THE DEPARTMENT OF JUSTICE IS BORN

ITS FIRST THREE (?) ATTORNEYS GENERAL

Stephen R. McAllister

THE U.S. DEPARTMENT OF JUSTICE (Department or DOJ) came into existence on July 1, 1870, and thus is celebrating its 150th anniversary in 2020.[1] Until I joined the Department in January 2018 as the United States Attorney for the District of Kansas, I did not fully appreciate that the Department is almost a century younger than the positions of Attorney General (AG) and U.S. Attorney, both of which date to the Judiciary Act of 1789.[2]

I knew that the Attorney General was a part-time position until the mid-19th century[3] and was held by some famous early American lawyers,[4] but I

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[1] 16 Stat. 162 (41 Cong., Ch. 150, June 22, 1870); see also "150 Years of the Department of Justice" at www.justice.gov/history/timeline/150-years-department-justice#event-1208301.

[2] 1 Stat. 73, 92-93 (1 Cong., Ch. 20, Sept. 24, 1789).

[3] See *Filarsky v. Delia*, 566 U.S. 377, 386 (2012) ("Until the position became full-time in 1853 . . . the Attorney General of the United States was expected to and did maintain an active private law practice.")

[4] For the entire list, the DOJ website has a great timeline, photos/portraits, and brief bios, at www.justice.gov/ag/historical-bios. One notable early Attorney General was William Wirt, who served an extremely long time (more than 11 years for two Presidents), and who some

had not grasped that for almost our first century AGs lacked a department to lead. The Judiciary Act of 1789 did not specify who, if anyone, was to supervise the U.S. Attorneys, and arguably only the President did: "Each was a king in his own domain, appointed by the President of the United States and directly answerable to him alone."[5]

In 1820, Congress authorized the President to appoint a Treasury official to direct and superintend suits for the recovery of money and property in the name and for the use of the United States.[6] Another section of that Act declared that the U.S. Attorneys "shall conform" to the directions of that Treasury official,[7] but that provision seems directed at proceedings to collect money for the Treasury, or defend against collection, not all activities of the U.S. Attorneys. In 1830, Congress created a Solicitor of the Treasury and designated the Solicitor to supervise the U.S. Attorneys with respect to the 1820 Act's provision but, again, it appears the Solicitor was only to supervise the U.S. Attorneys with respect to actions affecting the Treasury.[8]

Not until 1861 did Congress authorize "*general* superintendence and direction" of the U.S. Attorneys, when it gave that power to the Attorney General.[9] Thus, the first 72 years of the federal justice system – with the limited role and authority of the AG, the autonomy of the U.S. Attorneys,

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credit with formalizing the office by moving to Washington permanently upon his appointment, unlike virtually all his predecessors. See S.L. Southard, *Discourse on the Professional Character and Virtues of The Late William Wirt*, at 33 (Washington: Gales and Seaton 1834).

[5] Whitney North Seymour, Jr., *United States Attorney*, at 46 (New York: William Morrow & Co, Inc. 1975).

An aside: I have heard more than one Solicitor General (SG) of the U.S. refer to the fact that, by statute, the SG – a position created in 1870 simultaneously with the Department of Justice – must be a person "learned in the law," a requirement SGs claim is unique. As a lowly U.S. Attorney, I take pleasure in pointing out that the Judiciary Act of 1789 required the U.S. Attorneys and Attorney General to be "a meet person learned in the law" to "act as attorney for the United States," with the U.S. Attorneys to appear "in their district" while the Attorney General appeared in "the Supreme Court." 1 Stat., at 92-93. Thus, the U.S. Attorneys and the Attorney General were the *original* "learned in the law" members of DOJ.

[6] 3 Stat. 592 (16 Cong., Ch. 107, May 15, 1820).

[7] 3 Stat. at 596.

[8] 4 Stat. 414 (21 Cong., Ch. 153, May 29, 1830).

