Office, Justice Frankfurter, and Civil Rights Litigation, 1946-1960: An Oral History*, 100 HARV. L. REV. 817, 831 (1987).

²⁶² Employment Record of Maurice J. Mahoney, National Personnel Records Center, National Archives at St. Louis (hereinafter "Mahoney Employment Record") (on file with the author).

²⁶³ *Maurice Mahoney, Steel Firm Official*, WASH. POST, Mar. 8, 1978, p. B7; Mahoney Employment Record.

²⁶⁴ *Id.*; Mahoney Employment Record. During this period Mahoney often handled approximately twenty appellate cases per year. See, e.g., *Commissioner v. Southwest Consolidated Corp.*, F.2d 1019 (5th Cir. 1942); *Hoagland Corporation v. Helvering*, 121 F.2d 985 (2d Cir. 1941); *Michigan Steel Corporation v. Commissioner*, 116 F.2d 280 (6th Cir. 1940); *United Light & Power Co. v. Commissioner*, 105 F.2d 866 (7th Cir. 1939); *Commissioner v. Western Power Corp.*, 94 F.2d 563 (2d Cir. 1938); *Insull v. Commissioner*, 87 F.2d 648 (7th Cir. 1937); *Continental Petroleum Co. v. Commissioner*, 87

F.2d 91 (10th Cir. 1936); *Minnesota Tea Co. v. Commissioner*, 76 F.2d 979 (8th Cir. 1935).

²⁶⁵ *Resigns Government Job*, ATLANTA CONSTITUTION, Nov. 9, 1943, p. 11. See, e.g., *Bramer v. Commissioner*, 161 F.2d 185 (3d Cir. 1947); *In the Matter of General Armature & Manufacturing Co. and District 50, United Mine Workers of America*, 69 N.L.R.B. 768 (1948).

²⁶⁶ *In the Matter of Copperweld Steel Co. and United Steelworkers of America, Local 2243 (CIO)*, 75 NLRB No. 23 (1947); *Terminal Allowance, Copperweld Steel Co., Warren, Ohio*, 269 I.C.C. 323 (1947); *Copperweld Steel Co. v. Industrial Commission of Ohio*, 324 U.S. 780 (1945).

²⁶⁷ 32 INTERNAL REVENUE ACTS OF THE UNITED STATES, 1909–1950: LEGISLATIVE HISTORIES, LAWS, AND ADMINISTRATIVE DOCUMENTS 1416 (1979); 34 INTERNAL REVENUE ACTS OF THE UNITED STATES, 1909–1950: LEGISLATIVE HISTORIES, LAWS, AND ADMINISTRATIVE DOCUMENTS 2238 (1979).

²⁶⁸ S. Oliver Goodman, *Bill Allowing Banks to Deal in Bonds Is Hit*, WASH. POST, May 4, 1949, p. 14. See, e.g., *Copperweld Steel Co. v. U.S.*, 344 U.S. 871 (1952); *Copperweld Steel Co. v. U.S.*, 106 F. Supp. 283 (W.D. Pa. 1952); *In the Matter of American Iron & Steel Institute, et al.*, 48 F.T.C. 123, 125 (1951).

²⁶⁹ *Maurice Mahoney, Steel Firm Official*, WASH. POST, Mar. 8, 1978, p. B7.

²⁷⁰ See, e.g., *In the Matter of Richard C. Spangler, Inc.*, 46 S.E.C. 238, 239 (1976); *In the Matter of Richard C. Spangler, Inc.*, SECURITIES EXCHANGE ACT RELEASE 12104, ADMIN. PROC. FILE NO. 3–1950 (1976); *In the Matter of Richard C. Spangler, Inc.*, 43 S.E.C. 1093 (1969); *In the Matter of the Application of Richard C. Spangler, Inc.*, SECURITIES EXCHANGE ACT RELEASE NO. 8531 (1969); *Strathmore Securities, Inc. v. SEC*, 387 U.S. 918 (1967); *Unicon Management Corp. v. U.S.*, 179 Ct. Cl. 534 (1967).

