

UNITED STATES SENATE,
COMMITTEE ON MILITARY AFFAIRS,
WASHINGTON.

April 2, 1910.

Hon. Willis Van Devanter,
Cheyenne, Wyoming.

My dear Judge:

My train arrived in Washington at 10.25 this morning. I immediately took a taxicab for the hotel, changed my clothes, and was at the White House at 11:00 o'clock.

There was a big jam, and I had to wait until after twelve o'clock (noon) before seeing the President.

He took me into a private room; was very suave, in fact had been good-natured all the morning with every one who was waiting when I got there.

I asked him if he had heard of a man "without a country", and I said,

"Well, I am just from home, and instead of being made welcomed. I was met on every hand with inquiries as to how I happened to be home just at the moment I was needed so in Washington to protect the interests of a man, especially respected and loved by Western people."

The Denver newspapers had given out the story that there was to be no delay – that the appointment was to be made almost immediately, and so I had returned to submit the situation to him.

He laughed and said:

"Well, I have settled nothing, not even in my own mind, except this, that I will wait a month or even two. Senator Hoar used to say that when an important judicial position was to be

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filled it was always best to wait; let the proposed names go out to the country; give the country time to respond; and see what the country would say of good or bad – if there was anything bad – about each of the candidates.”

He then said:

“You can give it out in the West or here in this way. I propose to proceed slowly as I consider the position not only a delicate one, but of great importance.”

Then, dropping his voice in a confidential way, he said:

“I want to figure it out to bring certain results during my three remaining years. I do not regard the lines of the various circuits to be nearly as important as I do the character of the men. The New York circuit feels rather sore and exceedingly anxious for this appointment now, since it did not get the one made vacant a short time ago. But such matters can be regulated so as to come out right in the long run.”

I then remarked upon the size and importance of the 8th Circuit, and said:

“Mr. President, I can tell you nothing new of that as you know it so much better than I do. I wish you knew Judge Van Devanter as well as I do, though I do feel sure you know him sufficiently to have the highest regard for him and great confidence in him.”

He said:

“Yes, I have that.”

I then said:

“Mr. President, it is now over a year since you took the oath of office, and you will recall that this is the first time I have called upon you to press the claim of anyone and to ask for patronage. I did not come to you following Judge Peckham’s death because I felt somehow when a vacancy came in the 8th Circuit, it would be a more appropriate time; and, furthermore, I

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assumed your friendship for Judge Lurton, his standing, and the fact of Peckham being a Democrat, that Lurton would be selected.”

“I did not go to you when there was talk about Van Devanter for a Cabinet place because I felt that you ought not to be annoyed with too many suggestions when selecting your official family; and, furthermore, Judge Van Devanter was not a candidate. I did, however, when the talk got rather strong, go to Judge Van Devanter, and ask (first) if he wanted it; and (second) if you should happen to call upon him if he would accept; and he said that he did not desire it, but, of course, if asked by you to do duty in that position, he would immediately comply.”

The President said: “I knew that at the time.”

And then he stopped and laughed heartily, and said:

“Well, Judge Van Devanter has a good friend at my cabinet table.”

I said:

“I hope he has more than one.”

The President replied:

“He has one that is always and enthusiastically his friend, and that is Knox.”

I said:

“Yes, Knox had an opportunity to know him well while he was Attorney General, and he knew of Judge Van Devanter’s work in the Interior Department; also of his first decision on the bench – the Northern Securities Company.”

And I continued:

“A little digging in would discover some very potent work by the Judge in the Standard Oil case.”

At this the President smiled very benignly; nodded his head significantly, and said:

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“Judge Hook of the 8th is receiving strong endorsements; and Sanborn also has some.”

He said Brewer hated Hook.

I said:

“And, Adams?”

He replied:

“Not Adams. He is a Democrat, and he will not be considered anyway for I have appointed one Democrat, and that is enough.”

I said:

“Mr. President, with all respect to Mr. Hook, and while he is a good man, he is far behind in comparison with Judge Van Devanter – from every point of view.”

Then I said:

“I have noticed quite a little mention of Solicitor Bowers, and I know you have the highest regard for him as we all have.”

Here the President became rather enthusiastic in his praise of Bowers, and said he would hesitate very seriously in proposing him for the bench at this time because of the magnificent work he is doing – the great importance of it, and of more that was still to be done.

The President then said:

“He was a railroad attorney for a long time, it is true, and this has given him (Bowers) great breadth of knowledge and experience – added to his other practice.”

