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Todd C. Peppers

Washington and Lee University School of Law, pepperst@wlu.edu

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Birth of an Institution: Horace Gray and the Lost Law Clerks

TODD C. PEPPERS

Introduction

In a vault hidden away in a downtown Boston bank rests a large silver loving cup. The cup was presented to Associate Justice Horace Gray on March 22, 1902 by his law clerks, and engraved on its tarnished surface are the names of the nineteen Harvard Law School graduates who served as Justice Gray's law clerks.¹ While the details surrounding the presentation of the cup have been lost to history, the gift was likely prompted by the failing health of Justice Gray and his future departure from the Supreme Court. The loving cup is still held by the Gray family, passing to the heirs of Professor John Chipman Gray, the famous Harvard Law School professor and half-brother of Horace Gray, upon the death of the childless Horace Gray.

The loving cup, however, is more than a mere historical curiosity, for it contains information previously unknown to students of Supreme Court history, namely, a complete list of the men who clerked for Justice Gray. While government records contain the names of Gray's later law clerks, the identity of Gray's first three clerks—Thomas Russell, William Schofield, and Henry Eldridge Warner—are not contained in Supreme Court records. The reason why Russell, Schofield, and Warner have not been previously acknowledged for their role in the creation of the clerkship institution is not due to conspir-

acy and cover-up. Since Horace Gray personally paid the salaries of the three men, they did not receive a paycheck from the federal government and their names were not recorded on government rolls. When the Justices were authorized in 1886 to hire stenographic clerks, governmental bureaucrats began recording the names of these new judicial assistants—and thereby created the false impression that law clerks had not arrived at the Supreme Court until 1886. Given this historical confusion about the identities of the first law clerks, this loving cup is arguably the “holy grail” for Supreme Court historians

who study the origins of the clerkship institution.

The primary purpose of this article is to acknowledge Horace Gray's important role in the creation of an enduring institution at the U.S. Supreme Court and to restore Thomas Russell, William Schofield, and Henry Eldridge Warner to their rightful place as the first law clerks. I will conclude by briefly discussing the other Harvard Law School graduates who clerked for Justice Gray, an impressive collection of young men who went on to careers in the law, the legal academy, and politics.²

A Brief History of the Supreme Court and Support Staff

Supreme Court Justices have not always had the services of law clerks. Throughout most

of the nineteenth century, the Justices were assisted only by a small handful of support personnel. Besides the Justices themselves, the Court's original support staff consisted of the clerk of the Supreme Court, the official Court reporter, and the marshal of the Court. In subsequent decades, the staff of the Supreme Court was supplemented with what Chief Justice Roger Taney called "servants about the Court," to wit, messengers.³ Political scientist Chester A. Newland writes that although Congress first appropriated funds for the hiring of messengers in 1867, individual Justices employed messengers before that date.⁴ Newland states that messengers were given a number of different job responsibilities, including serving as barbers, waiters, and chauffeurs.



This silver cup was presented to Associate Justice Horace Gray in 1902 by his law clerks and shows the names of the nineteen Harvard Law School graduates who clerked for him during his Supreme Court tenure. The names of Gray's first three clerks appear on it, making the cup a more reliable document than Supreme Court records.

In the years following the Civil War, the Supreme Court's workload increased sharply and the Justices began to publicly call for reform and assistance. Attorney General Augustus H. Garland provided the Justices with some relief, recommending in the **Annual Report of the Attorney General of the United States for the Year 1885** that each Justice be provided "by law with a secretary or law clerk, to be a stenographer . . . whose duties shall be to assist in such clerical work as might be assigned to him." In support of the recommendation, Attorney General Garland argued that the "immense" work of the Justices demanded additional staff support, noting that "while the heads of Departments and Senators have this assistance, I do not think there is any good reason that the judges of this court should not also have it."⁵ Congress swiftly acted upon Garland's recommendation, and in 1886 it authorized funds for the hiring of a "stenographic clerk for the Chief Justice and for each associate Justice of the Supreme Court, at not [sic] exceeding one thousand six hundred dollars each."⁶ While the Justices initially differed in who they hired to serve as their stenographic clerk—some Justices hired lawyers or law students, while a few hired professionally trained stenographers—within fifty years the position had evolved into what we recognize as the modern law clerk.⁷

Horace Gray and the Creation of the Supreme Court Clerkship

When Horace Gray was appointed to the U.S. Supreme Court in 1882, he began hiring Harvard Law School graduates to serve one- or two-year appointments as his assistants. Gray had previously been the chief judge of the Massachusetts Supreme Judicial Court from 1873 to 1882, and it was in that capacity that he first started employing clerks. The clerks were selected by Judge Gray's half-brother, the aforementioned Professor John Chipman Gray. From the very beginning, Professor Gray evidenced a keen eye for legal talent, and

the clerks that he sent to Chief Justice Gray included future U.S. Supreme Court Justice Louis Brandeis.

Justice Gray never publicly discussed his motivation for hiring law clerks, but the most likely explanation for the decision to employ assistants was related to workload considerations. As a jurist, Gray "delighted to go to the fountains of the law and trace its growth from the beginning," for he "believed that an exhaustive collection of authorities should be the foundation of every judicial opinion on an important question."⁸ Gray's indefatigability in legal research might well explain his motivation in seeking out legal assistance.

So who was this creator of the Supreme Court law clerk? He was a large, balding man with "mutton chop" whiskers and a stern countenance. Former Gray law clerk Samuel Williston vividly describes Justice Gray as follows:

In appearance Judge Gray was one of the most striking men of his time. He was six feet and four inches tall in his stockings. Unlike most very tall men, all the proportions of his



Horace Gray personally paid the salaries of his first three clerks, so they did not receive a paycheck from the federal government and their names were not recorded on government rolls. When the Justices were authorized in 1886 to hire stenographic clerks, governmental bureaucrats began recording the names of these new judicial assistants, thereby creating the false impression that law clerks had not arrived at the Supreme Court until 1886.

body were on the same large scale. His massive head, his large but finely shaped hands, and the great bulk of his frame, all seemed to mark him as one of a larger race than his fellows.⁹

Gray's contemporaries viewed him as a man "possessed of great physical as well as great mental vigor," an individual blessed with "abounding vitality and a delightful flow of animal spirits," and a jurist endowed with an "extraordinary" memory, a strong work ethic, and heightened awareness of "the dignity of the court and the position of judge."¹⁰ Attorney Jack B. Warner painted a picture of a man who was more deity than mortal. "His great stature and commanding figure heightened the impression of a presence never to be trifled with, and suggested the classic demi-god walking on the earth with his head reaching among the clouds."¹¹ On the Bench, Gray displayed a grim, cold demeanor, and his judicial energies extended not only to cases before the court but "to the color of the clothes worn by some members of the bar in court."¹² Given Gray's status as the creator of the modern law clerk, perhaps it is only fitting to describe him in biblical terms.

