Willis Van Devanter: Chancellor of the Taft Court

ROBERT POST

Although William H. Taft was president for only four years, he appointed a remarkable five justices to the Supreme Court. But only two of these appointments remained on the Court when Taft became chief justice—Mahlon Pitney and Willis Van Devanter. Pitney would be gone within eighteen months, but Van Devanter would remain as “one of the most enduring achievements of the Taft Administration, and very possibly its greatest.”

Early Life

Willis Van Devanter was born on April 17, 1859, in Marion, Indiana. He was about eighteen months younger than Taft. Van Devanter’s father was a successful local lawyer. Although Van Devanter wanted to go into farming, his father prevailed upon him to attend Indiana Asbury University (now DePauw University) and then Cincinnati Law School, where Van Devanter was a year behind but nevertheless acquainted with Taft himself.

Unlike both Taft and Oliver Wendell Holmes, who followed well-worn career paths, Van Devanter elected to move as a young man to the distant and lawless West. In 1884, within a week of President Chester A. Arthur’s appointment of Van Devanter’s brother-in-law (John W. Lacey) as Chief Justice of the Territorial Court for Wyoming Territory, Van Devanter relocated to the frontier town of Cheyenne. In 1885, he offered his services to the new territorial governor, the loyal, shrewd, and astute Francis E. Warren, stalwart Republican, wealthy rancher, and Civil War recipient of the Medal of Honor.

Van Devanter’s rise in the new territory was “little short of sensational.” He became a commissioner tasked with revising the laws and statutes of Wyoming Territory in 1886; the city attorney of Cheyenne in 1887; a member of the Territorial House of Representatives in 1888; and, in 1889, at the age of thirty, the Chief Justice of the Territorial Supreme Court. When Wyoming became a state 1890, Van Devanter was elected to its new Supreme Court and became its first Chief Justice. Advising a friend to try his luck in the western territories, Van Devanter
At age 25, Willis Van Devanter moved from Indiana to Cheyenne, WY (pictured in 1890) and became a successful lawyer representing the Union Pacific Railroad and large cattle ranchers. He also became active in the Wyoming Republican Party.

wrote, “A man grows fourfold more than he would under other conditions.”

Within four days of his election as Chief Justice, Van Devanter suddenly and unexpectedly resigned, returning to the successful law practice that he had maintained throughout his time in Wyoming. He traveled the state in stagecoaches and on horseback. In 1890 he formed with his brother-in-law the firm of Lacey and Van Devanter. It quickly became “Wyoming’s most prominent law firm,” representing the most important economic interests in the state, including cattlemen’s associations and the state’s most significant railroad, the Union Pacific. Most memorably, Van Devanter defended the cattlemen who, along with a contingent of Texas gunman, had traveled to the northern reaches of the state to exterminate the “rustlers” who they claimed were stealing cattle. After murdering two suspected rustlers, the excursion was itself surrounded by angry residents and survived only after extraction by federal troops. The invasion was the outgrowth of ongoing disputes between southern Republican cattle interests and northern settlers. Van Devanter conducted a masterful and effective defense of the gunmen in what later became known as the Johnson County War.

From the moment he arrived in the territory, Van Devanter sought to become an important player in Wyoming Republican politics. Largely because of his close connection to Warren, he “served as Chairman of the Republican State Committee from 1892 to 1895, as a delegate to the Republican National Convention in St. Louis in 1896, and as a member of the Republican National Committee from 1896 to 1900.” After Warren became a powerful United States Senator, Van Devanter became “Senator Warren’s man in Wyoming, his confidant, counsel, and political manager.” Van Devanter subsidized Republican newspapers;
arranged for political torchlight parades and rallies; provided Republican speakers with free Union Pacific passes (essential in such a large, unpopulated state); financed the transportation of Republican voters to the polls; created a statewide network of Republican clubs; waged election campaigns; drafted platforms and legislation; whipped the unruly Wyoming legislature into line; and in general was the first lieutenant of what became known as the “Warren machine.”  

Van Devanter remained throughout absolutely loyal to Warren. “A good listener, organizer, and financial manager, Van Devanter could purchase railroad fares, bands, newspapers, and election officials with aplomb and tact, leaving few traces except Republican success in his wake.” Van Devanter was an “ideal tool” who was content never to threaten Warren’s authority.

Van Devanter was discreet, kept Warrant’s confidences, but faithfully relayed political gossip and intelligence to Warren, giving Warren a trustworthy guide to Wyoming’s political climate. Van Devanter, as legislative draftsman and political negotiator, could translate Warren’s program into speeches and bills and see that the territorial and state legislature responded. Van Devanter, however, never intruded on questions of policy. Warren decided on the ends; Van Devanter took care of the means. In crisis after crisis, other Republicans would falter or whine, but Van Devanter never wavered in his willingness to defend Warren and his program. For such devotion, Warren repaid Van Devanter with the highest gifts he could command.

**Becoming a Judge**

Warren’s gifts included, first and foremost, a relentless effort to advance Van Devanter’s career, including helping Van Devanter achieve his intense ambition to become a federal judge and ultimately a Supreme Court justice. The first step was vigorously to lobby Attorney General Joseph McKenna to secure Van Devanter’s appointment in 1897 as an Assistant Attorney General assigned to the Department of the Interior. Describing his interview with McKenna, Warren wrote Van Devanter:

> I then told him and I will admit my voice was tremulous and emotional in the conversation at this juncture, that if the President turned us down in this I felt I had no further interest in the patronage of my State, for the gap would be too wide to fill; that we all were intent upon it, and that personally it was the one thing I felt I must have for I should feel disappointed and humiliated beyond measure if it was not granted.

Van Devanter proved an “efficient bureaucrat,” impressively and effectively managing his department, reducing backlogs, and successfully arguing important cases before the Supreme Court. During this period, he acquired his famous expertise in Indian, mining, and water law, as well as the law of public lands and patents, all of which was of considerable importance to the governance of the West. But Van Devanter never lost his thirst for judicial office. And when Warren—ever loyal, effective, and imaginative—secured the passage of legislation creating an extra position on the Eighth Circuit, Van Devanter was nominated to the seat by Theodore Roosevelt and confirmed in 1903. Van Devanter acted the part of a moderate Roosevelt liberal, voting (unlike Holmes) to apply the Sherman Antitrust Act to dismantle the Northern Securities Co. and the Standard Oil Co., and taking a strong stand in favor of national power with regard to the control of federal lands and Indians.
Supreme Court Appointment

“From the moment that he was appointed to the Eighth Circuit Court of Appeals, Van Devanter actively sought a position on the United States Supreme Court.” Senator Warren was fully supportive. “We must keep our eye on the sight and our thumb on the keyhole, and not miss a single trick, because the thing will not be complete until you become one of the nine.” Pushing for Roosevelt to appoint Van Devanter to the vacancy left open by Henry Billings Brown, for example, Warren wrote Van Devanter:

Things seem to be working rather favorably toward the general end we are seeking. Of course it may be necessary to have lots of time, lots of patience and some close figuring, but we might as well fix our aim directly on the spot we desire to hit, and then bend our energies diplomatically and continuously in that direction.