²⁷¹ *Maurice Mahoney, Steel Firm Official*, WASH. POST, Mar. 8, 1978, p. B7. Mahoney's successor, Ward Elgin Lattin, clerked for McReynolds during the 1934 Term. Supreme Court Library Correspondence. Lattin was born in Hesperia, Michigan in 1905, and worked part-time as a basket maker while attending the local Shelby High School. After his graduation in 1922, he worked for a year as a full-time basket maker in nearby Ludington before moving to Detroit to enroll in Wayne State University. During college he worked as a grocery clerk and an assistant treasurer for the University. After receiving his A.B. in English and History in 1927 he moved to Washington, D.C., where he worked for two years for the Board of Temperance, Prohibition, and Public Morals. He enrolled in Georgetown's law school in the fall of 1928, earning his LL.B.

in 1932 and his J.D. in 1934, when he was admitted to the D.C. bar. WHO'S WHO IN AMERICAN LAW 310 (1st ed. 1978); *Ward E. Lattin*, WASH. POST, Mar. 30, 1985, p. B6; Employment Record of Ward E. Lattin, National Personnel Records Center, National Archives at St. Louis (hereinafter "Lattin Employment Record") (on file with the author). From 1929 to 1934, Lattin served as assistant secretary to Senator Arthur Vandenberg of his native Michigan, and as an assistant clerk to the Senate Committee on Enrolled Bills. WHO'S WHO IN AMERICAN LAW 310 (1st ed. 1978); OFFICIAL CONGRESSIONAL DIRECTORY (72–2) 224 (2d ed. 1933); Lattin Employment Record; Letter from Christopher J. Doby, Financial Clerk, United States Senate, to the author, March 20, 2014 (on file with the author). Following his clerkship, Lattin worked as an attorney and special contract claims examiner with the General Accounting Office from 1935 to 1942, during which time he earned both an L.L.M. degree and a Doctor of Juridical Science degree from Georgetown. Lattin Employment Record; *Ward E. Lattin*, WASH. POST, Mar. 30, 1985, p. B6; Ward E. Lattin, *The Unemployment Compensation Features of the Social Security Act* (unpublished L.L.M. thesis, Georgetown University, 1937); WARD E. LATTIN, *FEDERAL ADMINISTRATIVE AGENCIES AND THE DOCTRINE OF THE SEPARATION OF POWERS* (J. Sc. D. thesis, Georgetown University, 1938). See also Bernard J. Long & Ward E. Lattin, *Constitutional Problems Arising Out of the 'Fraud Order' Powers of the Postmaster General*, 4 J. D.C. BAR ASSN. 34 (1937); Ward E. Lattin, *Legal Maxims, and Their Use in Statutory Interpretations*, 26 GEO. L.J. 1 (1937). In 1942 he left the GAO to join the firm of Gardner, Morrison, Sheriff & Beddow, where he specialized in tax and corporate matters, along with cases involving railroad regulation, government contracts, wills, and charitable trusts. *Ward E. Lattin*, WASH. POST, Mar. 30, 1985, p. B6. See, e.g., *Riggs National Bank v. U.S.*, 352 F.2d 812 (Ct. Cl. 1965); *Hearst Corp. v. Commissioner*, 14 T.C. 575 (1950); *Southern Ry. Co. Discontinuance of Trains No. 35 and 34 Between Washington, D.C. and Salisbury, N.C.*, 331 I.C.C. 9 (1967); *Bangor & Aroostook R.R. Co.—Investigation of Conrail – Maine Freightways*, 80 M. C.C. 569 (1959); *Ivy H. Smith Co. v. United States*, 154 Ct. Cl. 74 (1961); *Peter Kiewit Sons' Co. v. United States*, 151 F. Supp. 726 (Ct. Cl. 1957); *Branch Banking & Trust Co. v. United States*, 98 F. Supp. 757 (Ct. Cl. 1951); *Hearst Corp. v. Commissioner*, 14 T.C. 575 (1950); *American National Red Cross v. Holtman*, 351 F.2d 746 (D.C. Cir. 1965); *Riggs National Bank v. Holtman*, 221 F. Supp. 599 (D.D.C. 1963); *Olds v. Rollins College*, 173 F.2d 639 (D.C. Cir. 1949); *Noel v. Olds*, 138 F.2d 531 (D.C. Cir. 1943). In 1972, he successfully represented a trustee in its suit to strike a

racial restriction from a charitable educational trust it was administering. *Wachovia Bank & Trust Co. v. Buchanan*, 346 F. Supp. 665 (D.D.C. 1972). He retired as a partner in 1978 and took of counsel status. He died of a heart attack at the age of seventy-nine in 1985, a widower leaving three children and two grandchildren. *Ward E. Lattin*, WASH. POST, Mar. 30, 1985, p. B6.