[9] 12 Stat. 285 (37 Cong., Ch. 37, Aug. 2, 1861) (emphasis added); www.justice.gov/usao/timeline/-history#event-556026.

and the lack of a Department – were quite a contrast to the modern system. Today, the Department is headed by a powerful Attorney General, contains numerous attorney divisions at "Main Justice" in Washington,[10] includes major law enforcement/investigative agencies under the DOJ umbrella,[11] has numerous other program/grant/support offices,[12] and oversees the 93 U.S. Attorneys and their offices.[13]

The earliest days of the Department were a time of great political turmoil. In fact, the Grant Administration was so chaotic that it is unclear who was the *first* Attorney General after the Department's creation – Ebenezer Hoar or Amos Akerman. Hoar started 1870 as Grant's AG, and Akerman was confirmed as the next AG in November 1870. In June, Grant requested and obtained Hoar's resignation, which Grant intended to keep secret, but that did not work, and it leaked to the press. Grant immediately nominated Akerman, also in June, at least a week before the Department of Justice was born. So, who, if anyone, was Attorney General on July 1, 1870?

Jacob Dolson Cox, Grant's Secretary of the Interior in 1870, published a fascinating insider account of these events 25 years later, shortly after the death of Ebenezer Hoar.[14] Noting that "the recent death of Judge Hoar so nearly ends the list of living men who were his colleagues in the Cabinet when he was Grant's first Attorney-General," Cox provides a very credible and detailed account of Hoar's abrupt and unexpected resignation (at Grant's request, it was not Hoar's desire), and how carelessness in the White House leaked the news to the press and forced Grant to make an immediate nomination, which was Akerman, all of which Cox dates as occurring during June 15-17, 1870.[15] Cox further asserts that "Judge Hoar

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[10] The divisions are Antitrust, Civil, Civil Rights, Criminal, Environment & Natural Resources, National Security, and Tax.

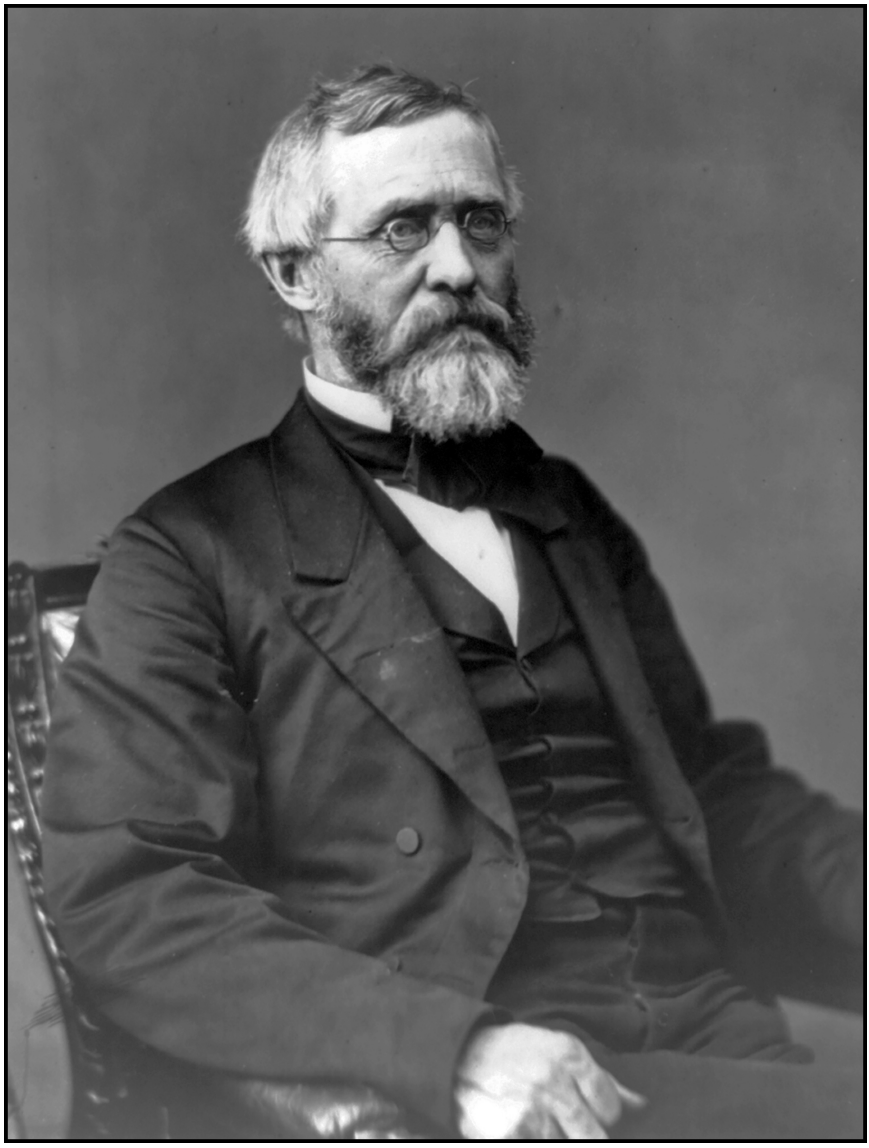
[11] These include the Federal Bureau of Investigation; the Bureau of Alcohol, Tobacco and Firearms; the Drug Enforcement Administration; and the U.S. Marshals Service.