Almost as soon as William H. Taft became president, Warren let him know in no uncertain terms, “Probably I shall desire nothing during your administration so intensely as I desire the promotion of Judge Willis Van Devanter to the Supreme Court when a vacancy occurs.” Warren’s opportunity came in 1910 with the death of Chief Justice Fuller and the retirement of Justice William H. Moody. One of the new appointments would almost certainly have to come from the Eighth Circuit.

The story of Van Devanter’s nomination is told elsewhere, but for present purposes it is important to emphasize a curious and mysterious memorandum tabulating the efficiency of Circuit Court judges that somehow ended up in Taft’s files as he contemplated the appointment. The memorandum purported to show that Van Devanter was a “shirker” who was unable to keep up his share of the Eighth Circuit’s work. Van Devanter had earlier heard of the memorandum from Charles Nagel, Taft’s Secretary of Commerce and Labor (and Brandeis’ brother-in-law). Van Devanter responded to the allegation with indignation. “It gives me no little pain because it does me an injustice.” Van Devanter pointed to the number of original trials that he had had to conduct, the difficulty of the opinions that he had undertaken, as well as the fact that “I have proceeded upon the theory that quality and accuracy are more important, particularly in appellate work where binding precedents are made.”

Matters came to a head in December 1910 as Taft contemplated his options. Taft angrily said to Warren that Van Devanter was not working hard enough. “Almost certainly” with Warren’s connivance, Van Devanter
responded with a public telegram taking his name out of consideration:

It is true that I am now behind in Circuit Court of Appeals work but not to extent apparently represented. While this is to be regretted it does not arise from indolence or timidity in reaching conclusions, or hesitancy in giving effect to them. I may have given too much attention to closely contested and important cases, especially where there have been differences of opinion, and may have been too tenacious of my own views, but I have felt justified in my course because it almost always has resulted in unanimity and has tended to produce harmonious rules of decision. I have done much important work in Circuit Courts which, if added to my appellate work, makes my total easily up to average of my associates. I emphatically protest against impressions which seem to have been created, but make no complaint of President’s attitude for it is obviously reasonable. I cannot prepare and submit showing in my own behalf now without assuming attitude which would be distasteful to me. For this reason I prefer that further consideration of my name be omitted. Then at some later time when there are no appointments at stake I shall hope President will permit me personally to make full statement of my work to him and yourself. I will owe this to both because of his consideration of my name and because of your interest in presenting it.44

Accompanying the telegram was a long impassioned “private” letter undermining the memorandum’s statistics, casting personal doubt on its author, and defending Van Devanter’s own performance.45

Warren presented the telegram to Taft, who found it “very dignified,”46 and then cleverly induced Taft himself to request to see Van Devanter’s “private” justificatory letter. As Warren recounted the story to Van Devanter, Warren informed Taft about the letter, coyly observing, “Mr. President, I ought not to withhold anything from you, and if you will consider, in reading it, that it was absolutely a confidential, quickly-written, friendly letter such as husband and wife or brothers might write to each other, I will bring it over and let you see it.” At that point Taft became “very anxious to see [the letter] and [said he] would treat it as I desired him to.”47

On December 9, Warren, meeting at 7 pm with a sleepy Taft to discuss irrigation matters, also suggested to Taft that appointing Van Devanter’s chief rival from the Eighth Circuit, Judge William Cather Hook, would encourage insurgent Republicans to believe that they were controlling Supreme Court appointments. “By this time Mr. Taft’s sleepiness had entirely disappeared and he was the most thoroughly awake man you ever saw, his eye snapping fire,” Warren wrote Van Devanter, “and the way he raked over the insurgents and what he said about them would not look at all well in print.”48 Taft also reported to Warren that the Cabinet, including Nagel, had met and recommended Van Devanter.49 Taft had been worried that Senator Knute Nelson of Minnesota, “the high man on the Judiciary,” might be “bucking.” “Nelson said to-day,” Taft commented, that “‘I have no candidate, myself, but ask you not to appoint any railroad attorney like Van Devanter and others.’”50

Three days later Taft announced his selection of Van Devanter, who was confirmed on December 15, 1910.51 To Judge Walter H. Sanborn, Van Devanter’s colleague on the Eighth Circuit and likely author of the offending memorandum, Taft wrote,
I took Van Devanter only after a long investigation in which I found that he had been sick and his wife had been ill and after a full letter of explanation from him. I think perhaps the dilatory habit in respect to turning out opinions could be corrected by close association with a court that sits all the time in the same city, and where the comparison between him and the other judges will be constant and when he knows why it is that I seriously hesitated before taking him.52

**Opinion Shy**

Unfortunately for Taft, Van Devanter never did learn to correct his “dilatory habit in respect to turning out opinions.” Indeed, Van Devanter was far and away the least productive member of the Taft Court. Alongside of Van Devanter, four other justices sat continuously on the Taft Court from its inception in the 1921 Term through the conclusion of the 1928 Term. During that time, Taft authored 249 opinions, Holmes 205 opinions, Brandeis 193 opinions, McReynolds 172 opinions, and Van Devanter only 94 opinions. If one considers the period between the outset of the 1923 Term and the conclusion of the 1928 Term, Taft authored 176 opinions, Holmes 146 opinions, Brandeis 143 opinions, Butler 137 opinions, McReynolds 129 opinions, Sutherland 113 opinions, Sanford 113 opinions, and Van Devanter only 70 opinions.

Not only did Van Devanter write fewer opinions than his colleagues, but he was also the slowest author on the Taft Court. From the outset of the 1921 Term through the conclusion of the 1928 Term, it took an average of 143 days from oral argument for Van Devanter to announce a unanimous
van devanter was also the most prolix member of the taft court. from the beginning of the 1921 term through the end of the 1928 term, van devanter’s unanimous opinions averaged 9.05 pages in length, which was the longest of any justice on the court. by contrast holmes’ unanimous opinions averaged 3.27 pages, mcreynolds’ 4.73 pages, brandeis’ 6.05 pages, sutherland’s 6.29 pages, butler’s 6.39 pages, sandford’s 6.39 pages, and taft’s 8.85 pages. overall, a unanimous taft court opinion averaged 6.33 pages in length.

van devanter’s opinions did, however, possess the merit of singular clarity. john w. davis, pointedly contrasting van devanter to holmes, observed in a commemorative tribute that van devanter’s written style … was doric rather than corinthian in its architecture. there was no striving for adornment, no search for novel words, no effort to coin epigrams. at the moment, i do not recall a single sentence of his that might be called epigrammatic. instead … he aimed to be a judge and not a litterateur, and endeavored always to make his meaning so plain that a wayfaring man could not mistake it. and this i take to be the quintessence of merit in a judicial utterance.

attorney general william d. mitchell seconded this conclusion. he noted that van devanter’s style is simple and clear. he was not a phrasemaker and he did not import into his vocabulary words having no settled meaning in the law. his opinions are wholly free from such affectations. no one can fail to understand his reasoning and his conclusions; and, above all, his opinions not only dispose of the cases under consideration, but furnish to the profession a guide and a chart for the future.