²⁷² Supreme Court Library Correspondence.

²⁷³ *J. Allan Sherier*, 52; *Government Attorney*, WASH. POST, Dec. 29, 1965, p. B6.

²⁷⁴ *Joseph T. Sherier, D.C. Lawyer, Dies*, WASH. POST, June 20, 1960, p. B3; *Haberly v. Reconstruction Finance Corp.*, 104 F. Supp. 636 (D.C. 1951).

²⁷⁵ See, e.g., 1 THE MARTINDALE-HUBBELL LAW DIRECTORY 1590, 70th Annual Edition (Martindale-Hubbell, Inc. 1938), *microformed on* LLMC Martindale-Hubbell, Directories (1938) No. 92-001A F11; 1 THE MARTINDALE-HUBBELL LAW DIRECTORY 1570, 77th Annual Edition (Martindale-Hubbell, Inc. 1945), *microformed on* LLMC Martindale-Hubbell, Directories (1945) No. 92-001A F11; 1 THE MARTINDALE-HUBBELL LAW DIRECTORY 387, 87th Annual Edition (Martindale-Hubbell, Inc. 1955), *microformed on* LLMC Martindale-Hubbell, Directories (1955) No. 92-001A F19. See, e.g., *Haberle v. RFC*, 104 F. Supp. 636 (D.D.C. 1951); *Shea v. Second National Bank of Washington*, 143 F.2d 379 (D.C. Cir. 1944); *Myers v. H.L. Rust Co.*, 134 F.2d 417 (D.C. Cir. 1943); *Mountford v. Mountford*, 181 Md. 212 (1942).

²⁷⁶ *J. Allan Sherier*, 52; *Government Attorney*, WASH. POST, Dec. 29, 1965, p. B6; Employment Record of Joseph Allan Sherier, National Personnel Records Center, Valmeyer, Illinois (on file with the author); Military Record of J. Allan Sherier, National Personnel Records Center, St. Louis, Missouri (on file with the author); 1962 CONG. DIR. 255 (1962); 107 CONG. REC. 13130 (1961).

²⁷⁷ Supreme Court Library Correspondence.

²⁷⁸ *Biographical Note, Finding Aid, Musser Family Papers, 1852–1967*, Utah State Historical Society, at <http://history.utah.gov/findaids/B00096/B0096ff.xml#s4> (hereinafter “*Biographical Note*”); *A. Milton Musser Called by Death*, DESERET NEWS, Sept. 25, 1909, at http://jared.pratt-family.org/parley_family_histories/amos_musser_obituary.html; Orson F. Whitney, *Amos Milton Musser*, in LDS BIOGRAPHICAL ENCYCLOPEDIA, available at <http://search.ancestrylibrary.com/search/db.aspx?dbid=2028>.

²⁷⁹ *Biographical Note; A. Milton Musser Called by Death*, *supra* note 278.

²⁸⁰ *Biographical Note*. The trial of Joseph Musser and other polygamists received substantial attention from the local press. See, e.g., *Judges Delay Polygamy Case*

Pleas in Both Federal and City Courts, SALT LAKE TELEGRAM, March 8, 1944, p. 1; *Forty-Six Seized in Three-State Polygamy Drive*, SALT LAKE TRIBUNE, March 8, 1944, p. 1; *Preliminaries Open in Prosecution of Polygamy Suspects*, SALT LAKE TRIBUNE, March 9, 1944, p. 13; *Judge Sends 15 Cultists to State Prison*, SALT LAKE TRIBUNE, May 26, 1944, p. 17; *Woman Details Life in Cultist Colony at Polygamy Trial*, SALT LAKE TRIBUNE, Sept. 27, 1944, p. 13; *Eleven Polygamists Win Paroles From Prison*, SALT LAKE TRIBUNE, Nov. 27, 1945, p. 13. These and other news clippings reporting on the proceedings may be found in the Musser Family Papers, Box 32, Folder 8.