[12] The Department's organization chart can be found at www.justice.gov/agencies/chart.

[13] There are 94 federal districts served by 93 U.S. Attorneys. *Bicentennial Celebration of the United States Attorneys 1789-1989*, at 2 n.2, available at www.justice.gov/usao/page/file/1038771/download.

[14] Jacob Dolson Cox, *How Judge Hoar Ceased to be Attorney-General*, 76 Atlantic Monthly 162, 168-171 (Aug. 1895).

[15] *Id*. at 171.



Ebenezer Hoar (1816-1895), U.S. Attorney General (1869-1870).

remained in office some weeks (a short absence intervening), till Mr. Akerman could be ready to assume his duties."[16] When Akerman arrived in Washington, Hoar brought the new Attorney-General to the Cabinet room and introduced him to his colleagues; then turning to the President, he said, "Having presented my successor, I will take my leave, wishing the most abundant success to your administration."[17]

If Hoar resigned in mid-June, Grant accepted his resignation without conditions or qualification, and Akerman was not confirmed until late November, who was Attorney General on July 1, 1870? Cox reports that Hoar "remained in office some weeks" and attended Cabinet meetings until Akerman arrived in Washington, but in what capacity did Hoar participate if his resignation had been tendered and accepted? Would not an Attorney General's resignation be effective upon receipt and acceptance by a President, unless expressly stating a later effective date? DOJ's website does not take a definitive stance, stating simply that Hoar served from "1869-1870," without specifying an end date in 1870 for his loyal service.[18] I have found no documentary evidence that proves with certainty whether Hoar or Akerman was the first AG to serve the Department.

But Akerman definitely led the new DOJ. He was the first former Confederate to join Grant's Cabinet. Prior to his nomination, Akerman was serving as U.S. Attorney for Georgia, and he merits the telling of his own story.[19] AG Akerman was relentless and fearless in his prosecutions of the Klan in the South. Those efforts, however, coupled with his principled refusal to bow to the wishes of the railroad companies regarding land grants, shortened his tenure as Attorney General, as he became unpopular with several influential Senators who pressured Grant for change. AG Akerman's service ended December 13, 1871, when he, like AG Hoar, resigned at Grant's request.

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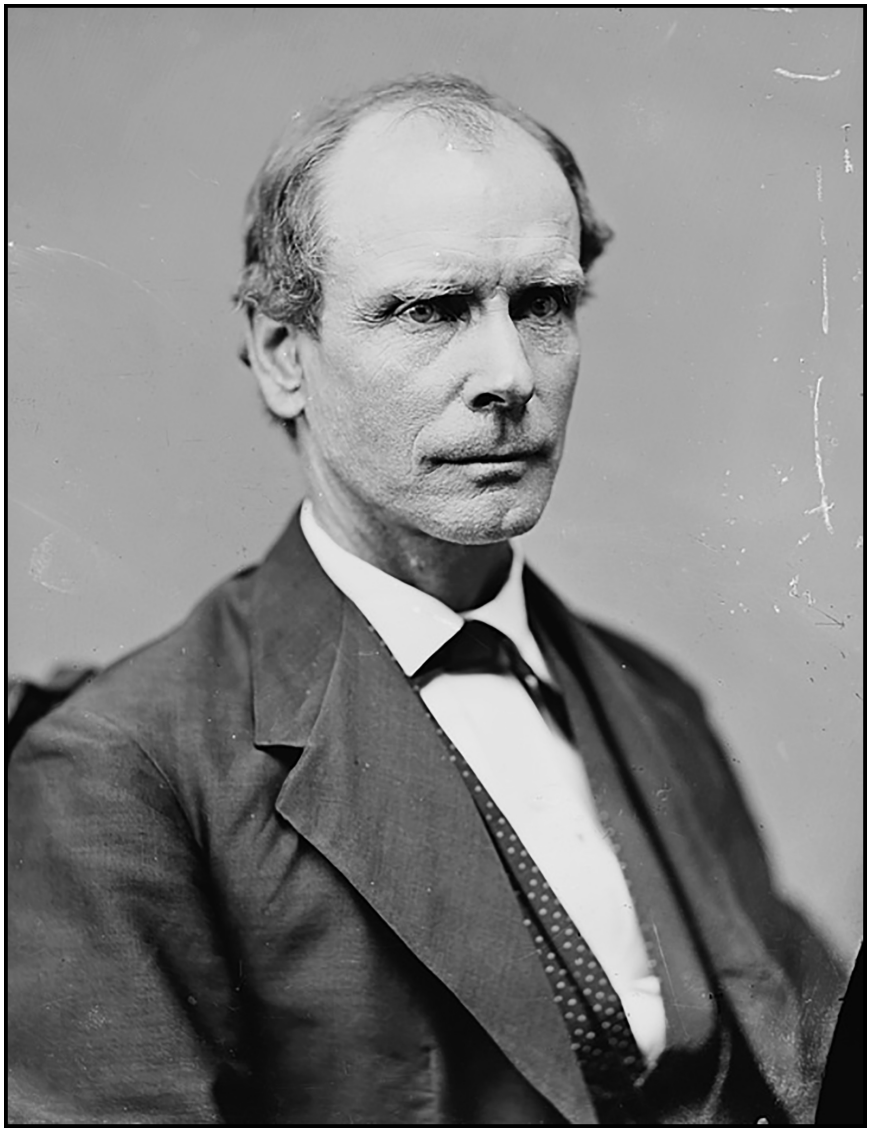
[16] *Id*.