brandeis privately commented to frankfurter that van devanter, in contrast to taft, “sufficiently work[s] over materials” to provide adequate guidance to the bar.

van devanter’s difficulty in drafting opinions was a source of pain and concern to taft. van devanter “is very slow in writing his cases,” taft observed to his son. “he is opinion-shy, and he is never content to let an opinion go until he has polished it and worked on it until it is a gem.” “it means fine opinions, but very few of them.” the “trouble” with van devanter, taft wrote his brother horace, “is that he insists on writing opinions which involve too great individual investigation and he is not content therefore to get through an opinion within a reasonable time, so that now he has carried opinions for one or two years and he is way behind and this has become a nerve straining situation.”

in the fall of 1927, van devanter’s wife, dollie, suffered a debilitating stroke. “the illness of van devanter’s wife has made him very slow in his opinions, slower than he ever was, and he was always slow,” lamented taft. van devanter never recovered his footing. “we are not getting along as well in getting rid of opinions as i would like,” taft worried in 1929, and “judge van devanter is the worst offender in this regard. he is opinion-shy. he writes admirable opinions and he is the man whom we could least spare
in the Court, and yet his list of opinions is very small.\textsuperscript{60}

Van Devanter tended to justify his writer’s block by adverting to the special difficulty of the opinions assigned to him.\textsuperscript{61} “I have not been able to do much of anything in the way of writing opinions,” he wrote retired Justice John H. Clarke in 1927. “It so happens that those assigned to me call for particular care and do not admit of hasty or rapid disposal.”\textsuperscript{62} Clarke abetted Van Devanter in these excuses: “I have noted that you are not writing as much as usual & fear that you are not well. And yet it may be that, as heretofore, you have been loaded up with a volume of work which no one else seemed equal to and are buried in it. You have been the ‘burden bearer’ of the Court ever since I have known you—and it’s not fair.”\textsuperscript{63} It is not obvious to a contemporary observer, however, that Van Devanter’s opinions were especially difficult. \textit{Bunch v. Cole}, for example, was a relatively simple case involving federal preemption of Indian land ownership; it nevertheless took Van Devanter some eight months to complete.\textsuperscript{64}

Given his urgent need to keep the Court current with its docket, Taft occasionally felt impelled “to take most of his cases away from [Van Devanter] and distribute them among the other Justices.”\textsuperscript{65} As early as 1924, the Chief Justice wrote his wife

\begin{quote}
I am just through Conference and have assigned the cases. Poor Van Devanter works so slowly with his opinions that he has thirteen cases assigned to him. I didn’t give him any to-day. Holmes is so quick that I gave him two…. What disturbs me is the necessity for helping Van Devanter. I am going to talk with Holmes and with Sutherland about it, and then with Van Devanter, to see if we can not relieve him. He has had one case that was assigned to him that has taken a great deal of time. That was the controversy between Texas and Oklahoma over their boundary and a lot of oil which we found to belong to the United States, and out of which our Receiver, Fred Delano, has taken several millions dollars worth of oil. Van Devanter has done very well and it has taken him a good deal of time. Apparently he writes opinions slowly and is not under great pressure to get them disposed of.\textsuperscript{66}
\end{quote}

After Van Devanter’s productivity declined during the 1926 Term, Taft was forced to “redistribute” some of his cases. Taft complained to his wife that Van Devanter “is very sensitive cross and unreasonable. He does not write and yet he hates to have any comment made or action taken in respect to the matter. I turned over two of his cases to Brandeis but B. thought Van would cherish resentment against him. So I had to take Van’s cases myself and turn over some of mine to Br. I told Br. that the experiences of a Ch. Justice were like those of an impresario with his company of artists.”\textsuperscript{67} Taft explained to Holmes how he had finessed the situation:

\begin{quote}
Brother Brandeis whom I called on to help out with two other of Van Devanter’s cases objected because he thought Van rather resisted any one else taking one assigned to him. So he suggested that I transfer to him some of my own cases and take Van’s myself. He thinks Van will be less disturbed if the matter is wholly settled between him and me. I am going to do this for B. and perhaps I would better do it for you…. I greatly appreciate your willingness to help out. The brethren are feeling jaded. They grow a little sensitive and the life of a C.J. is not all roses.\textsuperscript{68}
\end{quote}
Chief Justice Charles Evans Hughes (right), who shared the Bench with Van Devanter (left) from 1910-1916, and then again from 1930 to 1937, said that his “careful and elaborate statements in conference” were “of the greatest value.” His predecessors Chief Justices White and Taft had also relied heavily on Van Devanter in Conference discussions.

Taft diplomatically approached Van Devanter, saying, “You have too many cases for this recess and not be expected to clean up…. I really assigned you too many.”69 Despite his pride, Van Devanter acceded to Taft’s plan. “I must assent to the change in assignment proposed in your very considerate note of yesterday. It gives me no little pain and embarrassment to have to say this, but I recognize the full propriety of what you propose. The cases must be disposed of.”70

Other justices agreed with Taft’s assessment of Van Devanter. Sutherland diagnosed Van Devanter with a case of “pen paralysis” that grew steadily worse during his time on the Court.71 Writing to Taft about his visit to Van Devanter’s rural summer home in Canada, Sutherland gently mocked Van Devanter’s obsessive perfectionism, which no doubt contributed to his paralysis: “Van Devanter has an excellent garden and keeps a cow, chickens and ducks. He looks after them all conscientiously, and every teat yields milk and every hen lays eggs with logical exactness and strict conformity to the settled precedents and rules of procedures.”72

The Most Valuable Man on the Court

Van Devanter’s paucity of opinions is likely why a 1972 study evaluating justices listed Van Devanter among the eight “failures” in the Court’s history.73 Yet almost all members of the Court who worked with Van Devanter testified to his powerful and disciplined legal acumen, which commanded “their respect and attention.”74

Charles Evans Hughes, who shared the Bench with Van Devanter from 1910 to 1916, and again from 1930 to 1937, praised Van
Devanter’s “careful and elaborate statements in conference” as “of the greatest value.” Ironically, “if these statements had been taken down stenographically they would have served with but little editing as excellent opinions.”75 After Van Devanter’s retirement, Hughes observed that “[t]he was in … conference that Justice Van Devanter’s wide experience, his precise knowledge, his accurate memory and his capacity for clear elucidation of precedents and principle contributed in a remarkable degree to the disposition of the court’s business…. Few judges in our history have rivaled him in fitness by reason of learning, skill and temperament for the judicial office.”76

Van Devanter, said Brandeis, “both in purpose & abilities can’t be compared. He is too much superior to—P[ierce] B[utler].”77 When Van Devanter retired in 1937 Brandeis, who had sat with him since 1916, observed that "no one could fully appreciate [Van Devanter’s] value who has not observed his work in conferences, particularly in the days of White and of Taft.”78 Indeed in 1934 Brandeis had even urged Van Devanter not to retire from the Court. As Van Devanter wrote his brother-in-law:

It may be of a little interest to you to know that after the term closed Justice Brandeis particularly asked an opportunity to have a talk with me. In the course of the talk he said that he wished specially to urge that I should not think of retiring; that he did not wish to see any changes in the Court just now, and quite apart from that he wished me to continue on the Court; that the Court specially needed me; that no one could take my place in conference; and that he thought it would be a great misfortune for the Court if I should leave. I thanked him for what he said and indicated that I was not prepared to say what I would do. He then renewed his request in even stronger terms and I pleasantly ended the talk. I told Sutherland, and only Sutherland, about it. He said that he believed that Brandeis was sincere in what he said about me and that Brandeis really had more confidence in me than in any other member of the Court. Sutherland then added: “Brandeis probably never talks to you about matters where he knows you and he differ in opinion, but in other matters of general law he usually wishes to know what you think before he comes to a conclusion, and he usually accepts what you say on such questions.” It is possible that Justice Brandeis is losing faith in the present administration and its policies. There have been some indications of this, but I have supposed that they would not be carried very far.79

Although Harlan Fiske Stone would eventually come to regard Van Devanter as “the commander-in-chief of judicial reaction,”80 he nevertheless freely acknowledged “the vigor, sanity, and precision” of Van Devanter’s mind.81 Stone remarked that members of the Court “know well that the public evidences of his judicial activities conceal rather more than they reveal what was his greatest service to the Court and to the public.”82 “At the conference table [Van Devanter] was a tower of strength. When his turn came to represent his views of the case in hand, no point was overlooked, no promising possibility left unexplored. His statements were characteristically lucid and complete, the manifest expression of a judgment exercised with unswerving independence. Often his expositions would have served worthily, both in point of form and substance, as the Court’s opinion in the case.”83 Taft himself regarded Van Devanter as “the strongest Judge in this country.”84 Van
Devanter was “the mainstay of the Court,”
“the most indispensable man we have in the
Court.” He is of the utmost value in the
Court, even if he writes no opinions,” Taft
wrote his brother. “Indeed, it would be better
if he did not write any opinions, because then
the others could keep up with the work.”

In his successful appeal to Yale Univer-
sity to bestow an honorary degree on Van
Devanter, Taft wrote Yale President James R.
Angell:

Even members of the Bar who fol-
low the Court’s decisions are of-
ten not advised of the very great
function that one Judge may play in
guiding the decisions of the Court,
by reason of his experience, his judi-
cial statesmanship, his sense of pro-
portion and his intimate familiarity
with the precedents established by
the Court of which he is a member,
and to which the Court ought to
make itself conform as near as may
be. The value of a Judge in Confer-
cence, especially in such a Court as
ours, never becomes known except
to the members of the Court. Now I
don’t hesitate to say that Mr. Justice
Van Devanter is far and away the
most valuable man in our Court in
all these qualities…. Van Devanter
exercises more influence … than
any other member of the Court, just
because the members of the Court
know his qualities.

To Yale professor William Lyon Phelps,
Taft wrote that Van Devanter

is one of the ablest Judges in this
country and one of the ablest Judges
that we have ever had on the Court,
but he is a very modest man and
nobody knows the position he oc-
cupies on the Court but those who
have to do with him in Conference.
No one can appreciate his influence
except through knowledge gained
from the intimacy of the deliber-
ations of the Court over opinions…. He is better versed than any member
on the Bench in our decisions and
keeps us straight. He does not write
so many opinions, but they are all
admirable when he writes them. I
don’t know how we could get along
without him in Conference. I don’t
think the Bar realizes generally what
a commanding figure he is on the
Court. He never advertises and he
never seeks publicity…. The truth is
I think those who refer to the Court
who are in the ‘know’ think when
they refer to the Court that they are
referring to Van Devanter.

Taft wrote his son that “Van is so modest
that his merits are not recognized, but I am
determined that they shall be.”

The Cardinal

Taft was apparently blind to Van Devan-
ter’s deep wells of vanity and ambition, as
illustrated by Van Devanter’s secretive and
abortive campaign to succeed Chief Justice
Edward Douglass White in 1921. Seven days
after White’s death, Van Devanter wrote his
close friend district judge John C. Pollock:

Confidentially, Justices McKenna,
Day, McReynolds and Clarke have
said to me that they would be glad to
see me appointed, but I realize that
an expression of their views may
not be solicited and cannot with
propriety be given unless solicited.
Senator Kellogg has volunteered to
me the statement that he intends to
recommend me and to recommend
that ex-Senator George Sutherland
be named in my place. Ex-Senator
Bailey seems to think I will be the
man, and others have volunteered
a friendly interest, but I am neither
saying nor doing anything nor permitting any of these statements to bring me any sense of elation or to change the current of my mind.91

A week later, he added:

Of course, there is nothing which I can do with propriety. No doubt there will be those who think that my opinions represent the only work which I do, and of course it would be quite inadmissible for me or my friends to intimate that I have any responsibility for the opinions of others or have done any work on them. At all events, no one outside of the court itself could speak of this no matter what they surmise. Aside from other elements of impropriety it would give offense in quarters where offense would be harmful. This has been a term in which dissents were quite frequent, and yet there has not been a single dissent from any of my opinions during the term. There are some who merely count the number of opinions regardless of their substance or the direction in which they go. When one does work on that line he can do what superficially seems a volume, and then the other federal courts and the state courts may grope as best they can in an effort to find out what was intended. My ideas and inclinations are not in that direction. It leads to uncertainty and confusion, makes for instability and in the long run results in tremendous waste. The number of petitions for rehearing during the term has been unusually large, but in my cases only one was presented. People outside do not know this and in the nature of things would not be supposed to know. Again, comment on it, save by someone inside, might arouse resentment where a kindly feeling now exists.92

Three days later, Van Devanter threw in the towel and conceded the inevitability of Taft’s appointment. “My impression is that nothing more should be done by my friends. I fear that under the circumstances it would not be welcome, and this becomes a little more pointed with me when I reflect that Mr. Taft appointed me to my present place and also that I must serve with whomever is appointed for a considerable time.”93

Van Devanter’s letters illustrate his explicit ambition, highly honed from his days with Warren, to appear discretely and modestly useful to those around him. Ever since his telegram to Taft withdrawing his name from consideration as a potential nominee to the Supreme Court bench, self-effacement was always a potent weapon in Van Devanter’s arsenal.

Van Devanter knew very well how to make himself indispensable to those he wished to serve. His long history with Warren was a perfect apprenticeship. As early as Fall 1922, Brandeis could observe to Frankfurter that “Van D. runs Court now …. He is like a Jesuit general; he is always helpful to everybody, always ready for the C.J. He knows a deal of federal practice & federal specialties, particularly land laws, and then he is ‘in’ with all the Republican politicians.”94 A year later, Brandeis commented that “Van D. was influential with [Chief Justice] White, as he is with Taft – a very useful man. Ein treuer Diener seines Herrn. He would make an ideal Cardinal. He has a mind that can adjust itself to two such different temperaments as Taft and White.”95 Van Devanter “keeps close track of the Chief & of some others—Mc. (who has to be tactfully treated), Sanford, Sutherland. Intimidates some, influence that [comes] from experience.”96 Chief Justice Hughes remarked that Van Devanter’s “perspicacity and common sense made him a trusted adviser in all sorts of matters. Chief
CHANCELLOR OF THE TAFT COURT

Brandeis (seated at left) greatly admired Van Devanter (seated second from left) “both in purpose & abilities” during the time they served together on the Court from 1916 to 1937. Brandeis said Van Devanter would have made a good medieval Cardinal and in 1934 (photo depicts Court seating from 1932–1937) he urged him not to resign.

