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Justice Van Devanter of Wyoming: A "Mainstay" on
the Court

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The odds were against Willis Van Devanter ever winning an appointment to the Supreme Court. Widespread talk that he suffered from "pen paralysis," an affliction that subverted his production, made President William Howard Taft "hesitant" to nominate the Wyoming transplant to fill a vacancy on the nation's High Court.

Various factors, however, convinced President Taft to overcome his reluctance. In 1911, he named Van Devanter to the Court, where he served for 26 years. Geographic considerations persuaded Taft that he needed to add a Westerner to the Court, which lacked representation from anyone west of the Mississippi. Van Devanter boasted solid conservative credentials and an impressive record of public service, including a stint as Chief Justice of the Wyoming Supreme Court. Plus, he had been a judge for eight years on the 8th Circuit Court of Appeals. Most of all, there were the unrelenting efforts of Wyoming's beloved U.S. Senator Francis Warren to promote the Equality State and elevate his good friend into a seat at the Judicial Palace.

President Taft, who had held a variety of offices in his lengthy career, including the Chief Justiceship of the U.S. Supreme Court, expressed admiration for Van Devanter's track record. Van Devanter was the model for those who believed then, and believe now, that a

Supreme Court Justice ought to possess experience beyond the law school classroom, the professoriate and the bench. In a word, he was steeped in governmental experience and presented a breadth of public service rare for a Justice, at any time in our history.

Van Devanter served in all three branches of government and held various local government offices. Born and raised in Marion, Indiana, he attended law school at the University of Cincinnati. In 1884, he moved to Cheyenne, Wyoming Territory, wisely taking advantage of the opportunities created by his brother-in-law's (John Lacey) appointment as Chief Justice of the territory. Van Devanter's pursuit of legal and political prominence was in full sprint. He established himself as a loyal Republican and earned a reputation as a first-rate lawyer, representing railroads and the cattle industry. He became a close friend and indispensable aide to Francis Warren who, as Wyoming's Governor and later U.S. Senator, relied on Van Devanter's advice and organizational skills. Van Devanter served in the territorial legislature and revised the territory's statutes. On October 11, 1890, months after Wyoming achieved statehood, Van Devanter became the first Chief Justice of the Wyoming Supreme Court, although he resigned a year later to return to private practice.

Van Devanter continued to expand his resume. An avid outdoorsman who had once hunted with Buffalo Bill Cody, he was in 1897 appointed assistant attorney general in the Department of Interior, where he handled federal land claims and tribal matters. He taught law classes at George Washington University and was appointed by President William McKinley to the 8th Circuit Court of Appeals, where he served until appointed by President Taft to the Supreme Court.

Taft's concerns about Van Devanter's paralysis of the pen, demonstrated by his low productivity on the 8th

Circuit, caused the President, at one point, to withdraw his name from consideration for a nomination to the Court. But Senator Warren's frantic maneuvers, aided by Van Devanter's concession that he was behind in his work—a deficit, he pleaded, that was the result of his own illness and that of his wife—persuaded Taft to proceed. But Taft's worries were confirmed by Justice Van Devanter's low production on the Court. Van Devanter was described by colleagues as meticulous and devoted to detail in his analyses at the Court's weekly conferences, and admired for his insightful questions at oral argument, but writing proved extremely difficult for him.

Taft and Van Devanter became close friends. Van Devanter's colleagues valued him, despite his low output, which illustrates how a Justice can play an important role in the work of Court, countering a poor public reputation. Chief Justice Hughes said of Van Devanter, "his careful and elaborate statements at conference were of greatest value. If these statements had been taken down stenographically, they would have served with little editing as excellent opinions. His perspicacity and common sense made him a trusted advisor in all sorts of matters." As Chief Justice, Taft once referred to Van Devanter as his "mainstay" on the Court.

Van Devanter was the first of a group of Court appointees who became known as the Four Horsemen, along with George Sutherland, Pierce Butler, and James McReynolds. He was viewed by scholars, eventually, as the dominant, behind-the-scenes spokesman for the anti-New Deal bloc of Justices who thwarted President Franklin D. Roosevelt's ambitious legislative programs to lift the country from the depths of the Great Depression. Justice Van Devanter was unwilling to adjust the Constitution to crises of the times, although his defenders applauded his hostility to economic regulation of private enterprise.

At the end of the 1937 Term, Van Devanter, 78 years old and exhausted by the Court's internal strife and public criticism, announced his resignation from the High Bench. He assumed senior status and spent his final days in New York, overseeing criminal trials.