



2019

## Mourning the Magnificent Yankee: The Funeral of Oliver Wendell Holmes, Jr.

Todd C. Peppers

*Washington and Lee University School of Law*, [pepperst@wlu.edu](mailto:pepperst@wlu.edu)

Follow this and additional works at: <https://scholarlycommons.law.wlu.edu/wlufac>



Part of the [Legal Biography Commons](#), [Legal History Commons](#), and the [Supreme Court of the United States Commons](#)

---

### Recommended Citation

Todd C. Peppers, Mourning the Magnificent Yankee: The Funeral of Oliver Wendell Holmes, Jr., 41/42 Sup. Ct. Hist. Soc'y Q. No. 4 & 1 at 4 (2019).

This Article is brought to you for free and open access by the Faculty Scholarship at Washington and Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Scholarly Articles by an authorized administrator of Washington and Lee University School of Law Scholarly Commons. For more information, please contact [christensena@wlu.edu](mailto:christensena@wlu.edu).

# Mourning the Magnificent Yankee: The Funeral of Oliver Wendell Holmes, Jr.

By Todd C. Peppers\*

On July 22, 2019, a now-familiar ritual took place at the Supreme Court. At approximately 9:30 a.m., the casket of the late John Paul Stevens was carried up the stairs of the Supreme Court, passing between two lines of Stevens' former law clerks and into the Great Hall. Once inside, it was placed on the Lincoln Catafalque as current and former members of the Supreme Court solemnly watched. A portrait of Justice Stevens was placed nearby. Throughout the day, the Justice's former law clerks stood vigil as a stream of visitors paid their respects.

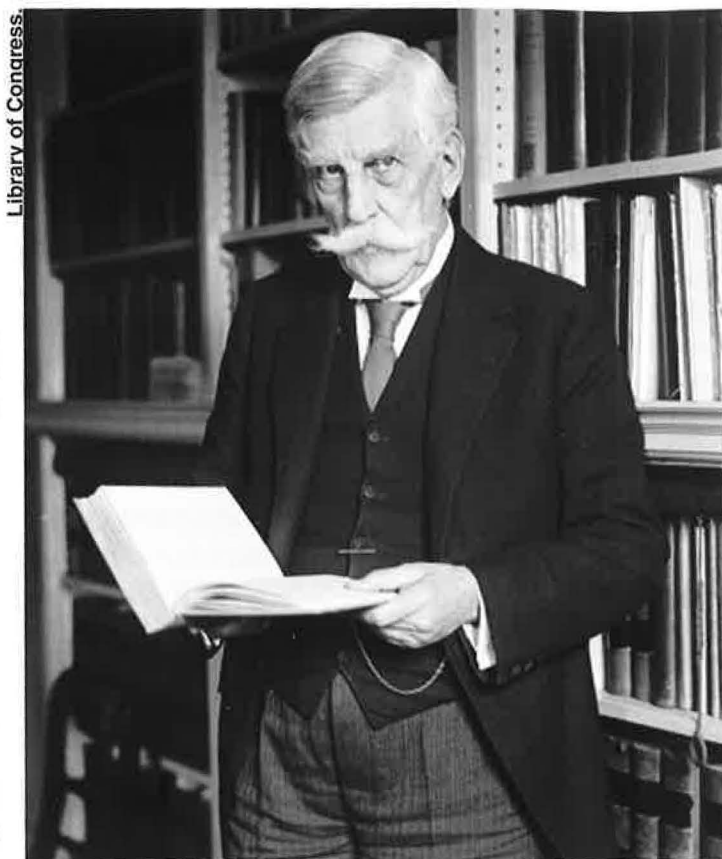
The tradition of former Justices lying in repose in the Supreme Court's Great Hall began with the death of former Chief Justice Earl Warren in 1974. Twenty years passed before the next Justice — Thurgood Marshall — was so honored. Since Justice Marshall's death, however, the practice has occurred with greater frequency: Chief Justice Warren Burger in 1995, Justice William J. Brennan, Jr. in 1997, Justice Harry A. Blackmun in 1999, Chief Justice William H. Rehnquist in 2005, and Justice Antonin Scalia in 2016. While not all modern Justices have followed this tradition — for example, the Supreme Court travelled to Richmond, Virginia for the memorial service of Justice Lewis F. Powell, Jr. — it is now a standard part of Supreme Court ritual.