Here I interrupted, and said:

“The same as Judge Van Devanter, who was with the Union Pacific for a time, and, by the way, I said, Judge Van Devanter would probably have been practicing law now – and not on the bench – except for the slump and panic in business matters in Wyoming when we all went up

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Salt River together. This, added to the pleading of McKinley, and, to some extent, of Bliss and McKenna, that Van Devanter accept a place in the Interior Department, accounts for his being on the circuit bench now. He was a candidate for Solicitor General, and nothing else, but the combined entreaties and almost tears of his friends and of the influences I have mentioned, caused him to come to Washington.

The President then said:

“Everyone who has spoken of Bowers, and his argument before the Supreme Court has been highly complimentary.”

The President then called in, through an open door of an adjoining room, Moseley, Secretary of the Interstate Commerce Commission, with whom I had previously talked while waiting, but without mentioning Van Devanter, Bowers, or anybody else in connection with the Supreme Court.

Moseley came in, and the President asked him what he thought of Bowers and of Bowers’ work before the Supreme Court.

Moseley immediately launched out into a most enthusiastical laudation of Bowers – both arms busy with gestures, one full of important papers, and after a genuine peroration, he stopped suddenly, and said:

“But, Mr. President, there is another man to whom I want to give the highest praise, and that is Judge Van Devanter of the 8th Circuit.”

“But - ”

I said:

“Mr. Moseley, I did not mention this subject to you when I saw you in the ante-room.”

“No”

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He said:

“I have never spoken Van Devanter’s name to you or you to me, or mentioned it in writing, but Bowers being talked about suggested to me another great lawyer, and seeing Senator Warren here perhaps helped to bring it to my mind.”

Then Mr. Moseley went on to say that Van Devanter was the ablest lawyer west of the Mississippi, and one of the ablest judges on the bench.

Then he turned the subject to Bowers again, and said:

“Bowers is the ablest Solicitor General we have ever had.”

I interrupted him with –

“Except Mr. Taft.”

This pleased the President immensely – the way I had got Moseley.

Moseley then said:

“I hope to see both of them on the Supreme bench sometime.”

The President bowed, as much as to say:

“Me to:”

But was careful not to utter a word.

I said to the President:

“Our people in the West are quite up in arms, and are besieging me to know if they should get up petitions, bar meetings, etc., and I have asked them not to do that without first hearing from me.”

The President said:

“Well, that is right, only I do not want to shut off genuine letters of endorsement, and I hope I may have these regarding all of the candidates, and as coming from people of some

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consequence, who know, first, something of what is wanted, and, second, who endorse, not as a matter of form because asked to, but because they feel interested in the man they recommend, and for me, as President, and my administration. The more I think of it, the more I am convinced of the delicacy of these judicial appointments which I am to make, and that I ought to let the names of the various candidates circulate out through the country as much as they will, and receive the echo of it.”

Then I said:

“Mr. President, I beg you to consider one thing in connection with this situation, that New York, Pennsylvania, and other nearby-populous States, with an ebb and flow of their prominent men into Washington and out, will think of these things, and call upon you by the score or by the hundreds; while just as earnest and important people, living in the great and growing West, will neglect it, not from lack of feeling or loyalty, but because it simply does not occur to them. And this becomes especially true with reference to States like Wyoming – not large in population – and especially true in the great 8th Circuit, covering so large a territory, but with small cities and towns – greatly scattered.”

He replied:

“Yes, there is something in that.”

Then he continued:

“Speaking of the lines of circuits, I believe the West is more sensitive about their being observed than is the East.”

“If anything should occur to Judge McKenna, and I should have to consider a successor, California would just raise the roof and turf unless his successor was to come from that State or locality.”

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I said:

“Mr. President, the 8th Circuit covers a tremendously large territory of your friends and supporters, and those who support the tariff legislation – as well as the other tenets of Republicanism – while it derives much smaller benefits as to manufactories and other interest which profit from tariff.”

Van Orsdel came on home before I did, and is working. He says he will write you at once.

My own opinion is that today Bowers has the inside track, especially if in the next month or so, part or all of the big cases are reported and the coast is clear. Unless he appoints Bowers now, I believe he will want to do so later, but during his three years.

From his manner I think he would also like to appoint you, if not now, sometime during his term, although this is merely a guess.

P.S. Please show all, or such portions as you desire, of this letter to Burdick, Fred, and to any one else whom you wish to see it.

F. E. W.