[17] *Id*.

[18] See www.justice.gov/ag/bio/hoar-ebenezer-rockwood.

[19] Which others have done, including one of my U.S. Attorney colleagues. See Gretchen C.F. Shappert, *Fighting Domestic Terrorism and Creating the Department of Justice: The Extraordinary Leadership of Attorney General Amos T. Akerman*, 68 DOJ J. Fed. L. & Prac., no. 1, 2020, pp. 125-143.



Amos Akerman (1821-1880), U.S. Attorney General (1870-1871).

Akerman's successor, George H. Williams, would become the first AG at the fledgling Department of Justice to enjoy a tenure of any significant length. Grant nominated Williams on December 14, 1871, the day after Akerman resigned, and Williams served until April 25, 1875. But like Hoar's and Akerman's, his service would end in resignation.

Williams had a unique tenure as AG, because following the death of Chief Justice Salmon P. Chase, Grant nominated him to succeed Chase.[20] Williams initially won unanimous support from the Senate Judiciary Committee. But, in a stunning turnaround, the Committee voted to reconsider its vote, and every Senator then made clear to the President that he would vote against Williams. A frustrated Grant asked his Secretary of State to have Williams withdraw, Williams grudgingly did so, and the nomination ended five weeks after it was made. The speed with which the tide turned was remarkable in an era of no cable television, Twitter, or electronic media.