Justice White leaned heavily upon him and so did Chief Justice Taft, especially when the latter began to fail in health.” Hughes remembered that “it was a familiar scene to see [White] trudging along, generally with Justice Van Devanter in close consultation, and stopping every few blocks to rest his feet.”

Brandeis mused that he himself “could have had much influence with White—I did in beginning, but I made up my mind I couldn’t pay the price it would have cost in want of directness & frankness. He required to be managed.” The contrast with Van Devanter was explicit and pointed. “In the middle ages, Van Devanter would have been the best of Cardinals. He is indefatigable, on good terms with everybody, knows exactly what he wants & clouds over difficulties by fine phrases & deft language. He never fools himself, and his credit side is on the whole larger than his debit. But he is on the job all the time.”

It seems clear that Van Devanter enjoyed good if not excellent relationships with almost all members of the Court. He was John H. Clarke’s closest companion on the Bench. Van Devanter told Clarke in 1922 that he was “one of the very few with whom [Mrs. Van Devanter and I] have been proud to maintain really affectionate relations.” Van Devanter was like a “brother” to Butler. To Sutherland he was “the ‘salt of the earth’ and no one could be a pleasanter companion.”

Van Devanter had, as Stone observed, “a large capacity for friendship…. His relations with his colleagues were marked by his uniform courtesy and helpfulness and by their mutual regard.” Van Devanter would often go hunting and present his colleagues with a brace or two of ducks. He also socialized over a good round of golf.
Taft was correct to conclude that Van Devanter exercised great influence on the Court’s deliberations. It can be statistically shown that he was more likely than any other Taft Court justice to persuade others to alter their conference votes to join his opinions. Sutherland once wrote Taft that “if Van Devanter writes the opinion I shall unhesitatingly agree to it. If written by anybody else, I will agree to what you and he accept.” Dean Acheson, Brandeis’ law clerk during the 1919 and 1920 Terms, later recalled that Justice Van Devanter was, I think, the most beloved Member of the Court among his colleagues. He was gentle and wise and kind and thoughtful. His colleagues regarded him, so far as Justice Brandeis and Justice Holmes who talked with me were concerned, with the greatest respect in conference. He was the one who made wise and helpful observations. He was the one who in the returns which came from the circulation of draft opinions, made the suggestions or corrections which both Judge Holmes and Judge Brandeis always accepted.

Another clerk noted that Brandeis was confident that “the opposition will collapse” after receiving Van Devanter’s assent to a circulated opinion that had been five to four in conference, “so great was Van Devanter’s standing with his colleagues in matters of procedural law.” Extant case files contain ample evidence of the influence exerted by Van Devanter on the work of Brandeis, Butler, Holmes, Stone, McKenna, McReynolds, and Sanford, which at times even extended to the precirculation of draft opinions to Van Devanter for his comments and suggestions.

It was Taft, however, with whom Van Devanter developed an especially close relationship. Taft regarded Van Devanter as “really the closest friend I have on the Court.” Most unusually, Taft would close his letters to Van Devanter with “love.” Taft considered Van Devanter a “really a fine constitutional lawyer, and he writes most admirable opinions.” Unlike Holmes, Van Devanter “has not what some of our Judges have by reason of their relations to Law Schools—a claque who are continually sounding their praises.”

Almost as soon as Taft became Chief Justice, Van Devanter began to insinuate himself into the administration of Court business, and Taft quickly came to trust and rely on Van Devanter’s discretion and judgment. For example, in his first Term Taft sent Van Devanter a tentative opinion in a case, writing “I wish you would look it over and cut and slash as you think wise…. I have not sent this to the whole Court, because I want to have the benefit of your suggestions and corrections before doing so.”

Taft worked closely with Van Devanter in pushing Harding to nominate Pierce Butler to the Supreme Court. When handling the delicate business of Joseph McKenna’s retirement, Taft turned to Van Devanter to consult with McKenna’s doctor and family. He conferred with Van Devanter about the use of Court funds and the administration of Court personnel, as well as about the assignment and composition of opinions. Van Devanter was Taft’s proxy in the never-ending process of vetting potential nominees to the lower federal courts. Taft turned to Van Devanter to design and draft the Judiciary Act of 1925 as well as the Supreme Court rules necessary to implement the Act. When Holmes’ wife broke her hip and was close to death in 1929, and when Taft had to take over arranging matters for his domestically inept patrician colleague, Van Devanter was right at his side consulting at every step. Van Devanter was Taft’s loyal assistant during the planning of the new Supreme Court Building.
In short, as Van Devanter wrote to a Kentucky lawyer, “the Chief Justice … and I are not prone to differ.” Frankfurter would later capture the essence of their relationship: “Taft … himself said, and he was very happy to say, with that generosity of his which politicians would do well to, but do not often, imitate, that whatever he did as Chief Justice was made possible by his great reliance on him whom he called his ‘lord chancellor,’ Mr. Justice Van Devanter.”

Taft’s reliance on Van Devanter became ever stronger as Taft experienced his own mental acuity diminish over the decade. Once, after Van Devanter returned from a vacation, Taft confided in him that “It is a real comfort to have you back. I am always afraid we may go wrong without you.” In 1927, Taft wrote his son:

I sometimes feel that I do not have time enough in making ready for Conferences to examine with the closeness they deserve the argued and submitted cases, but they are examined by the Court with care. They have more time than I have and sometimes they humiliate me with their pointing out matters that I haven’t given time enough to the cases to discover. The familiarity with the practice and the thoroughness of examination in certain cases that Van Devanter is able to give makes him a most valuable member of the Court, and makes me feel quite small, and as if it would be better to have the matter run by him alone, for he is wonderfully familiar with our practice and our authorities. Still I must worry along until I get to the end of my ten years, content to aid in the deliberations when there is a difference of opinion.

Throughout the 1920s, Van Devanter and Taft stood at the dead center of the Taft Court. From the beginning of the 1921 Term until the end of the 1928 Term, they each either authored or joined the opinion of the Court in 98.8% of the cases in which they participated, more than any other justices. Although Pierce Butler was slightly less likely to join Taft Court opinions—through the conclusion of the 1928 Term he authored or joined the opinion for the Court in 97.8% of the cases in which he participated—it may perhaps be most accurate to conceive the Taft Court as oriented along an axis that consisted of Taft, Van Devanter, and Butler. Taft regarded Butler as “one of my dearest friends”; Van Devanter and Butler were also extraordinarily close, sharing deep roots in the Eighth Circuit.

In conference, Taft, Van Devanter, and Butler voted with each other more than with any other justices. Taft voted with Van Devanter 88% of the time, and with Butler 86.8% of the time. The next justice with whom Taft was most likely to vote was Stone, with whom Taft agreed in 82.7% of cases. Van Devanter, in turn, voted in conference with Butler 89% of the time and with Taft 88% of the time. He voted with Sanford, the next closest justice, in only 81.4% of cases. In conference Butler voted with Van Devanter 89% of the time, and with Taft 86.8% of the time. He voted with Sanford, the next closest justice, in only 80.4% of cases. Throughout the course of the decade, it is fair to say that Van Devanter and Butler together pushed Taft further and further to the right.