Most — but not all — of the aforementioned Justices were carried from the Great Hall to their final resting place at Arlington National Cemetery. In section 5 of the cemetery, which is located near John F. Kennedy's eternal flame, are the graves of Chief Justices Earl Warren, Warren E. Burger, and William H. Rehnquist, as well as Associate Justices William O. Douglas, Arthur Goldberg, William J. Brennan, Jr., Potter Stewart, Thurgood Marshall, and Harry Blackmun. The late husband of Ruth Bader Ginsburg — Martin Ginsburg — is also buried in this section. It was in section 5 that Stevens was interred, next to the grave of his late wife Maryan.

The first Justice buried in section 5 was Oliver Wendell Holmes, Jr. There was no great hall in which to have the Justice lie in repose, and, even if the new Supreme Court building had officially opened by the time of Holmes' death, the Magnificent Yankee — who sometimes laughed at the overblown dignity of the Court — would have likely scoffed at the idea of the public parading past his casket while “the boys” (one of his nicknames for his legal secretaries) stood watch.

Holmes' final days were spent in the red-brick brownstone on 1720 I Street that he and his wife Fanny purchased shortly after his nomination to the Supreme Court in December of 1902. Fanny died in April of 1929, and Holmes remained on the Court until his retirement in January of 1932 at the age of 91. For the rest of his life, Holmes would be watched over by his dotting housekeeper Annie Donnellan, Harvard Law School Professor Felix Frankfurter, and a parade of current and former legal secretaries (today known as law clerks).

During the fall of 1934 and the spring of 1935, Harvard Law School graduate James Rowe served as Holmes' legal



**Justice Oliver Wendell Holmes, Jr. in his study in 1924. Well into his eighties, Holmes was still at the height of his intellectual powers.**

secretary. Of course, no legal work remained for the retired Holmes, but the post-retirement legal secretaries had become Holmes' personal secretaries and social companions. Their job duties included paying the Justice's bills, completing his yearly income tax return, listening to his “tall talk” about the Civil War, reading to the Justice at night and accompanying him on daily drives around the city.

Justice Holmes and Rowe took their daily outing on February 23, 1935. The weather was cool and dry, but the Justice contracted a cold after their jaunt. Within days, Holmes was fighting bronchial pneumonia. Felix Frankfurter, now as much a guardian as friend of Holmes, came down from Boston. Doctors converged at Holmes' bedside. Former legal secretaries arrived to keep watch over their former master. Old friends like Edith Galt Wilson personally dropped off cards. Even Eleanor Roosevelt dropped by, driving herself over from the White House. And oxygen tanks were brought in to ease Holmes' breathing.

Taking a page from Holmes' nickname as “the great dissenter,” a newspaper reporter wrote that Holmes “dissented smilingly” to the attention. “[H]e scoffed at the anxiety of doctors and friends over his condition and weakly joshed his nurses.” “It's a lot of damn foolery,” Holmes purportedly said about the ministrations of his doctors. Even as Holmes declined,

his sense of humor remained; when Holmes was placed in an oxygen tent, Rowe joked, "Every soldier to his tent, Captain Holmes." The dying Holmes responded by thumbing his nose at his legal secretary.

The "damn foolery" continued outside the Justice's home. As word of Holmes' illness spread, reporters gathered in front of his home. And, too, gathered those who wanted to profit off the excitement. An organ grinder set up shop across the street, cranking out such tunes as "Let's All Sing Like the Birdies Sing" until former legal secretary Mark De Wolfe Howe paid the hurdy gurdy artist to move elsewhere.