Once on the Supreme Court, Gray treated his young assistants as more than mere scribes. Former clerk Williston writes that "[t]he secretary was asked to do the highest work demanded of a member of the legal profession—that is, the same work which a judge of the Supreme Court is called upon to perform." After oral argument, Gray would give his young clerks the applicable briefs and legal pleadings and ask them to review the "novettes" and report back to the Justice with their independent thoughts. Gray did not share his own opinion of the case with his secretary, but "[i]t was then the duty of the secretary to study the papers submitted to him and to form such opinion as he could." Since Gray "liked best to do his thinking aloud and to develop his own views by discussion," Gray and his secretary would then sit down before the Court's Satur-

day conference and discuss the pending cases. First Gray would ask his secretary to "state the points of the case as best he could," with Gray closely examining and challenging the secretary's "conclusions."¹³ "When I made [the reports]," Williston writes, "the Judge would question me to bring out the essential points, and I rarely learned what he thought of a case until I had been thoroughly cross-examined."¹⁴

Former law clerk Langdon Parker Marvin also recalled these oral examinations by Justice Gray, and he provides a vivid description of these sessions:

After he had settled himself in front of the fire with his black skullcap on his head and a five-cent Virginia cherry-root in his mouth, he would say to me, "Well, Mr. Marvin, what have you got for me today?" So then I would tell him, having fortified myself with a little bluebook in which I had made notes of the various cases. Of course, I couldn't read all of the records, or even all of the briefs, but I made an analysis of the cases and I would tell him what the facts in each case were, where it started, how it had been decided in the lower courts, how it got to the Supreme Court of the United States, and what the arguments on either side were.¹⁵

Through his tenure on the Supreme Court, Gray permitted his clerks to offer opinions as well as case recitations. Williston writes that Gray "invited the frankest expression of any fresh idea of his secretary . . . and welcomed any doubt or criticism of his own views,"¹⁶ while Marvin confesses that "he rather astonished me early in the year by saying 'How do you think it ought to be decided[?]'.¹⁷ Former Supreme Court law clerk Ezra Thayer echoes Williston and Marvin's comments about the intellectual give-and-take between Gray and his young charges. Thayer writes that Gray "liked best to do his thinking aloud, and develop his own views by discussion." During

these discussions Gray “would patiently and courteously listen to the crudest deliverances of youth fresh from the Law School.”¹⁸ In his memoirs, Williston is careful not to create the appearance of undue influence. “I do not wish, however, to give the impression that my work served for more than a stimulus for the judge’s mind . . . my work served only as a suggestion.”¹⁹

Gray then adjourned to the Saturday conference. Williston writes:

When . . . the Judge returned, he would tell the conclusions reached and what cases had been assigned to him for opinions. *Often he would ask his secretary to write opinions in these cases*, and though the ultimate destiny of such opinions was the waste-paper basket, the chance that some suggestion in them might be approved by the master and adopted by him, was sufficient to incite the secretary to his best endeavor.²⁰

Marvin also recalls assisting with the drafting of opinions, but only to a limited extent. “When the Court went into recess, Mr. Justice Gray would begin his work on the opinions allotted to him. I would help him on that, looking up law, and sometimes preparing statements of fact which appeared in the Court records—but, of course, he wrote the opinions himself—in long-hand, with a stub pencil.”²¹

In short, the secretaries took part in all aspects of the decision-making process. They not only culled through the records and briefs in order to distill the relevant facts and legal arguments for Justice Gray, but they also then debated and argued their conclusions and suggested holding with the Justice. Once Gray was assigned an opinion, the secretaries often prepared the first draft of an opinion. While that draft may have landed in the trash can, it provided the secretaries with a critical chance to frame the issues and shape the legal analysis necessary to reach the Court’s position.

Finally, the free rein extended to the clerk’s opinions of the work product of other Justices. For example, Gray asked Williston to review the opinions written by the other Chambers. Williston recalls that “I tried to induce Justice Gray to dissent [from a majority opinion written by Chief Justice Fuller], but while he did not much combat my arguments, he was prevented from complying with my wish, if by nothing else, by the indisposition, that he and other members of the Court then had, to express dissent except on extremely vital questions, lest they should weaken the influence and credit of the Court.”²² Interestingly, neither Gray, Marvin, nor Thayer mentions reviewing cert petitions or preparing Bench memoranda—duties that have become the staple of the modern law clerk’s existence.

It is unclear whether the law clerks shouldered more responsibilities in Gray’s final years on the Court, when age and poor health began to affect the Justice. Marvin recalls that “my job with Judge Gray was an extremely busy one, because he was getting rather old and he expected me to do a good deal of the spade work and to educate him so that he could take his part in the deliberations of the court.”²³ Marvin’s description of his job duties, however, tracks the descriptions provided by earlier clerks Williston and Thayer.

Gray and his clerks worked in the library of Gray’s home on the corner of 16th and I Streets in Washington, beginning their one-year terms in the early summer before the next Term of Court. Williston describes the second-floor library as composed of two rooms. “The walls of the library rooms were entirely covered with law books, except the spaces for windows and those over the mantel pieces. In the larger room, a portrait of [Chief Justice John] Marshall by Jarvis had the place of honor, surrounded by quite small portraits of all the other Chief-Justices of the United States. In the connecting room, the portrait over the mantel was a replica of Stuart’s well-known representation of [George] Washington.”²⁴ A desk for the law clerk was

placed in the larger of the two library rooms, a spot from which the law clerks observed social calls by the other Justices. Williston adds that Gray's bedroom was on the third floor of the home. He wryly observes that Gray "was unmarried at the time, and the house seemed designed for a bachelor. He had some antipathy to closets."²⁵

As for Justice Gray's personal relationships with his law clerks, Marvin commented that Gray was a "delightful person" who regaled his law clerks with stories of hunting buffalo in his youth. Marvin would often have lunch or coffee with Gray, and in the afternoon he took drives with Gray in his brougham ("I had to huddle in the corner, as he took up most of the seat") to the local zoo.²⁶

Justice Gray shared with his clerks not only stories of big-game hunting, but also his observations on the Court and his love life. Williston recalls that Gray freely discussed his impressions of his fellow Justices with the young man, such as referring to Justice Samuel Miller as the "little tycoon" for his empathetic but misplaced belief in the correctness of his legal positions.²⁷ Gray's closest friend on the Court was Justice Stanley Matthews, whose daughter, Jane, Gray was courting. Williston recounts:

One morning Gray approached me with a rather sheepish smile and exhibited a beautiful ring—a sapphire with a diamond on each side of it. He said "You being, if I may say so, *in consimili casu* can perhaps tell me whether this would be likely to please a young lady." I assured him that the probabilities were great that it would afford pleasure. Thus, I saw the engagement ring before the recipient of it.²⁸

Horace Gray died in his summer home in Nahant, Massachusetts on the morning of September 15, 1902. His funeral was held on September 18, 1902 at Emmanuel Church in

Boston. While Gray did not have pallbearers at the funeral service, former law clerks Roland Gray, Joseph Warren, Ezra Thayer, and Jeremiah Smith, Jr. served as ushers.²⁹

Justice Gray's clerkship model would serve as a template for future Justices on the Supreme Court. While some Justices employed stenographic clerks for extended periods of time, a core group of Justices—including Oliver Wendell Holmes, Jr. and Louis Brandeis—followed Gray's lead of selecting Harvard Law school graduates to serve as their law clerks for a single Term of Court. The Justices mirrored Gray's practice of having the assistants perform substantive legal work, and they also adopted Gray's habit of serving as mentors to their young charges. Over the next fifty years, Gray's clerkship model would be adopted by all the Justices on the Court; while the Justices varied in the types of job duties assigned to their clerks, by the 1940s all Justices were hiring recent law school graduates—most from Harvard, but others from Yale—as their assistants.

A Collective Portrait of the Gray Law Clerks

From 1882 to 1902, Horace Gray hired nineteen Harvard Law School graduates to serve as his law clerks at the U.S. Supreme Court. The early Gray law clerks were plucked from a Harvard Law School that was just becoming a modern institution of legal education, a school at which Christopher Columbus Langdell presided as dean, giants like John Chipman Gray, James Bradley Thayer, and James Barr Ames lectured, and the *Harvard Law Review* was in its infancy. Like modern clerkships, the clerks began working at the Court shortly after graduation and—with two unusual exceptions—remained with the Justice for a single Term of Court.³⁰

In terms of background, the law clerks themselves were a fairly homogenous group.