By the time of the New Deal crisis, Van Devanter would be pilloried in the popular press as “the court’s most ardent defender of property rights and … its most consistently conservative member.” As early as 1931, he would be branded by The New Republic “as reactionary a judge as ever sat on the Supreme Court,” which could be inferred “from his inevitable vote in favor of annulling state welfare acts, against labor unions and against the regulatory findings.
Taft and Van Devanter had such a warm relationship that Van Devanter signed his letters “your loving colleague” and Taft signed his “with love.” They stood together at the dead center of the Taft Court, with each either authoring or joining the opinion of the Court in 98.8% of the cases in which they participated.

Yet these characterizations do not capture the subtlety and adroitness of Van Devanter’s work during the Taft Court years. Brandeis himself never lost sight of the formidable, elegant, and far-sighted legal technician that Van Devanter had always been. Brandeis discerned in Van Devanter the “conflict of two deep impulses. Appetite for power & ambition that Court be right. If first is satisfied and not involved, second is strong…. That’s [the] great thing about V. Once having established power he will try to confine his own errors.”

Editor’s Note: This article is derived from the forthcoming Volume X of the Oliver Wendell Devise History of the Supreme Court of the United States, which will cover the period 1921–30 when William Howard Taft was Chief Justice.

Notes
1 Horace Lurton, Charles Evans Hughes, Van Devanter, Joseph R. Lamar, and Pitney. Taft appointed six justices if the promotion of Edward Douglass White to Chief Justice is counted.
3 WVD to Chauncey R. Hammond (June 21, 1930) (Van Devanter papers); Willis Van Devanter: Associate Justice of the Supreme Court of the United States, in WVD to W.E. Chaplin (April 15, 1929) (Van Devanter papers).
25, 1891) (Van Devanter papers).

beyond measure.” WVD to Francis E. Warren (February
appointment, Van Devanter replied, “Would like position
vided the key to his advancement. Warren admitted Van
others. Paradoxically, this intellectual repression pro-
but on his willingness to carry out the decisions of
success depended not upon his ability to make decisions,
convictions, and became a political craftsman whose
Politics

18 ((no. 4.) (Autumn 1967).

The best account is in Lewis L. Gould, Willis Van De-
Wyoming Politics 103-30 (Ph.D. Dissertation,
Yale University, 1966). See also Holsinger, Wyoming
Leader, 190-92.

war in Wyoming Politics

13 Lewis L. Gould, Willis Van Devanter and the Johnson
County War, 17 MONTANA: THE MAGAZINE OF WESTERN
History 18 ((no. 4.) (Autumn 1967).

12 Holsinger, Wyoming Leader, 178.

11 Lewis L. Gould, Willis Van Devanter and the Johnson
County War, 17 MONTANA: THE MAGAZINE OF WESTERN
History 18 ((no. 4.) (Autumn 1967).

10 WVD to Melville W. Miller (November 8, 1902) (Van
Devanter papers).

8 Id.; 182-83.

9 Id., 186-88.

7 Id., 177.

6 Francis E. Warren to WVD (February 3, 1897) (Van
Devanter papers) (“About the Supreme Bench . . . I only
mentioned it in passing because I took it for granted
every lawyer would like to reach that goal, though
knowing full well that but few of the many can reach
it. There is no reason why you should not aim as high
as that with the many years you still expect to live and
thrive.”).

5 Francis E. Warren to WVD (March 10, 1897) (Van
Devanter papers).

4 Francis E. Warren to WVD (March 21, 1906) (Van
Devanter papers).

3 Francis E. Warren to WVD (March 12, 1906) (Van
Devanter papers).

2 “I could not, even if I should write countless pages,
overstate his character, ability, and desirability from
all points, as to age, temperament, resourcefulness,
environment, breadth of view and knowledge, etc. I
believe that you know Judge Van Devanter quite well.
I shall desire at a later date to discuss the matter with
you more fully.” Francis E. Warren to WHT (March 19,
1909) (Van Devanter papers).

Chief Justice Fuller died on July 4, 1910.

Justice Moody retired because of illness on November
20, 1910. Crippled by rheumatism, Moody’s retirement
had been anticipated for many months.

See BICKEL AND SCHMIDT, THE JUDICIARY AND RE-
SPONSIBLE GOVERNMENT, 44-64; Daniel S. McHargue,
President Taft’s Appointments to the Supreme Court, 12
J. POLIT. 478 (1950); Holsinger, The Appointment of
Supreme Court Justice Van Devanter; Nelson, Supreme
Court Appointment, 239.

See BICKEL AND SCHMIDT, THE JUDICIARY AND RE-
SPONSIBLE GOVERNMENT, 53-57.

Judge Alexander Van Orsdel to Francis E. Warren
(August 1, 1910), quoted in Nelson, Supreme Court
Appointment, 8.

41 WVD to Charles Nagel (April 19, 1910) in National
Archives, DOJ File # 348 (“Willis Van Devanter”).

42 Ibid.

43 Holsinger, The Appointment of Supreme Court Justice
Van Devanter, 333.
Darling of Destiny

The first is to hook up with destiny; and the second is to let destiny land you in a state where live two men who are but two things to do if they have the stuff in them. His career "proves to all ambitious young men that there can be no doubt that destiny was working overtime when he entered the world." BICKEL AND SCHMIDT, The Judiciary and Responsible Government 63 (quoting WVD to W.A. Richards (June 2, 1911) (Van Devanter papers)).

Cases Assigned to Justice Van Devanter (Memorandum, February 1927) (Taft papers).

The third claim to fame is the fact that during the six years since 1930 he has handed down only twenty-two opinions...."

WHT to Butler (January 28, 1927) (Taft papers); WHT to Mrs. Frederick J. Manning (April 10, 1927) (Taft papers); WHT to OHW (February 13, 1925) (Holmes papers); See WHT to Helen Taft (May 25, 1924 (Taft papers) ("some are pretty far behind especially Van Devanter"); WHT to Robert A. Taft (April 7, 1929) (Taft papers).

Van Devanter’s surviving letters contain intricate remedies for constipation. See WVD to William Meyers (October 13, 1924) (Van Devanter papers). It is difficult to imagine that this repressed individual—"as conservative as a Dutch canal, and as calm," The Judiciary: Supreme Convention, 10 TIME (No. 15) (October 10, 1927), 8—had begun life in "the turbulent days of the great Wyoming cattle ranges," Justice Van Devanter, The New York Times (February 10, 1941), 16, and that he had as a young man joined hunting parties with the legendary Buffalo Bill Cody. Holsinger, Willis Van Devanter: The Early Years, 107 n.1; see Attorney General Francis Biddle, Proceedings in Memory of Mr. Justice Van Devanter, 316 U.S., xxxiii (1941).