²⁸¹ *Biographical Note*.

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ HUTCHINSON & GARROW, *supra* note 5, at 9–11.

²⁸⁶ *Biographical Note*; Letter from Christopher J. Doby, Financial Clerk, United States Senate, to the author, March 20, 2014 (on file with the author) (listing Musser as a “folder” and an “Additional Clerk” in 1933 and 1934); “Personal History Statement,” Nov. 9, 1960, Box 20, Folder 6, Musser Family Papers; “Balfour Province Award,” Musser Family Papers, Box 32, Folder 6.

²⁸⁷ Supreme Court Library Correspondence.

²⁸⁸ *Biographical Note*.

²⁸⁹ John Knox, *John Knox Diary* (April 18, 1940) (unpublished manuscript available at Knox MSS, Special Collections, University of Virginia, folder 10240-k).

²⁹⁰ *Biographical Note*. See also *Bar Association Members Serving in the Armed Forces of the United States*, 10 J.B. ASS’N D.C. 36, 37 (1943); *Purely Personal*, WASH. POST, July 6, 1943.

²⁹¹ *Biographical Note; Dalby Surrenders to Court on Conspiracy Indictment*, L.A. TIMES, Jan. 16, 1951, p. 2; *Fellows v. Commissioner*, 1950 WL 7940 (Tax Ct. 1950); *Zeller v. Commissioner*, 9 T.C.M. 7 (1950); *Scurlock v. Commissioner*, 1950 WL 7937 (Tax Ct. 1950); 1 THE MARTINDALE-HUBBELL LAW DIRECTORY 86, 97, 80th Annual Edition (Martindale-Hubbell, Inc. 1948), *microformed on* LLMC Martindale-Hubbell, Directories (1948) No. 92-001A F5; 1 THE MARTINDALE-HUBBELL LAW DIRECTORY 136, 153, 87th Annual Edition (Martindale-Hubbell, Inc. 1955), *microformed on* LLMC Martindale-Hubbell, Directories (1955) No. 92-001A F8; “Summary of Past Employment,” Box 20, Folder 6, Musser Family Papers.

²⁹² *Biographical Note*; Musser Family Papers, Box 28, Folders 1, 2 and 4.

²⁹³ *Obituary, Woodrow S. Wilson*, DESERET NEWS, January 13, 2005; *Obituary, Woodrow S. Wilson*, PROV. J. BULL., Jan. 7, 2005.

²⁹⁴ See, e.g., 1 THE MARTINDALE-HUBBELL LAW DIRECTORY 177, 92nd Annual Edition (Martindale-Hubbell, Inc. 1960), *microformed on* LLMC Martindale-Hubbell, Directories (1960) No. 92-001A F8; 1 THE MARTINDALE-HUBBELL LAW DIRECTORY 288, 100th Annual Edition (Martindale-Hubbell, Inc. 1968), *microformed on* LLMC Martindale-Hubbell, Directories (1968) No. 92-001A F8.

²⁹⁵ <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GSln=MU&GSpartial=1&GSbyrel=all&GSst=5&GSentry=4&GSsr=2881&GRid=63659338&>.

²⁹⁶ *Obituary, Woodrow S. Wilson*, DESERET NEWS, January 13, 2005; *Obituary, Woodrow S. Wilson*, PROV. J. BULL., Jan. 7, 2005; "Brief of Record," Musser Family Papers, Box 28, Folder 2.

²⁹⁷ Supreme Court Library Correspondence.

²⁹⁸ *R.W. Radcliffe, 67*, WASH. POST, Sept. 24, 1982, p. B10; *Mary Denison Hope Becomes Bride of Raymond Radcliffe*, WASH. POST, Apr. 29, 1942, p. 17; *Dr. Radcliffe, Fishery Expert, Dies at 70*, WASH. POST, Sept. 4, 1950, p. B4; Employment Record of Raymond W. Radcliffe, National Personnel Records Center, National Archives at St. Louis (on file with the author).