Fourteen of the nineteen were born in Massachusetts, and all but one—Blewett Lee—hailed from well north of the Mason-Dixon line. With the exception of the aforementioned Lee, all of the clerks attended Harvard College prior to enrolling in law school. Most of the clerks first attended prestigious preparatory institutions, such as the Boston Latin School and Roxbury Latin School.

As with modern law clerks, membership on law review appeared to be an important credential. While the *Harvard Law Review* was not founded until 1887, thirteen of Gray's fourteen law clerks hired after the founding served on the *Law Review's* editorial board. Finally, the high quality of Gray's law clerks is reflected in the fact that five of the clerks—Francis Richard Jones, Moses Day Kimball, John Gorham Palfrey, William Schofield, and Samuel Williston—were accorded the honor of serving as commencement speakers at the Harvard Law School's graduation ceremonies. Ezra Ripley Thayer, another Gray law clerk, managed the impressive feat of being the first in his class at both Harvard College and Harvard Law School.

The First Three Law Clerks at the U.S. Supreme Court³¹

Thomas Russell was born in Boston, Massachusetts on June 17, 1858. His father, William Goodwin Russell, was a descendent of Mayflower passengers John Alden and Miles Standish. William Russell also attended both Harvard College and Harvard Law School and later served as an overseer of Harvard College.³² William Goodwin Russell became a prominent member of the Suffolk Bar, first as a member of the law firm Whiting & Russell and then as a member of the firm Russell & Putnam. His biographer claims that “avoidance of all public office was a marked feature in Mr. Russell,” and that his “love for private practice and a singular distaste for public station” caused Russell to turn down offered ap-

pointments to both federal circuit court and the state supreme court.³³ Thomas Russell's namesake was his grandfather, a Plymouth merchant, and his uncle, a prominent state court judge and a classmate of Horace Gray's at Harvard College.

While in law school, Russell was a member of both the Ames and Gray law clubs. He graduated from Harvard Law School in 1882, and he spent the winter of 1882 and the spring of 1883 clerking for Justice Gray. Regrettably, I have not discovered any information about either Russell's experiences as the first Supreme Court law clerk or the reaction of the other Justices to Justice Gray's bold decision to hire a law clerk. Russell himself never publicly wrote of the clerkship, Justice Gray's meager personal papers at the Library of Congress contain no mention of Russell, and the few biographies of Gray's contemporaries do not reference Gray's unusual experiment.

Unlike many of Gray's later clerks, Russell did not climb to the top of his profession. From 1883 to 1896 Russell worked at his father's law firm, Russell & Putnam, and from approximately 1896 to 1900 he worked as a solo practitioner. Russell briefly flirted with



Very little is known about Thomas Russell (pictured here in his youth), the first law clerk. Unlike other clerks, he did not go on to an illustrious legal career.

state politics as a young man—serving for two terms in the Massachusetts House of Representatives in 1893 and 1894 while simultaneously holding the position of treasurer of the Republican City Committee of Boston—and he remained active in the Massachusetts Republican party.

I have been unable to uncover any evidence that Russell was a prominent member of the bar during his short career. Russell himself wrote little of his own legal career, observing in 1900 that “[m]y summers are spent in a small place in Plymouth, Massachusetts, where I am philanthropically engaged in feeding a large number of bugs of various kinds in my attempt to cultivate a small garden.” Russell added that his only civic responsibility was serving as a trustee of the Worcester Insane Hospital. Russell had the financial resources to retire from the practice of law in 1909 at the relatively young age of 51.

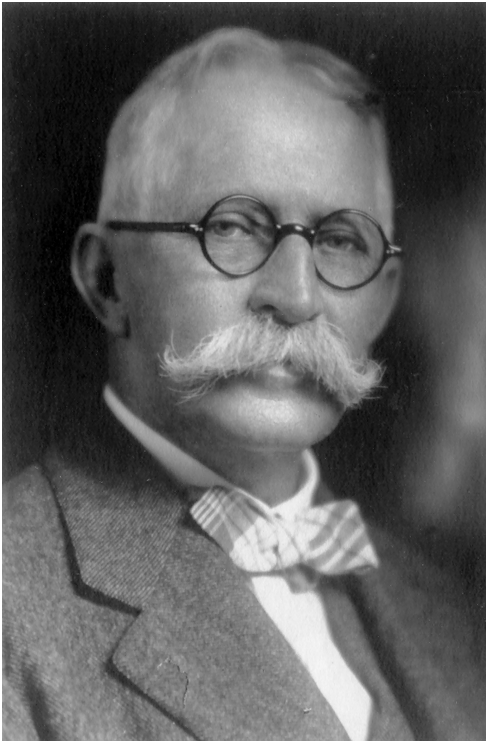
According to his granddaughter, Star Myles, Russell spent most of his post-retirement days at the Brookline Country Club or the Union Club in Boston, golfing and—when a heart condition caused him to stop golfing—curling, lawn bowling, and playing “cowboy pool.” Perhaps Russell himself felt reticent about his early retirement, commenting in 1929 that “I retired from the law some twenty years ago and, have, I am sorry to say, done nothing of interest to anyone since.” Curling was the post-retirement activity that Russell took the most seriously. In 1927, the *Boston Herald* ran a picture of Russell and his curling teammates, an image bearing the headline “A Veteran Quartet of County Club Curlers” and the caption “Although none of these four curlers is young any more, each can furnish plenty of entertainment for his more youthful opponents.”³⁴

Russell is remembered by his granddaughter as a “gentleman of the old school,” a tall and distinguished man who was devoted to his wife, never touched alcohol or liquor, threw elegant dinner parties, had a practiced eye for finding good antiques and oriental rugs,

believed that President Franklin Delano Roosevelt was a “traitor to his class,” and shared his granddaughter’s love of movies involving “historical adventure tales.”³⁵ Russell died in his Boston home on April 8, 1938.

Justice Gray’s second law clerk was William Schofield, who was born on February 14, 1857 in Dudley, Massachusetts. The historical record suggests that, unlike many of his fellow clerks, Schofield came from a more modest socioeconomic background. Schofield was forced to balance his college studies with work as a printer, and a former classmate wrote that Schofield “came from a small town [and] was prepared for college in one of the less known academies, which so often bring forward boys of unusual character and promise who would otherwise never go to college.” While the classmate reported that Schofield arrived at Harvard College with an “inadequate” education which limited his early academic success, “his persistence and unremitting industry and his great natural ability made him a leader.” This work ethic, however, came at a price. “He was always a man of serious and earnest purpose, with perhaps too little thought or care for the lighter side of life.”

Schofield graduated from Harvard College with a Phi Beta Kappa key, gave a commencement address entitled “The Commercial Agitation in England,” and spent a year pursuing the study of Roman law in graduate school before enrolling at Harvard Law School in the fall of 1880. After his graduation in 1883, which saw him give a commencement address on “The Codification of the Common Law,” Schofield spent two years clerking for Justice Gray. After his clerkship, Schofield returned to Cambridge, practiced law, and taught at both Harvard Law School from 1886 to 1889 (torts) and Harvard College from 1890 to 1892 (Roman law). Schofield managed to supplement his teaching (which he referred to as “only incidental work”) and law practice with the publication of several articles in the *Harvard Law Review*.³⁶ Schofield himself expressed disappointment at what he perceived to be only



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a modest academic output, explaining to his classmates that “[t]he briefs which we lawyers write do not seem to count either as literary or as legal work, but they cost hard labor none the less.”