Twelve justices were rated “Great,” of which two were members of the Taft Court: James C. McReynolds and Pierce Butler. Two other “failures” were also members of the Taft Court: Charles Evans Hughes, The Autobiographical Notes of Charles Evans Hughes 171 (Harvard University Press: Cambridge, 1973, David J. Danielski and Joseph S. Tulchin, eds.). See WHT to OHW (May 3, 1927) (Taft papers).

Two other “failures” were also members of the Taft Court: Charles Evans Hughes, The Autobiographical Notes of Charles Evans Hughes 171 (Harvard University Press: Cambridge, 1973, David J. Danielski and Joseph S. Tulchin, eds.).

WHT to WVD (March 5, 1927) (Taft papers).
PEARSON & ALLEN, NINE OLD MEN, 188. Van Devanter “was not a judge of whom the public generally could gain any very sharply defined impression. He was quiet and unassuming and appeared seldom in public. He made very few speeches, even before gatherings of lawyers, and those were of the conversational and unpretentious sort. He left practically no writings except his opinions. But his comprehensive learning, his industry, his passion for thoroughness and exactness, and his power of clear analysis and forceful exposition marked him, among all those who really knew the work of the Court, as one of its most conspicuously valuable members.”

AUTOBIOGRAPHICAL NOTES OF CHARLES EVANS HUGHES, 171.

Address of Justice Hughes at Law Institute, The NEW YORK TIMES (May 13, 1938), 8.

Brandeis-Frankfurter Conversations, 316 (July 1, 1923). William Douglas recalls that Van Devanter’s “highest credentials were, as Brandeis said, that he was an honest, able, forthright and dependable man who always kept his word. At the end of an argument he could summarize it, state the pros and cons and what the Court should decide. If his words had been recorded, they would have made a perfect opinion. . . . We were at opposite poles on many phases of constitutional law, but what drew me to him was our shared love of the outdoors. Van Devanter had been a hunter, fisherman and camper in his early years in Wyoming and I spent many hours listening to his tales. I found him a genuine human being.” WILLIAM O. DOUGLAS, THE AUTOBIOGRAPHY OF WILLIAM O. DOUGLAS: THE COURT YEARS 1937-1975 11 (Random House: New York, 1980).


WVD to John L. Lacey (June 23, 1934) (Van Devanter papers).

M. Paul Holsinger, Mr. Justice Van Devanter and the New Deal: A Note, 31 THE HISTORIAN 57, 58 n.3 (November 1, 1968). See HFS to Children (February 13, 1941) (Stone papers) (“I have always felt [that Van Devanter] conceived it his duty to declare unconstitutional any law which he particularly disliked.”).

Proceedings in Memory of Mr. Justice Van Devanter, XL-XLI.

Ibid.

Ibid., XLII.

WHT to Samuel H. Fisher (December 25, 1926) (Taft papers).

WHT to Mrs. Frederick J. Manning (June 11, 1923) (Taft papers). See WHT to Mrs. Frederick J. Manning (January 23, 1927) (Taft papers). Van Devanter “is the mainstay of the Court and if he wrote no opinions at all, we could hardly get along without him.” WHT to Robert A. Taft (January 16, 1927) (Taft papers).

WHT to Charles P. Taft 2nd (January 23, 1927) (Taft papers).

WHT to Horace D. Taft (January 17, 1927) (Taft papers). See WHT to Charles P. Taft 2nd (January 16, 1927) (Taft papers) (Van Devanter is “the most valuable man we have in the Court, and we can not afford to lose him.”).

WHT to James R. Angell (December 2, 1926) (Taft papers). “Sutherland is an excellent man, a man of great experience and a man of force and strength of character,” Taft added, “but as compared with Van Devanter, I am sure the friends of both would accord the precedence which the official rank in the Court gives to Van Devanter.”


WHT to Charles P. Taft 2d (January 16, 1927) (Taft papers). Taft believed that “Van Devanter is a modest man and needs somebody to play his trumpet, and I am delighted to fill that function.” WHT to Robert A. Taft (January 16, 1927) (Taft papers).

WVD to John C. Pollock (May 26, 1921) (Van Devanter papers).

WVD to John C Pollock (June 7, 1921) (Van Devanter papers).

WVD to John C. Pollock (June 10, 1921) (Van Devanter papers).

Brandeis-Frankfurter Conversations, 310 (November 30, 1922).

Brandeis-Frankfurter Conversations, 322 (August 6, 1923).

Brandeis-Frankfurter Conversations, 336 (June 15-16, 1926).

AUTOBIOGRAPHICAL NOTES OF CHARLES EVANS HUGHES, 171. John W. Davis commented in 1941 that “I have heard the statement from Chief Justice White, who leaned on him heavily, that in the conference he was the most helpful member of the Court. More than one of his judicial brethren have expressed the same opinion.” Proceedings in Memory of Mr. Justice Van Devanter, 301 U.S. xxvi (1941).

AUTOBIOGRAPHICAL NOTES OF CHARLES EVANS HUGHES, 169.

Brandeis-Frankfurter Conversations, 322 (August 6, 1923).

Ibid., 328 (July 2, 1924).

See WVD to JHC (September 3, 1922) (Clarke papers).

Brandeis-Frankfurter Conversations, 330 (July 6, 1924). Butler had been a long-time law partner with William D. Mitchell, In Memory of Mr. Justice Butler, 310 U.S. vii (1939), who had also been Van Devanter’s personal lawyer. Dollie Van Devanter to William D.
Mitchell (April 19, 1924) (Van Devanter papers); Dollie Van Devanter to Messrs. Doherty, Rumble, Bunn & Butler (June 17, 1925) (Van Devanter papers). Butler and Van Devanter together contrived (with Taft's support) to secure Mitchell's appointment as Solicitor General.

WVD to William D. Mitchell (February 1, 1925) (Van Devanter papers); William D. Mitchell to WVD (February 18, 1925) (Van Devanter papers); WVD to William D. Mitchell (February 25, 1925) (Van Devanter papers); William D. Mitchell to WVD (June 6, 1925) (Van Devanter papers). Mitchell went on to become Attorney General under President Hoover.

See, e.g., GS to OWH (June 6, 1926) (Taft papers).


See, e.g., Paul A. Freund, Justice Brandeis: A Law Clerk's Remembrance, 68 AM. JEW. HIST. (No. 1, September 1978), 12

GS, Memorandum for the Chief Justice (May 15, 1928) (Sutherland papers) (referring to Quaker City Cab Co. v. Pennsylvania, 277 U.S. 389 (1928); Nobles of the Mystic Shrine v. Muaichas, 279 U.S. 737 (1929); Highland Russel Car & Snow Plow Co., 279 U.S. 253 (1929)).

Dean Acheson, Recollections of Service with the Federal Supreme Court, 18 ALA. LAW. 355, 361 (1957). On Brandeis' respect for Van Devanter, see Paul A. Freund, The Supreme Court: A Tale of Two Terms, 26 OHIO STATE LAW J. 225, 226-27 (1965) ("Brandeis had very deep regard for Van Devanter").

Freund, Justice Brandeis, 12.

WHT to Charles P. Taft (June 8, 1927) (Taft papers).

