



## CUSHMAN'S TABLE FOR 9

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ONE WOULDN'T normally seek recipe ideas from Supreme Court Justices. We don't think of these legal nerds as gourmands, and learning that Justices Louis Brandeis and Robert Jackson noshed on spinach and cowslip sandwiches, respectively, reinforces the stereotype. A book on Supreme Court food traditions therefore is likely to descend into nostalgia, reciting odd and obscure recipes accompanied by faithful descriptions that toggle between comedy and condescension. Thankfully, Clare Cushman, Director of Publications at the Supreme Court Historical Society, has written a book that is much more than a collection of recipes. *Table for 9: Supreme Court Food Traditions & Recipes* examines how the Justices from the beginning have tried to create food traditions that forge a common identity and calm an unduly stressful work environment that would otherwise fray human relationships.

Cushman notes that Chief Justice John Marshall, who inherited an "ineffectual" Court in 1801, used food, wine, and lodging as elements of his plan to "forg[e] a cohesive group identity among the Justices."<sup>1</sup> It is hard to overstate how rudimentary food culture was at the time. The first American cookbook was only five years old; knives, forks, and cups had only recently become standard items in American kitchens; and the advent of restaurants as we know them today was nearly a century away. What is more, Washington, D.C. was a cow town, and the Justices of the young

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<sup>1</sup> *Table for 9*, at 5.

court had to bunk in one of the city's many boardinghouses when the Court was in session.<sup>2</sup>

Marshall first convinced his brethren to stay at the same boarding-house, one on North Capitol Street run by a "Mrs. R. Dunn."<sup>3</sup> Without adequate space in the Capitol, Mrs. Dunn's boardinghouse became the Justices' workplace: "They ate meals together at a common table with other boarders, and discussed cases (except on Sundays) in public over dinner, continuing afterward in a private room."<sup>4</sup> Marshall cultivated loyalty from the Justices by "deploy[ing] his taste for spirits, which he arranged to be supplied for the Justices' meals."<sup>5</sup> His plan worked, and an *esprit de corps* soon developed among the Justices. As Justice Joseph Story told a friend, the Justices developed into "great ascetics," eating and working together and "tak[ing] no part in the society of the place."<sup>6</sup>

The Justices spent far more time apart than together because the Court's term was so short (mid-January to mid-March), and Cushman shows that Marshall and Story, and likely other Justices, corresponded to maintain warm and productive relationships during their down time. In particular, Cushman quotes from genuinely friendly letters between Marshall and Story exchanging Virginia ham and New England salt cod.<sup>7</sup> Marshall apparently enjoyed the salt cod, which suggests that early American palates were (ahem) underdeveloped.

It wasn't until the new Supreme Court Building opened in 1935 that the Court finally had its own facilities, including a modern kitchen and a private dining room for the Justices, but it continued to follow the Marshall plan. Not surprisingly, most of Cushman's book deals with the post-1935 era. The Court continued to schedule group lunches among the Justices that were guided by the same rules Marshall established. According to Justice James Byrnes, "[We] lunch together in a room on the second floor; guests are not invited. . . . Discussion at lunch was stimulating and

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 5-6.

<sup>5</sup> *Id.* at 6.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 24-27.

entertaining, with only one subject barred – the work of the Court.”<sup>8</sup> When Chief Justice Warren Burger expanded lunch recess to an hour on oral argument days, he maintained the prohibition on legal discussions during lunch.<sup>9</sup>

Cushman notes that when attendance at the group lunches waned it was Justice Sandra Day O’Connor who “strove to revive the tradition and persuaded all her colleagues to eat lunch together on days when the Court was in session.”<sup>10</sup> Justice Clarence Thomas was reluctant to join the lunches because of the intense workload, but Justice O’Connor persuaded him and Justices Ruth Bader Ginsburg and Stephen Breyer to join the lunches.<sup>11</sup> Today, ideological opposites like Justices Thomas and Sonia Sotomayor describe the group lunches as “wonderful.”<sup>12</sup> As Justice Thomas says, “It is hard to be angry or bitter at someone and break bread and look them in the eye. It is a fun lunch. It’s just nine people, eight people – whoever shows up – having a wonderful lunch together.”<sup>13</sup>