Like Russell, Schofield served several years in the Massachusetts legislature. As a legislator, Schofield held key committee assignments and “won fame as an impassionate orator, a resourceful debater, a keen parliamentarian and a rapid thinker”³⁷ whose speeches “commanded the entire attention of the House.”³⁸ He was noted by the local press to be a loyal supporter and friend of Republican Massachusetts Governor Winthrop Murray Crane, support that was repaid when Crane ap-

pointed Schofield to the Massachusetts Superior Court in 1902. The *Boston Evening Journal* remarked that Schofield was “one of the best known attorneys in the State” and that “[h]is nomination is met with favor by all who know him,”³⁹ while the *Springfield Republican* concluded that Schofield’s “personal qualities are so attractive and reliable that men have forecast for him a successful career in politics, where his adaptation for useful public service has been well proved.”⁴⁰

I have been unable to find any information on Schofield’s tenure on the Superior Court. Approximately eight years later, Crane again served as Schofield’s political mentor, submitting his name to President William Howard Taft for a vacancy on the First Circuit Court of Appeals. Schofield originally declined to be nominated for the position, but was “at last . . . persuaded to change his mind by Senator Crane, who appointed him to the superior court.”⁴¹ While Schofield was subsequently confirmed as a federal appeals court judge, his federal judicial career was short-lived. The March 23, 1912 edition of the *Boston Daily Globe* reported that Schofield was slowly recovering from a “nervous breakdown” suffered earlier in the year, and within three months he was dead of “spinal trouble in the form of paralysis.”⁴² His death was viewed as “an irreparable loss to the community” by the *Boston Herald*, and over one thousand judges, attorneys, politicians, and family members attended his funeral on June 12, 1912.

With regard to Gray’s first three law clerks, the historical record is the most sparse when we come to the third clerk, Henry Eldridge Warner. He was born in Cambridge, Massachusetts on October 27, 1860, graduating from Harvard College in 1882 and Harvard Law School in 1885 before clerking for Justice Gray during October Term 1885. In an 1899 newspaper article, Warner was described as “an aristocratic appearing young man and . . . very democratic. He is tall and has a straight, athletic figure. His hair and moustache are black.”⁴³

Warner immediately entered private practice upon the conclusion of his clerkship with Justice Gray, ultimately becoming senior partner in the Boston law firm Warner, Stackpole, Bradlee & Cabot. His foray into politics was more modest than either Russell's or Schofield's. He served for one year on both the Cambridge Board of Health and the Cambridge City Council. Warner also served as a bankruptcy referee in Middlesex County, Massachusetts in approximately 1899.⁴⁴

In his later years, Warner moved to Lincoln, Massachusetts to a property that he humorously referred to as "his farm." At the age of forty-five, he wrote to his Harvard College classmates: "I seem to have no unusual experiences to relate, and I fancy that my case is like that of the rest of the class, a continued endeavor to 'lead the simple life' and keep up with the procession." Like Russell, Warner was a member of both the Brookline County Club and the Union Club of Boston, and one cannot resist wondering whether the two men exchanged gossipy stories about Justice Gray and the Supreme Court over drinks. Warner died on June 22, 1954 at the age of 93. His death merited several newspaper articles, not because of his legal accomplishments, but due to his advanced age: at the time of his death, Warner was the oldest living graduate of Harvard Law School.⁴⁵

Warner would be the last Supreme Court law clerk to lead a solitary and unique existence. With Congress's authorization of stenographic clerks, the other Justices quickly moved to hire their own assistants. Not all Justices immediately adopted the clerkship model created by Horace Gray—namely, hiring a newly graduated law student for a one-year clerkship and assigning him substantive legal work—but the die was cast. Before retiring from the Bench, Justice Gray himself hired sixteen additional law clerks. While the historical record is sparse for some of these men, the accomplishments and personalities of a few Gray clerks have survived the passage of time and deserve a brief mention.

Horace Gray's Subsequent Law Clerks

Today a Supreme Court clerkship is practically a prerequisite to securing a teaching position at an elite law school. The origins of this hiring norm may well be traced to Justice Gray and the alumni of his nascent internship program. Three of Gray's former law clerks—Ezra Thayer, Joseph Warren, and Samuel Williston—all returned to Harvard Law School and became full-time members of the faculty, while former clerks Roland Gray, William Schofield, and Jeremiah Smith, Jr. occasionally lectured at the law school. Another Gray law clerk, Blewett Lee, served on the law faculty of both Northwestern University and the University of Chicago.

Of the three Gray law clerks who were permanent members of the Harvard Law School faculty, Williston achieved the most enduring fame. Born on September 24, 1861 in Cambridge, Massachusetts, Williston graduated from Harvard College in 1882 and taught at a boarding school before attending Harvard Law School. Williston served on the editorial board of the *Harvard Law Review* during its first year of existence, and was awarded a prize by the Harvard Law School Association for an essay entitled "History of the Law of Business Corporations Before 1800." After his clerkship, Williston practiced at the Boston law firm of Hyde, Dickinson & Howe and accepted an appointment to teach at Harvard Law School.

As his class notes obliquely observe, "[t]he strain of the double work proved to be too much, and in 1895, soon after being appointed to full professor, he was forced to take a three years' vacation." Ultimately, Williston's absence from Harvard Law School would stretch over much of the next five years and would turn out to be more than physical fatigue. Writes Hofstra Law School Professor Mark Movsesian:

It soon became apparent that he needed more than a vacation. Neurasthenia, or nervous exhaustion, was a

common diagnosis during the Gilded Age, particularly for “brain toilers” like Williston who were thought to be particularly susceptible to the strains that modernity placed on the nervous system. The catchall term covered various mental disturbances, including what we would call depression and anxiety disorder. People understood the condition to be chronic, debilitating, and potentially incurable.⁴⁶

Williston ultimately sought help at a sanitarium in Bethel, Maine⁴⁷ and was treated with a combination of sedatives and talk therapy.

Movsesian writes that the treatment appeared successful, and Williston resumed teaching at Harvard law School in 1900. “Although he suffered periodic relapses that sent him back to Bethel and sanitariums over the years, and never weaned himself entirely off sedatives, he was able to work steadily . . . teaching into his eighties and doing research into his nineties.”⁴⁸ Williston had the courage to frankly discuss the events surrounding his periodic breakdowns, and Movsesian notes that Williston “hoped his recovery might show those with similar problems that ‘some achievement may still be possible after years of incapacity.’” Writes Movsesian: “Williston himself liked to tell people that his own career had been like the path of a wobbling planet: he was proof that, however far off course one went, one could ‘wobble back.’”⁴⁹

One can only speculate whether fellow faculty member Thayer took any comfort in Williston’s recovery as Thayer himself battled severe depression. Thayer was born on February 21, 1866 to James Bradley Thayer (who himself began a teaching career at Harvard Law School in 1873) and Sophia Bradford Ripley Thayer. Thayer’s college preparation included a year studying classical texts in Athens, and in 1888 he graduated first in his class at Harvard College. While in law school Thayer was a member of the *Harvard Law Review* and received the highest grades of any

law student in the previous thirty-five years. Of Thayer, his classmates observed that his success “did not come from the laborious toil of one striving merely for high rank. He had extraordinary intellectual powers and capacity, a brain that absorbed easily, and a tenacious memory.”

Upon Thayer’s graduation, Harvard Law School promptly offered him a teaching position. Thayer declined and clerked for Justice Gray during October Term 1891. Thayer subsequently spent eighteen years in private practice, first at the law firm Brandeis, Dunbar, and Nutter and later at Storey, Thorndike, Palmer and Thayer. Thayer was described as “a good trial lawyer, but was even better known for his ability to deal with questions of law and had taken his place in the foremost rank of those who argued cases before the full court.”⁵⁰ Thayer’s native intelligence could be intimidating to lawyers who matched wits with him; attorney and long-time friend Charles E. Shattuck once confessed that “Thayer’s mental processes were so thorough and at the same time so swift that often those of us less gifted were almost appalled by them.”⁵¹ While in private practice, Thayer also lectured at both Harvard Law School and Harvard Medical School.

