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Portland, Oregon, September 11, 1897.

Mr. Chief Justice Melville W. Fuller,

Washington City.

Dear Sir:-

The appointment of Attorney General McKenna to succeed Mr. Justice Field is spoken of from time to time in the dispatches from Washington City as a matter definitely settled. It is possible that these publications are inspired with the view of creating the impression that the Attorney General is conspicuous for his qualifications for a place on the Supreme Bench, and possibly to forestall opposition to his appointment. In justice to the Supreme Court and to the people of the Pacific Coast who will be misrepresented by it, I desire to say that such an appointment is one not fit to be made. I know the estimate in which the Attorney General is held by the Judges who were associated with him in the Circuit Court of Appeals in this circuit and what is said of his qualifications among lawyers who practiced before him. He had no standing at the Bar at the time he was appointed Circuit Judge. He had never been connected with an important case nor appeared in any Federal Court, nor, as I am informed, in the Supreme Court of the State. He was without legal training, or knowledge or acquaintance with the literature of the law. Nor did he develop any of the qualities

required by his office of Judge during the time he held it. His associates in the Circuit Court of Appeals were under the necessity of revising his opinions and correcting his syntax and mistakes of grammar. I believe that such portions of his opinions as did not require correction will be found to have been taken mainly from the briefs of counsel. His capacity for work is shown in his record as Judge. When he retired from the bench he left more than thirty cases undecided that had been taken under advisement by him, and these reached back over a period of some two and a half years. During his last year on the bench he sat in but four cases in the Circuit Court of Appeals, and these, probably because of the infrequency of his appearance in that court, were assigned to him for examination, but he went out of office without reaching a conclusion in either of them. These facts are not explained by his work in the Circuit Court. During his last year he did not dispos of as many cases in the Circuit Court as his successor, Judge Morrow, disposed of in that court during the six weeks prior to hi promotion that he performed the work of the Circuit Judge in addition to his duties as District Judge. The effect of this indiffer ence to the duties of his office, was to discourage the bringing o causes in that court to such an extent that the fees of the clerk were reduced so that they were not more than one half what they were in this district during the same period, notwithstanding the fact that the population and business of Northern California are many times what they are in this state.

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Judge McKenna's associates in the Circuit Court of Appeals all know that he is wholly without qualification for judicial office. It is unfortunate that their relations to him constrain them to remain silent, when public interests, the dignity of the Supreme Bench, and justice to President McKinley require that the truth be known. Since the government was established such an appointment has never before been possible, or even thought of, and the belie is wide spread on this coast that it is only possible now through the aid of the Southern Pacific Railroad Company, working through indirection to that end.

The Attorney General's ignorance in legal matters is illustra- ted by the following incident: A defendant, a sailor, I believe, had been convicted in the U. S. Circuit Court, before Judge McKenna, of some offense on the high seas involving the death penalty under the act of April 30, 1790. The Judge, in the course of the trial, became acquainted with Sec.31 of the act, which provides that the benefit of clergy shall not be used or allowed, upo conviction of any crime when the punishment is declared to be deat In the presence of Judge Morrow, Mr. Garter, then U. S. Attorney, and L. S. B. Sawyer, Judge McKenna, who was under the impression that this statute denied to a man condemned to death religious consolation in his last hours, and was therefore barbarous in the extreme, stated that he had searched diligently without success to find some repeal of this harsh statute, as he very much desired to give the poor fellow the benefit of clergy if it was within his

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power to do so. One of the Federal Judges, after repeating this anecdote to his associates, said: "If that story gets out we will all have to deny it." And if the threatened appointment is made every self-respecting citizen of the United States will feel the same way, albeit so far from a suppression of this exhibition of judicial ignorance, it will probably be supplemented by others, which will spread wide as the fame of the court.

I write this letter for the information of yourself and associates, to whom the appointment has a personal as well as public concern, and I do so at the risk of committing an impropriety, which should in my opinion be excused by the irreparable character of the injury threatened.

It is extremely unpleasant for me to say these things of Judge McKenna. My limited personal acquaintance with him is a pleasant one. He is an agreeable and, I believe, kindly disposed man. I would rather do him a service than otherwise. I only regret that he lacks the qualifications to be a Justice on the Supreme Bench. It is beyond my comprehension how such a man can wish for such a place.

Very truly yours,

Charles B. Belling

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