There are many other events at which the Justices dine together. These are the holiday parties, welcome and farewell dinners, and birthday celebrations at which the Justices, their spouses, and retired Justices come together to celebrate important moments in each other’s lives. Fittingly, the Junior Justice is responsible for organizing dinners welcoming a new Justice,<sup>14</sup> thereby exposing to the two most junior Justices participation in, and planning of, one of the Court’s most important food traditions. Judging by Justice Breyer’s approach, the Junior Justice spends much time and thought on the dinner. At Justice Samuel Alito’s welcome dinner, Breyer arranged for the Phillie Phanatic – the mascot of Alito’s hometown Philadelphia Phillies – to appear and give Alito a welcoming hug.<sup>15</sup>

Cushman makes clear that these group gatherings are defense mechanisms the Justices seem to recognize as necessary to keeping the Court

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<sup>8</sup> *Id.* at 19.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 21.

<sup>11</sup> *Id.* at 21-22.

<sup>12</sup> *Id.* at 20.

<sup>13</sup> *Id.* at 22.

<sup>14</sup> *Id.* at 39.

<sup>15</sup> *Id.* at 41.

from descending into a destructive work environment. The Justices need social events like these to maintain an acceptable level of productive social interaction because the very nature of their jobs provokes confrontation. The Justices are smart, ambitious personalities with strongly held beliefs deciding issues that are fundamental to our democracy. Their disagreements are not perfunctory, but deeply ideological and, potentially, personal. It therefore is not surprising that the Court has adopted techniques to lessen social tension, and, as Justice Ginsburg says in her Foreword, “[f]ood in good company has sustained Supreme Court Justices through the ages.”<sup>16</sup>

*Table for 9* is loaded with wonderful stories of individual Justices and their food stories. Some favorites are early Justices eating lunch behind a curtain during oral argument,<sup>17</sup> Justice Antonin Scalia teaching Justice Kagan how to hunt,<sup>18</sup> and Justice Hugo Black confidently advising others that the secret to cooking a good steak was “to keep the steak moving on the hot pan,”<sup>19</sup> which is precisely incorrect.

Two people especially stand out in Cushman’s tale. The first is Justice O’Connor. She seems both an embodiment of her Southwest heritage and an enthusiastic booster of the Court and its food traditions. In photos and text O’Connor seems an energetic ambassador for the Court’s traditions within its own walls. She sent her husband’s homemade beef jerky to her colleagues every Christmas, fed dinners to her new clerks after introducing them to Washington, D.C., regularly had lunch with her clerks, and brought into the Court homemade Southwestern dishes.

The second is Martin Ginsburg. He is everywhere in this book, baking birthday cakes for clerks, transforming the spoils of Justice Scalia’s hunting trips into sophisticated venison dishes, and happily carrying on the tradition of Supreme Court spouses creating a warm and productive social environment for the Justices and other employees of the Court. No one is mentioned more often in this book than Ginsburg, and it soon becomes obvious to the reader that Ginsburg was an extraordinary man. He was a successful lawyer in his own right as a tax law professor at the Georgetown University Law Center. Yet, Ginsburg never seems to have

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<sup>16</sup> *Id.* at vii.

<sup>17</sup> *Id.* at 13-15.

<sup>18</sup> *Id.* at 33-34.

<sup>19</sup> *Id.* at 69.

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been threatened by his wife's success, which eventually eclipsed his own. He seems to have reveled in his role as Supreme Court spouse and judging by his recipes — Salmon in a Spanish Manner, Pistachio Nut Citrus Sauce for Grilled Fish, and Red Pepper Boats with Tapenade — he was an accomplished cook.

Clare Cushman's *Table for 9* is only 142 pages of narrative text, but few books are more revealing about the Justices and their Court. It is a joy to read, perhaps because Cushman does not badger the reader into reaching a particular conclusion. Anyone interested in the Court, its history, or how it functions will find this book fascinating.

Bravo, Clare Cushman.