See WHT to Charles P. Taft 2nd (June 8, 1927) ("Justice Van Devanter and I are the closest friends on the Bench"); WHT to Robert A. Taft (June 8, 1927).

WHT to WVD (September 16, 1928) (Taft papers).

See WHT to WVD (August 1, 1929) (Taft papers).

WHT to Charles P. Taft (June 8, 1927) (Taft papers).


See, e.g., WVD to WHT (February 10, 1922) (Taft papers) (suggesting that steps be taken to instruct the Clerk to enforce a new rule requiring the assessment of expenses for the printing of records); WHT to WVD (February 10, 1922) (Van Devanter papers) ("I'll direct the clerk to section 2 Rule X just as you suggest. I'll write him today on the subject."); WHT to William R. Stansbury (February 10, 1922) (Taft papers); William R. Stansbury to WHT (February 16, 1922) (Taft papers).

WHT to WVD (December 7, 1921) (Taft papers).

The case was Truax v. Corrigan, 257 U.S. 312 (1921).

See also, WHT to WVD (April 11, 1923) (Van Devanter papers) ("I hope you will consent to help me out by coming to a conference on Sunday afternoon next at three o'clock at my house. I shall not ask such a favor again this year. Can't you take your golf on Saturday instead of Sunday? A critical meeting of the Yale Corporation comes on Sunday. The policy and the right policy of the University may be dependent on my vote. Bear with me."); WHT to WVD (December 26, 1924) (Van Devanter papers) ("Here is a long screed. I sent it to Butler and Sandford [sic] and McKenna. Run it over—It needs some more citations."); WHT to OWH (June 5, 1926) (Taft papers); WHT to OWH (June 6, 1926) (Taft papers).

On Van Devanter's central role in assisting Taft in securing the nomination of Pierce Butler, see DAVID J. DANIELSKI, A SUPREME COURT JUSTICE IS APPOINTED (Random House: New York 1964); WVD to George B. Rose (September 23, 1927) (Van Devanter papers).

Memorandum, November 10, 1924 (Taft Papers), reprinted in WALTER MURPHY & C. HERMAN PRITCHETT, COURTS, JUDGES, AND POLITICS: AN INTRODUCTION TO THE JUDICIAL PROCESS 199-201 (3d ed. 1979). With regard to McKenna's last opinion, which he insisted on publishing before retiring, Taft wrote Van Devanter, "I enclose McK's opinion. The latter part I had not seen. Run it over—send me your suggestions on a separate paper so that I can incorporate them in my handwriting. The old man is in a hurry to send it out. Let me have your suggestions tonight." WHT to WVD (December 9, 1924) (Van Devanter papers).

WHT to LDB (November 11, 1923) (Taft papers).

WHT to OWH (June 5, 1926) (Taft papers); Charles Cropley to WHT (June 20, 1928) (Taft papers); WHT to WVD (June 23, 1928) (Van Devanter papers); WVD to WHT (June 27, 1928) (Van Devanter papers); Horatio Stonier to WHT (June 27, 1928) (Taft papers); WHT to WVD (June 28, 1928) (Van Devanter papers); WHT to WVD (July 1, 1928) (Taft papers).

"I am thinking of assigning [Ford v. United States, 273 U.S. 593 (1927]) to Brandeis. It involves the British Treaty over the 12 mile limit and the conspiracy at San Francisco and Vancouver. Holmes and Stone dissented. They may come in. Don't you think we can be safe in that?" WHT to WVD (February 20, 1927) (Van Devanter papers).

Eventually Taft took over the opinion himself and wrote for a unanimous Court.

While drafting his opinion in Harkin v. Brundage, 276 U.S. 36 (1928), Taft wrote Van Devanter, "Brandeis suggests that I say something in the Chicago Receivership case like this. I am entirely willing to do it because I think the use of receiverships in the Federal courts has become too easy and frequent. It is not necessary in the case but it is entirely relevant. What would you think of it?" WHT to WVD (January 31, 1928) (Van Devanter papers).
121 WHT to Harry M. Daugherty (June 5, 1922) (Taft papers); WHT to WVD (June 1922) (Van Devanter papers).
123 William Howard Taft, The Jurisdiction of the Supreme Court Under the Act of February 13, 1925, 35 Yale L. J. 1, 12 (1925). WHT to WVD (August 15, 1925) (Taft papers); WVD to WHT (September 5, 1925) (Taft papers); WHT to WVD (September 9, 1925) (Taft papers); WHT to PB (September 16, 1925) (Taft papers); Robert Post, The Incomparable Chief Justiceship of William Howard Taft, 2020 Mich. State Law Rev. 1, 77-83 (2020).
124 WHT to Charles P. Taft 2nd (May 5, 1929) (Taft papers) (“Mrs. Justice Holmes died on Tuesday night. She had been dying for some days. She had suffered three falls since September and then had one that broke her hip. . . . Mrs. Holmes has been a protector of Justice Holmes and has attended to everything connected with his living. She has a niece, a Mrs. Clark, who came to me on Sunday last and told me that Mrs. Holmes was dying, but that the doctor, who is my doctor, had not communicated to Justice Holmes what the impending result would be. Dr. Clayton was afraid that it might shock the Justice and that he would save him this. But Van Devanter and I sent for the doctor and told him that Holmes was a man who wanted to know the facts, and therefore he ought to tell him.”).
125 Robert Post, The Incomparable Chief Justiceship of William Howard Taft, 151-75.
126 WVD to Edmund F. Trabue (April 26, 1926) (Van Devanter papers).
127 Felix Frankfurter on the Supreme Court: Extra-judicial Essays on the Court and the Constitution 487 (Harvard University Press, Cambridge, MA 1970, Philip B. Kurland, ed.) (“Mr. Justice Van Devanter is a man who plays an important role in the history of the Court, though you cannot find it adequately reflected in the opinions written by him because he wrote so few. But Van Devanter was a man of great experience. . . . He had a very clear, lucid mind, the mind, should I say, of a great architect. He was a beautiful draftsman and an inventor of legal techniques who did much to bring about the reforms which were effectively accomplished by Taft as Chief Justice.”).
128 On Taft’s declining mental acuity, see Robert Post, The Incomparable Chief Justiceship of William Howard Taft, 6-11.
129 WHT to WVD (March 7, 1927) (Van Devanter papers).
130 WHT to Robert A. Taft (October 23, 1927) (Taft papers).
131 C. Dickerman Williams, The 1924 Term: Recollections of Chief Justice Taft’s Law Clerk, 1989 Yearbook of the Supreme Court Historical Society 40, 50 (Van Devanter and Butler were the justices “closest” to Taft).
132 WHT to Myron Herrick (June 3, 1928) (Taft papers).  
133 See, e.g., White River Lumber Co. v. Arkansas, 279 U.S. 692 (1929).
134 Van Devanter Dies; Ex-Justice was 81, New York Times (February 9, 1941), 47. See Former Justice Van Devanter, 27 ABA J 154 (1941).
136 Brandeis-Frankfurter Conversations, 336 (June 17, 1926). Brandeis also observed that “Van Dev. knows as much about jurisdiction as anyone—more than anyone. But when he wants to decide all his jurisdictional scruples go.” Ibid. at 313 (June 28, 1923).