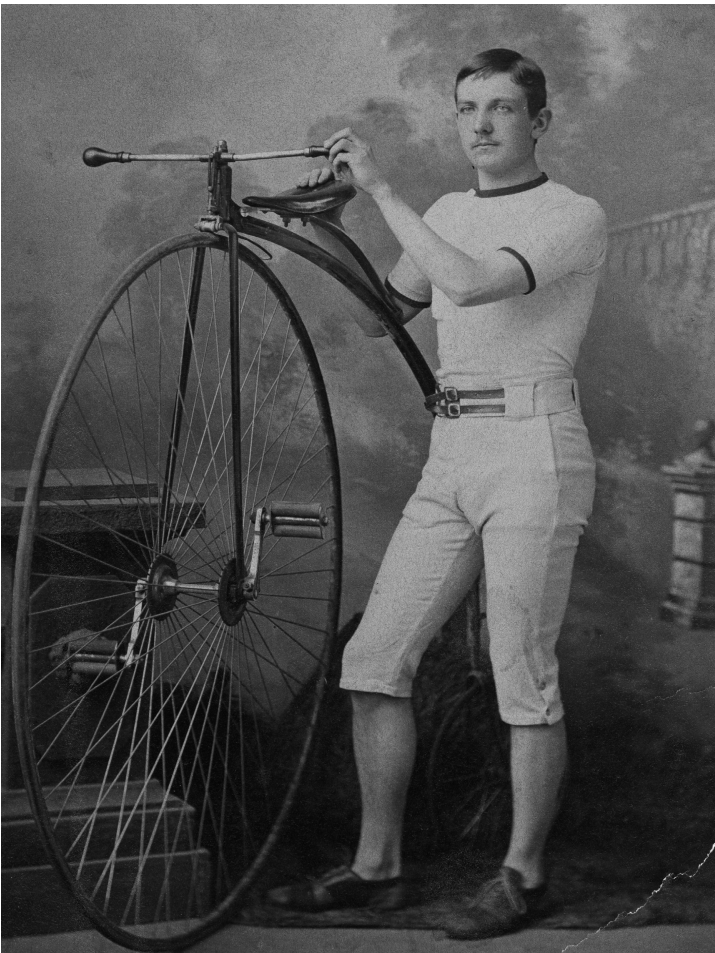
Thayer was appointed dean of the Harvard Law School in 1910, after initially and repeatedly expressing disinterest in the position. While biographer John Sheesley writes that Thayer did not have the time to stamp his own unique mark upon the law school, Thayer made a number of important decisions—including appointing Felix Frankfurter and Roscoe Pound to the faculty, raising the applicant admission standards, increasing course-load requirements, encouraging stricter grading, and tweaking the curriculum—while initially struggling in the classroom.⁵² As dean of Harvard Law School, Thayer made one other minor contribution—not to the law, but to popular culture. During Cole Porter’s first year at Harvard Law School, Thayer gave the young man the following advice:

I want to tell you something that may injure your self-esteem . . . but I think it is best for you. Frankly, Cole, your marks are abominable. You will never be a lawyer. But your music is very good, indeed. I suggest that you switch over to the excellent music school we have here . . . they will be gaining a talented student and we will be losing a wretched one.⁵³

A mediocre law student, Porter did indeed leave the school, a decision he “never regretted.”⁵⁴

As with Williston, Thayer’s colleagues described his fatal struggles with mental illness in terms of strain and overwork.

“Though athletic, simple and abstemious in his habits . . . the high standard which he had set for himself made too great draughts on his physical and nervous resources.” Sheesley states that Thayer was originally stricken with “bladder disease” in approximately March 1915, a painful condition which came and went throughout the summer of 1915. The illness pushed Thayer farther behind in his law school work, and Sheesley hypothesizes that the pain of the medical condition, combined with the work load, led to severe depression and anxiety. “A newspaper account at the time of Thayer’s death stated that he was ‘despondent’ over this pain, and that he ‘sometimes said he did not find life worth the living and would be glad when it all ended.’”⁵⁵ Thayer committed



Samuel Williston (pictured) has written that Gray “invited the frankest expression of any fresh idea of his secretary . . . and welcomed any doubt or criticism of his own views.” Like several Gray clerks, Williston went on to become a member of the faculty at Harvard Law School.

suicide in the Charles River on September 15, 1915.

“Ezra Ripley Thayer is one of the least celebrated of the men who have served as Dean of the Harvard Law School,” writes Sheesley. “No building bears his name. His portrait is tucked away in a far corner of the Library reading room.”⁵⁶ While Sheesley offers a number of explanations for this, including Thayer’s short tenure as dean (five years) and his lack of legal scholarship, he suggests that “there may also be an element of shame that adds to Thayer’s invisibility; the Law School may be embarrassed to recall that it was guided by a mentally unstable man, or even worse, that it contributed to his death.”⁵⁷ Regardless of the reasons for “the invisibility of the Thayer period” at Harvard Law School, he must be considered one of Horace Gray’s most accomplished law clerks—and his story one of the most tragic.⁵⁸

Joseph Warren was the second-to-last Harvard Law School graduate to clerk for Ho-



After clerking for Gray in 1891–92, Ezra Ripley Thayer went on to serve briefly as Dean of Harvard Law School. Unfortunately, he suffered from mental illness, and he committed suicide in 1915.

race Gray. After his clerkship during October Term 1900, Warren returned to Boston, briefly worked at Brandeis, Dunbar and Nutter, spent both a year as counsel for the Boston Police Department and one as secretary to the United States Ambassador to Rome, and then worked two years as a patent law attorney at the firm of Richardson, Herrick & Neave. In 1907, Warren returned to Harvard. After a stint in the President’s Office and as a part-time lecturer, Warren joined the Harvard Law School faculty in 1913. Warren was appointed the Bussey Professor of Law in 1919 and the Weld Professor of Law in 1929. Warren also served as acting dean of the Law School on two different occasions, and he published two influential legal treatises (**Cases on Wills and Administration** (1917) and **Cases on Conveyances** (1922)) as well as a half-dozen articles in the *Harvard Law Review*.

To the faculty and students of Harvard Law School, Warren was “Gentleman Joe.” Harvard Law School Professor Edmund M. Morgan, Jr. explained: “[T]his term has always been applied with genuine affection and respect. It has had no reference to manner or outward trappings; it has expressed appreciation of inward qualities, the character of the man.”⁵⁹ Morgan recounted an incident at the end of the final class Warren taught at Harvard Law School, where a representative of the class stood up, thanked Warren for his service, and then said to his fellow students “[s]o rise and start your cheering: a gentleman departs.”⁶⁰

Several of Justice Gray’s former law clerks—including Charles Lowell Barlow, William Harrison Dunbar, Roland Gray, Robert Homans, Gordon T. Hughes, Landgon Parker Marvin, James Montgomery Newell, John Gorham Palfrey, and Jeremiah Smith, Jr.—achieved varying degrees of professional success as attorneys in Boston and New York. Dunbar became a named partner in the law firm of Brandeis, Dunbar and Nutter, while Marvin practiced with future President Franklin D. Roosevelt. Roland Gray, the son

of John Chipman Gray, followed his clerkship by serving as the personal secretary to Chief Justice Melville Fuller (who was attending the Anglo-Venezuelan Arbitration Tribunal) before joining his father's firm of Ropes, Gray and Gorham. Roland Gray also devoted much time to revising his father's famous textbook, **The Rule Against Perpetuities**. Palfrey balanced his law practice with his duties as Justice Oliver Wendell Holmes, Jr.'s literary executor and watching tennis matches (he was the father of Sarah Palfrey Fayban Cooke Danzig, an international tennis star who won 18 Grand Slam titles, as well as four other daughters who also won national tennis championships⁶¹).