Holmes once remarked that he considered Death to be an old and familiar friend, and Death graciously granted Holmes a gentle passing. He died in his sleep at 2:15 a.m. on Wednesday, March 6, 1935. Holmes' main physician, Thomas Claytor, later told reporters that Holmes died "[m]ore peacefully than anyone I've ever seen." At 2:30 a.m., Howe stepped out of the front door of the Holmes residence and announced to the crush of reporters that the Justice was gone. Several of those same reporters would later write that Howe appeared pale and grief stricken.

For the next two days, Holmes' body lay in his bedroom as family and friends paid their respects. Marion Frankfurter was one of those visitors, and she later described her final visit with the Justice.

**"Looking at him had the strange effect of healing my grief. I saw not the ruins of Holmes' glory but the figure of death — it conveyed the impenetrability, the mystery & majesty of death itself. His absence was accidental — what I ever had of him was in me."**

Earlier that day, sculptor Gutzon Borglum was ushered into Holmes' bedroom in order to make a death mask — a tradition that harks back to an early age.

Holmes' memorial service was held at All Souls Unitarian Church in Washington, D.C. at noon on Friday, March 8, 1935 — Holmes' 94th birthday. The service was conducted by the Reverend Ulysses Grant Baker Pierce — the same minister who had supervised Fanny Holmes' memorial service six years prior. Fanny Holmes once explained to a legal secretary that the Holmes' were Unitarians because that was the "least" someone could be in Boston and still be considered to have a religious faith. In keeping with her sentiments, the Justice received an unadorned Unitarian Service.

As Holmes' flag-draped casket was carried into the church by six of his former secretaries, the Justices followed as honorary pallbearers. First came Chief Justice Charles Evans Hughes and Justice James McReynolds, followed by George Sutherland, Pierce Butler, Harlan Fiske Stone, and Owen Roberts. The Justice who replaced Holmes — Benjamin Cardozo — was last. Former Holmes legal secretary Francis Biddle later recalled that Cardozo walked with "his head bowed, a sense of the Nation's sadness and its pride on his sensitive, finely chiseled face." Justice Brandeis did not attend the service, reportedly because



Library of Congress

**Justice Holmes' legal secretaries assisted him one more time, serving as pallbearers at his funeral under the watchful gaze of Justice Benjamin Cardozo.**

he was so upset by Holmes' death. Willis Van Devanter was not present because of illness.

We don't know what the Justices were thinking as they followed Holmes' casket into All Souls Church, but it is likely that a few were struck with an odd sense of déjà-vu. Five years prior, on a gloomy and cold day in March, many of the same Justices walked behind the casket of the late Chief Justice William Howard Taft as it was carried into the same church for a Unitarian service presided over by the same minister. At the front of line of Justices was Chief Justice Charles Evans Hughes. "[W]alking beside Mr. Hughes [was] the bent figure of Oliver Wendell Holmes, just as he walked beside Mr. Taft at so many state funerals." Two days prior, Holmes announced from the bench that both former Chief Justice Taft and Associate Justice Edward T. Sanford had died within five hours of each other. After observing that "[s]uch events must be accepted with silent awe," Holmes adjourned the Court.

As guests entered the church for Holmes' service, other former secretaries answered the call of duty again and served as ushers. The dignitaries being led to their seats included Eleanor Roosevelt, joined by Vice President John Nance Garner, members of the Roosevelt Cabinet, and a congressional delegation. Outside the church, the public braved the cold weather to gawk at the parade of Washington royalty.

The service was simple. Music by Bach ("*Komm, süßer Tod*"), Chopin ("*Prelude in C Minor*"), Anton Dvorak ("*New World Symphony*"), Cesar Franck ("*Chorale*") and Handel ("*Largo*") was played on the church organ. Reverend Pierce stood at a pulpit covered with flowers, including a wreath of roses and lilies of the valley from the Supreme Court and a second wreath of roses from the White House. Pierce briefly read from scripture before quoting a passage from "The Soldier's Faith," a famous speech Holmes gave on Memorial Day in May of 1895. The second Holmes speech quoted by Reverend Pierce was one Holmes composed after the death in 1899 of Chief Justice Walbridge Field of the Supreme Judicial Court of Massachusetts.