Of all these attorneys, Jeremiah Smith, Jr. would have the most lasting impact on international affairs. Smith was born in Dover, New Hampshire on January 14, 1870 to Jeremiah and Hannah Webster Smith. Like many law clerks, his ancestral roots ran deep into the early history of America. His grandfather attended Harvard College, was wounded while fighting in the American Revolution, knew George Washington, and served in the United States House of Representatives, as the chief justice of the New Hampshire Supreme Court, and as Governor of New Hampshire. His father, also named Jeremiah Smith, was on the Harvard Law School faculty for over three decades.

Jeremiah Smith, Jr. attended Phillips Exeter Academy before enrolling in Harvard College in 1888 and Harvard Law School in 1892. Smith served as editor-in-chief of the *Harvard Law Review* and clerked for Horace Gray during October Term 1895. After his clerkship, Smith spent the next twenty years in private practice in Boston before serving as a captain in the United States Army during World War I. At the end of hostilities, Smith was appointed by President Woodrow Wilson to the American Commission to Negotiate Peace. Despite the rarified air of Paris and his role at the negotiation table, Smith remained unaffected. A former classmate writes:

Let me set down an example of the way in which he [Smith] hated sham or anything that savored of it: When the time came for the signing of the Versailles Treaty it was evidently going to be a great spectacle at the Palace, with everybody within miles of Paris anxious to attend. Jerry's official position entitled him to a seat; but he shook his head and declined to go. "No," said he, "it is a poor treaty. I don't want any part of it. Nobody will ever know whether I attend or not, but I shall know and I can't justify my presence there."

"Jerry was no prig," concludes the classmate, "but he had clear-cut conceptions of right and wrong." The same classmate described Smith as a man of "extraordinary integrity and straightforwardness" who possessed "a quaint, infectious humor in which the shrewdest knowledge of men and their foibles . . . mingled and was one with a pervasive joy in human nature and life as we all live it."

Smith subsequently returned to Boston and his legal practice, only to be again tapped for government service. In 1924, the League of Nations appointed Smith to supervise the distribution of a fifty-million-dollar loan to Hungary. According to Smith's obituary in the *New York Times*, his role was much more than that of a mere financial advisor. "Rather than 'advisor,' Mr. Smith was for a time virtually dictator of Hungary, as he controlled all governmental expenditures. His task was made doubly hard as besides being a foreigner in a foreign country, he was also dealing with the proudest race in Europe."⁶² During his time in Hungary, Smith gained international admiration, not only for his financial skill in completing in twenty-four months a job predicted to take thirty years, but for his refusal either to live in a Hungarian palace or to accept a \$100,000 bonus.



Joseph Warren clerked for Gray during the 1900 Term and eventually went on to a distinguished teaching career at Harvard Law School.

Upon the discharge of his advising duties in 1926, Smith spent the next ten years practicing law, serving as a director of AT&T and a member of the Harvard Corporation, and sitting on the boards of various international political organizations. Despite his wide range of duties, the *Washington Post* claimed, Smith had “turned down more offers than most men receive, including the post of Treasury Secretary, offered him by President Roosevelt in 1933.”⁶³ Smith died on March 13, 1935 in Cambridge, Massachusetts.

Two of Justice Gray’s law clerks were denied the opportunity to leave their mark on the legal profession, dying at a young age. Moses Day Kimball was born in Boston, Massachusetts on February 16, 1868 and graduated from Harvard College in 1889. Although Kimball evidenced an early interest in becoming a minister, he began Harvard Law School in the fall of 1889. A classmate implied that it was Kimball’s will and work habits that resulted in his early death. “This devotion to his profession blinded him . . . to the proper mea-

sure of his physical strength, and deprived the State of his most promising life and service.” Kimball died of pneumonia during his clerkship in Washington, D.C. on March 31, 1893. Little information exists regarding Kimball’s clerkship and fatal illness, and we can only speculate as to the impact that Kimball’s death had on Justice Gray.

Edward Twisleton Cabot also fell victim to a premature death. Cabot was born in Brookline, Massachusetts on September 13, 1861, graduated from Harvard Law School in 1887, and clerked for Horace Gray during October Term 1887. Fellow Harvard College student James F. Moors wrote a moving tribute to Cabot after his death, extolling his intellectual and athletic virtues. “When Ted Cabot entered college, he was best known as the most indomitable football player of the Class. ‘Lay for Cabot,’ had been a well-known cry from opposing school elevens.” Cabot was the senior captain of both the Harvard College football and crew teams. Described as sometimes studious, moody, and disposed to “austerity towards frivolity and meanness and truth deformed,” Cabot was described by Moors as possessing “an impressive moral force” that caused another classmate to remark that “[n]o true friend of his [Cabot’s] can ever consciously do wrong.” Cabot must have suffered from a long decline in health, for Moor writes that “all his life after graduation was passed in the shadow of approaching death” yet adds that even though “inexorable death was pressing upon him,” Cabot “was living among us so calm and fearless that very little of the conflict between young life and inevitable dissolution was apparent even to his friends.” Cabot practiced law in Boston until his death on November 10, 1893.

Finally, we come to Blewett Lee—the law clerk with perhaps the most unique family history of all Horace Gray’s young assistants. Born on March 1, 1867 in Moxubee County, Mississippi to Stephen Dill Lee and Regina Lily Harrison Lee, Lee was a member of the first graduating class of Mississippi

Agricultural and Mechanical College (later Mississippi State University). Thus, Lee was the only Gray law clerk to not attend Harvard College. Lee subsequently enrolled in classes at the University of Virginia before attending Harvard Law School. Harvard Law School classmate Samuel Williston wrote of Lee: “His brilliant mind, geniality, simplicity, and an outlook somewhat colored by his Southern training made him an attractive companion.”⁶⁴ Upon Lee’s graduation, he traveled to Germany and studied at the University of Leipzig and the University of Freiburg before taking a clerkship with Horace Gray.

After his Supreme Court clerkship, Lee moved to Atlanta, Georgia and struggled to find work as a lawyer. In an unpublished history of the Lee family, the following story is recounted:

One day a man came into the office and asked BL to establish a company for him. He said he wanted to manufacture a nonintoxicating drink. He said also that he didn’t have very much money so he could only offer BL a block of stock in the new company or \$25.00. BL took a drink of the stuff, thought it was awful, and took the \$25.00. The man’s name was [Asa Griggs] Candler and the company he started was the Coca Cola Company.⁶⁵

Lee eventually moved to Chicago in 1893, enticed there by a professorship at Northwestern University and a salary that Lee claimed was “more than the Chief Justice of the State of Georgia was making at the time.”⁶⁶ It was in Chicago that Lee met and married Francis Glessner, the daughter of International Harvester founder John J. Glessner. The marriage produced three children, but ended in divorce in 1914. Described by a biographer as a “brilliant, witty, shy, intimidating, and, by some accounts, impossible woman,”⁶⁷ Francis Glessner later achieved an unusual fame by



Mississippi-born Blewett Lee was the only Gray clerk who hailed from south of the Mason-Dixon line and who did not attend Harvard College prior to attending its law school.

parlaying the art of creating miniatures of murder scenes into becoming a leading expert in crime scene investigation.

Lee is one of two law clerks to have a famous Civil War general as a father.⁶⁸ Stephen Dill Lee was born in Charleston, South Carolina and attended West Point during Robert E. Lee’s tenure there as superintendent. At the start of the Civil War, Stephen D. Lee resigned his commission in the United States Army and enlisted in the Confederate Army, and it was Captain Lee—as a member of General P.G.T. Beauregard’s staff—who delivered a written note of surrender to Major Robert Anderson at Fort Sumter. Upon Major Anderson’s refusal to hand over the fort, Captain Lee ordered the artillery to fire upon Fort Sumter, thus firing the first shot in the Civil War. Lee survived both injury and capture during the Civil War, rose to the rank of lieutenant general, and later became the first

president of Mississippi A&M and the president of the United Confederate Veterans. A life-sized statute of General Stephen Dill Lee, resplendent in full military uniform and his saber at the ready, resides at the Vicksburg National Military Park.⁶⁹

After teaching at both Northwestern University Law School from 1893 to 1902 and the University of Chicago Law School in 1902 (as one of the first faculty members hired by the new law school), Blewett Lee left the legal academy in 1902 and eventually became the general counsel for the Illinois Central Railroad. Despite the fact that he was no longer a law professor, Lee remained intellectually curious and continued to write articles that appeared in the *Columbia Law Review*,⁷⁰ the *Harvard Law Review*,⁷¹ and the *Virginia Law Review*.⁷² Lee's family describes him as a "courtly southern gentlemen in every sense of the word. He was deeply and sentimentally attached to his southern inheritance and had all the graces and charm which came from such a background . . . A more cultivated, intellectually gifted man it would be hard to find."⁷³

Lee died on April 18, 1951 in Atlanta, Georgia and was buried with his parents in the family plot at the Friendship Cemetery in Columbus, Mississippi.

Conclusion

Many aspects of the clerkship model created by Horace Gray remain intact today. Other

important changes, however, have occurred over time. Although Harvard Law School continues to be well represented in the law-clerk corps, other top law schools—such as Yale, University of Chicago, Stanford, Columbia, New York University, University of Michigan, and University of Virginia—routinely send their graduates on to Supreme Court clerkships. Since the late 1960s, however, the Justices have preferred applicants who have prior federal appellate court clerkship experience—a dramatic change from the selection practices in earlier times. Finally, modern law clerks have been given many more job responsibilities than their predecessors, a change that has triggered concern for some Supreme Court watchers.

No major biography has been written about Horace Gray, and law professors have mixed opinions as to his place in the hierarchy of great Justices. Nevertheless, Justice Gray deserves to be given his due as the creator of a new institution at the Supreme Court—the law clerk—that has helped generations of jurists efficiently and skillfully wade through stacks of petitions for writs of certiorari, prepare for oral argument, and draft legal opinions that have reshaped our political and legal landscape. And after 125 years of anonymity, Thomas Russell, William Schofield, and Henry Eldridge Warner merit at least a footnote in the history of the U.S. Supreme Court as the first law clerks.

Appendix 1: The Law Clerks of Justice Horace Gray

Name of Clerk	Clerkship	Birthplace	Undergrad.	Law School	Subsequent legal career*
Thomas Russell	1882–1883	Boston, MA	Harvard	Harvard	State legislature; private practice
William Schofield	1883–1885	Dudley, MA	Harvard	Harvard	Private practice; state legislature; law professor; state and federal judge
Henry Eldridge Warner	1885–1886	Cambridge, MA	Harvard	Harvard	Private practice
William Harrison Dunbar	1886–1887	Roxbury, MA	Harvard	Harvard	Private practice
Edward Twisleton Cabot	1887–1888	Brookline, MA	Harvard	Harvard	Private practice
Samuel Williston	1888–1889	Cambridge, MA	Harvard	Harvard	Private practice; law professor
Blewett H. Lee	1889–1890	Columbus, MS	Miss. A&M	Harvard	Private practice; law professor; in-house counsel
Francis Richard Jones	1890–1891	Boston, MA	Harvard	Harvard	Private practice
Ezra Ripley Thayer	1891–1892	Milton, MA	Harvard	Harvard	Private practice; law school dean
Moses Day Kimball	1892–1893	Boston, MA	Harvard	Harvard	None
James Montgomery Newell	1893–1894	Roxbury, MA	Harvard	Harvard	Private practice
Gordon Taylor Hughes	1894–1895	Hamilton, OH	Harvard	Harvard	Private practice
Jeremiah Smith, Jr.	1895–1896	Dover, NH	Harvard	Harvard	Private practice; federal government
Charles Lowell Barlow	1896–1897	New York, NY	Harvard	Harvard	Private practice
Robert Homans	1897–1898	Boston, MA	Harvard	Harvard	Private practice
Roland Gray	1898–1899	Boston, MA	Harvard	Harvard	Private practice
John Gorham Palfrey	1899–1900	Belmont, MA	Harvard	Harvard	Private practice
Joseph Warren	1900–1901	Boston, MA	Harvard	Harvard	Private practice; law school professor
Langdon Parker Marvin	1901–1902	Albany, NY	Harvard	Harvard	Private practice

*Includes only significant and sustained professional accomplishments.

ENDNOTES

¹Throughout the article, I will refer to Gray's young charges as law clerks, despite the fact that in the late nineteenth and early twentieth centuries, Supreme Court law clerks were also referred to as stenographic clerks, private secretaries, or legal secretaries.

²For accounts of other nineteenth-century Justices and their law clerks, see the following sources: Chester A. Newland, "Personal Assistants to Supreme Court Justices: The Law Clerks," *Oregon Law Review* 40 (4): 299–317; Artemus Ward and David L. Weiden, *Sorcerers' Apprentices: 100 Years of Law Clerks at the United States Supreme Court* (New York University Press, 2006).

³Carl B. Swisher, *History of the Supreme Court of the United States*, vol. 5, *The Taney Period, 1836–1864* (New York: Macmillan Publishing Company, 1974): 296.

⁴Newland, "Personal Assistants," 300.

⁵Augustus H. Garland, *Annual Report of the Attorney General of the United States for the Year 1885* (Washington, D.C.: Government Printing Office, 1885): 43.

⁶24 *Stat.* 254 (1886).

⁷Not all scholars believe that workload pressures alone account for the creation of the law-clerk position. Political scientists Artemus Ward and David L. Weiden, authors of *Sorcerers' Apprentices*, argue that the apprentice model of legal education explains why some Justices first em-

ployed law clerks: not to help process the work of the Court, but to help train future lawyers.

⁸Elbridge B. Davis and Harold A. Davis, "Mr. Justice Horace Gray: Some Aspects of His Judicial Career," *American Bar Association Journal* 41 (May 1955): II.

⁹Samuel Williston, *Life and Law: An Autobiography* (Boston: Little, Brown and Company, 1940): 92.

¹⁰*Proceedings of the Bar and of the Supreme Judicial Court of Massachusetts in Memory of Horace Gray* (Jan. 17, 1903): 12, 50.

¹¹*Ibid.*, 30.

¹²George F. Hoar, "Mr. Justice Horace Gray," *Massachusetts Historical Society Proceedings* (Boston: Massachusetts Historical Society, 1904): 21.

¹³Samuel Williston, "Horace Gray," in *Great American Lawyers: A History of the Legal Profession in America*, ed. William Draper Lewis (Philadelphia: J.C. Vinson, 1909): 158–59.

¹⁴Williston, *Life and Law*, 92.

¹⁵"Oral History Project: The Reminiscences of Mary V. and Langdon P. Marvin," Columbia University.

¹⁶Williston, *Life and Law*, 93.

¹⁷"Reminiscences of Mary V. and Langdon P. Marvin."

¹⁸Hoar, "Mr. Justice Horace Gray," 36, 38.

¹⁹Williston, *Life and Law*, 92.

²⁰Williston, "Horace Gray," 159 (emphasis added).

²¹"Reminiscences of Mary V. and Langdon P. Marvin."