**"We accept our destiny to work, to fight, to die for ideal aims. As the grave of a hero who has done these things, we end, not with sorrow at the inevitable loss, but with the contagion of his courage; and with a kind of separate joy we go back to the fight."**

The Reverend closed the services by reading Joseph Blanco White's sonnet "Night and Death," the same sonnet Holmes requested be read at Fanny's funeral.

**Mysterious Night! when our first parent knew  
Thee from report divine, and heard thy name,  
Did he not tremble for this lovely frame,  
This glorious canopy of light and blue?  
Yet 'neath a curtain of translucent dew,  
Bathed in the rays of the great setting flame,  
Hesperus with the host of heaven came,  
And lo! Creation widened in man's view.  
Who could have thought such darkness lay concealed  
Within thy beams, O Sun! or who could find,  
Whilst fly and leaf and insect stood revealed,  
That to such countless orbs thou mad'st us blind!  
Why do we then shun death with anxious strife?  
If Light can thus deceive, wherefore not Life?**

The ceremony was over in less than thirty minutes. Holmes' casket was carried by automobile over the Arlington Memorial Bridge to Arlington National Cemetery. Once the hearse passed through the cemetery gates, it stopped and the casket was transferred to an artillery caisson. As the horse-drawn procession slowly moved towards the grave site, the Army Band played selections from "the American Medley Grand March." President Franklin Roosevelt waited at the grave, where he was joined by members of the Supreme Court, Holmes' nephew Edward J. Holmes and his wife, and the Frankfurters. It was a dark winter day, and the assembled onlookers were pelted with sleet and rain. As the casket was moved from the caisson to the grave site, the Army Band struck up "The Battle Hymn of the Republic" as the sleet grew heavier.

Later, newspaper accounts would breathlessly report that the President himself removed his hat in tribute to Holmes, thus exposing his bare head to the elements. Others followed his example. At least one onlooker, however, did not seem worried by the storm. As the rain increased, Annie Donnellan quietly commented to James Rowe: "Soldiers don't mind the rain." Was she referring to the

Photo Library of Congress.



**First Lady Eleanor Roosevelt, President Franklin Roosevelt, and military aide Colonel E.M. Watson at Holmes' graveside service at Arlington National Cemetery.**

Photo Library of Congress.



**A bugler plays Taps at the graveside of Justice Holmes as the honor guard folds the flag for presentation.**

soldiers carrying the casket, or to the old soldier being carried to his final resting place?

The graveside service was brief. Reverend Pierce read the 23rd Psalm and gave a benediction. Seven Infantrymen fired three volleys, followed by the playing of Taps. And with that, the casket holding the body of one of the most remarkable individuals to ever sit on the Supreme Court was lowered into the ground.

Funerals of Supreme Court Justices are now complicated and highly choreographed affairs. Lying in repose in the Great Hall at the Supreme Court. Funeral services in the grand Washington National Cathedral. Eulogies from fellow Justices, former law clerks, and prominent legal figures. Live coverage by national television networks. But for one of the greatest jurists to sit on the Supreme Court, a simple Unitarian service and the rites accorded an old soldier sufficed.

Endnotes: 1) G. Edward White, **Justice Oliver Wendell Holmes: Law and the Inner Self** (New York: Oxford University Press, 1995): 471.

2) Francis Biddle, **Mr. Justice Holmes** (New York: Charles Scribner's Sons, 1943): 208.

3) Carlisle Bargeron, "Military and Dignitaries Accompany Remains to Arlington." *The Washington Post*, March 12, 1930.

4) "Silent Awe' Rules High Court Session," *The New York Times*, March 11, 1930.

*\*Todd Peppers is a professor at Roanoke College and the author of Courtiers of the Marble Palace: The Rise and Influence of the Supreme Court Law Clerk.*