²²Williston, *Life and Law*, 257.

- ²³“Reminiscences of Mary V. and Langdon P. Marvin.”
- ²⁴Williston, **Life and Law**, 91.
- ²⁵*Ibid.*
- ²⁶“Reminiscences of Mary V. and Langdon P. Marvin.”
- ²⁷Williston, **Life and Law**, p. 95.
- ²⁸*Ibid.*, 97.
- ²⁹“Of Simplest Character: Funeral of Judge Horace Gray, Formerly of the U.S. Supreme Court, At Emmanuel Church,” *Boston Daily Globe*, September 19, 1902.
- ³⁰For unknown reasons, future federal judge William Schofield clerked for Gray for two years, while Moses Day Kimball died of pneumonia approximately nine months into his clerkship.
- ³¹The majority of the information that I present on the lives and careers of Gray’s law clerks comes from Harvard College class reports. In order to keep footnotes to a minimum, I will only cite to other sources of information, such as law review articles, newspaper stories, and obituaries.
- ³²Winslow Warren, **Memoir of William G. Russell, LL.D.** (Cambridge: John Wilson and Son, 1900).
- ³³*Ibid.*, 7.
- ³⁴“A Veteran Quartet of Country Club Curlers,” *Boston Herald*, January 9, 1927.
- ³⁵Author’s correspondence with Star Myles.
- ³⁶William Schofield, “The Principle of *Lumley v. Gye*, and Its Application,” *Harvard Law Review* 2 (April 1888): 19–27; William Schofield, “*Davies v. Mann*: Theory of Contributory Negligence,” *Harvard Law Review* 3 (January 1890): 263–77; William Schofield, “*Hamlyn & Co. v. Talisker Distillery*: A Study in the Conflict of Laws,” *Harvard Law Review* 9 (January 1896): 371–85; William Schofield, “Uniformity of Law in the Several States as an American Ideal. I. Case Law,” *Harvard Law Review* 21 (April 1908): 416–30; William Schofield, “Uniformity of Law in the Several States as an American Ideal,” *Harvard Law Review* 21 (May 1908): 510–26; William Schofield, “Uniformity of Law in the Several States as an American Ideal. IV. State Courts versus Federal Courts,” *Harvard Law Review* 21 (June 1908): 583–94.
- ³⁷“Judge Schofield Was Close to Crane,” *Pittsfield Journal*, May 26, 1912.
- ³⁸*Sandwich Independent*, April 25, 1902.
- ³⁹“Appointment as Superior Court Justice Pleases Especially Members of General Court Associated With Him for Four Years,” *Boston Evening Journal*, December 25, 1902.
- ⁴⁰“Two Judicial Appointments,” *Springfield Republican*, December 23, 1902.
- ⁴¹John Lorange, “Crane Persuaded Schofield to Accept,” *Boston Record*, May 23, 1911.
- ⁴²“Judge William Schofield Dies in Malden Home,” *Boston Herald*, June 11, 1912.
- ⁴³“To Succeed Manchester: Henry E. Warner Has Been Appointed Referee in Bankruptcy for Middlesex County,” *Boston Journal*, December 5, 1899.
- ⁴⁴*Ibid.*
- ⁴⁵“H.E. Warner, Oldest Harvard Law Alumnus,” *Boston Herald*, June 24, 1954; “Henry E. Warner,” *Boston Traveler*, June 24, 1954.
- ⁴⁶Mark L. Movsesian, “Samuel Williston: Brief Life of a Resilient Legal Scholar: 1861–1963,” *Harvard Magazine* (January–February 2006), available at <http://www.harvardmagazine.com/on-line/010683.html> (last visited October 25, 2007).
- ⁴⁷Movsesian observes that “[s]o many of Harvard’s faculty were among the patients that the sanitarium was known as the University’s ‘resting place.’” *Ibid.*
- ⁴⁸*Ibid.*
- ⁴⁹*Ibid.*
- ⁵⁰Moorfield Storey, et al., *Proceedings at the Meeting of the Bar in the Supreme Judicial Court of Massachusetts in Memory of Ezra Ripley Thayer* (July 7, 1916): 3.
- ⁵¹Charles E. Shattuck. *Proceedings at the Meeting of the Bar in the Supreme Judicial Court of Massachusetts in Memory of Ezra Ripley Thayer* (July 7, 1916): 23.
- ⁵²John P. Sheesley, “Ezra Ripley Thayer: Dean of the Harvard Law School 1910–1915. Paper written to satisfy Harvard Law School third year writing requirement.
- ⁵³Richard G. Hulber, **The Cole Porter Story** (New York: The World Publishing Company, 1965): 12.
- ⁵⁴*Ibid.* See also William McBrien, **Cole Porter: A Biography** (New York: Alfred A. Knopf, 1998): 50–51.
- ⁵⁵Sheesley, “Ezra Ripley Thayer.”
- ⁵⁶*Ibid.*
- ⁵⁷*Ibid.*
- ⁵⁸*Ibid.*
- ⁵⁹E. M. Morgan, “Joseph Warren: A Gentleman Departs,” *Harvard Law Review* 56 (October 1942): 171.
- ⁶⁰*Ibid.*, 172.
- ⁶¹Robin Finn, “Sarah Palfrey Danzig, Stylish Tennis Champion, Dies at 83,” *The New York Times*, February 28, 1996.
- ⁶²“Jeremiah Smith, Financier, Dead: Lawyer and Banker was Called Financial ‘Savior’ of Post-War Hungary,” *The New York Times*, March 13, 1935.
- ⁶³“Jeremiah Smith: International ‘Refuser,’” *The Washington Post*, March 17, 1935.
- ⁶⁴Williston, **Life and Law**, 80.
- ⁶⁵Percy Maxim Lee and John Glessner Lee, **Family Reunion: An Incomplete Account of the Maxim-Lee Family** (privately printed, 1971): 255.
- ⁶⁶*Ibid.*
- ⁶⁷Corinne May Botz, **The Nutshell Studies of Unexplained Death** (Monacelli, 2004): 17.
- ⁶⁸The other was Charles Lowell Barlow, son of “the boy general,” Francis Channing Barlow.
- ⁶⁹Harold Cross, **They Sleep Beneath the Mockingbird: Mississippi Burial Sites and Biographies of Confederate Generals** (Southern Heritage Press, 1994); Herman

Hattaway, **General Stephen D. Lee** (Jackson: University Press of Mississippi, 1976).

⁷⁰Blewett Lee, "Spiritualism and Crime," *Columbia Law Review* 22 (May 1922): 439–49.

⁷¹Blewett Lee, "Railroad War Bonds," *Harvard Law Review* 32 (April 1919): 709–11; Blewett Lee, "Psychic Phenomena and the Law," *Harvard Law Review* 34 (April 1921): 625–38.

⁷²Blewett Lee, "The Thirteenth Amendment and the General Railway Strike," *Virginia Law Review* 4 (March 1917): 437–56; Blewett Lee, "The Conjuror," *Virginia Law Re-*

view 7 (February 1921): 370–77; Blewett Lee, "The Rule Against Perpetuities in Mississippi," *Virginia Law Review* 10 (May 1924): 533–45; Blewett Lee, "An Establishment of Religion," *Virginia Law Review* 14 (December 1927): 100–111; Blewett Lee, "Copyright of Automatic Writing," *Virginia Law Review* 13 (November 1926): 22–26; Blewett Lee, "What Cannot be Sold Cannot be Mortgaged," *Virginia Law Review* 15 (January 1929): 234–37; Blewett Lee, "Abolishing the Senate by Amendment," *Virginia Law Review* 16 (February 1930): 364–69.

⁷³*Ibid.*, 261.

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