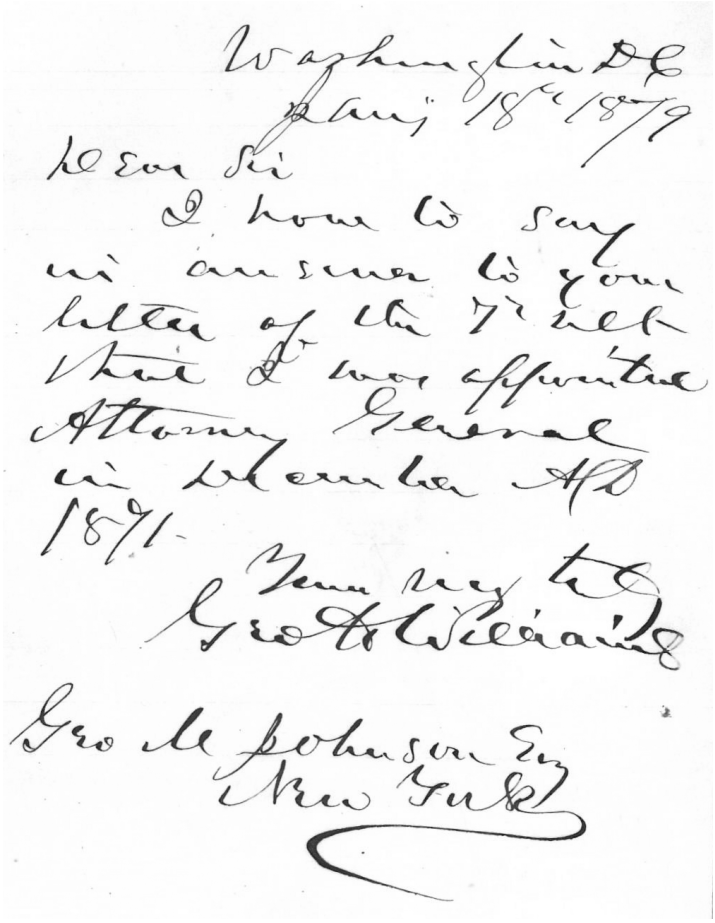
THE FAILED NOMINATION OF GEORGE WILLIAMS TO BE CHIEF JUSTICE

On May 7, 1873, about halfway through Williams' tenure as AG, Chief Justice Chase died. Grant, however, did not make a nomination for almost six months. He first asked the dashing Roscoe Conkling, Senator from New York, an accomplished lawyer and ardent Grant supporter, but Conkling declined. Grant next asked his Secretary of State, Hamilton Fish, but Fish also declined. Grant then wanted former Attorney General Caleb Cushing, but Grant's Cabinet argued Cushing was too old for the job.[21]

Finally, on December 7, 1873, Grant nominated his Attorney General, George Williams, to the surprise of many. Williams had significant credentials, including service as a U.S. District Judge in Iowa, as Chief Justice of the Oregon Territory, as a U.S. Senator from Oregon, and as AG. The

[20] J. Myron Jacobstein & Roy M. Mersky, *The Rejected: Sketches of the 26 Men Nominated for the Supreme Court but Not Confirmed by the Senate*, at 82 (Toucan Valley Publications 1993).

[21] Allan Nevins, *Hamilton Fish, The Inner History of the Grant Administration*, at 660-61 (New York 1936). Fish, remarkably, would last all eight years of the Grant administration as Secretary of State.



Letter from former AG Geo H Williams to Geo M Johnson (Jan. 17, 1879):

> *Dear Sir*
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> *I have to say in answer to your letter of the 7th ult that I was appointed Attorney General in December AD 1871.*[*]

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[*] The term "appointed" rather than "nominated," appears commonly in 19th-century sources, and even in contemporary sources discussing 19th-century government positions. The impression given is often that a position was "official" upon "appointment," even though many are indisputably a "Principal Officer" under the Appointments Clause and subject to Senate confirmation, including AGs. That said, as the anecdotal evidence about Akerman suggests, earlier practice and understanding may have been that such officers could begin performing their duties upon "appointment."

overall media and bar association reaction to the nomination was, however, strongly negative; only the press in Williams' adopted home state of Oregon was supportive.[22]

The Senate Judiciary Committee nonetheless within a few weeks voted unanimously to approve the nomination. Then, the story took an odd turn. While the drumbeat of public opposition continued, numerous influential people approached the Senators behind the scenes, perhaps most significantly the *spouses* of the Senators. Private allegations of misconduct by Williams and his wife, Kate, were brought, including misuse of public funds, efforts to influence the outcome of DOJ litigation, and the taking of bribes or gifts in connection with DOJ litigation decisions.

One claim was that Williams intervened to end a federal criminal investigation in Oregon into alleged vote-buying in a recent election involving an Oregon U.S. Senator with whom Williams was friendly. A grand jury declined to bring any charges, but the U.S. Attorney, A.C. Gibbs, a former law partner of Williams, moved the Court to convene a new grand jury to reconsider the matter. Gibbs' motion was granted, and the judge gave the grand jury a "stirring charge" to inspire it to investigate the potential scheme. When the Oregon Senator brought this investigation to Williams' attention, the AG sent a telegraph to Gibbs asking for a report and essentially directing Gibbs to stand down. Gibbs, however, refused, and Williams then removed Gibbs as U.S. Attorney. The Oregon press turned against Williams, vehemently opposing his Chief Justice nomination, and all of this was made known to the Senate Judiciary Committee.[23]

Other charges alleged Williams misused DOJ funds to purchase a "handsome landaulet" carriage for his family, as well as two fine horses to pull it, and to pay the wages of two servants to care for the horses and drive the carriage.[24] These charges were consistent with a general perception around

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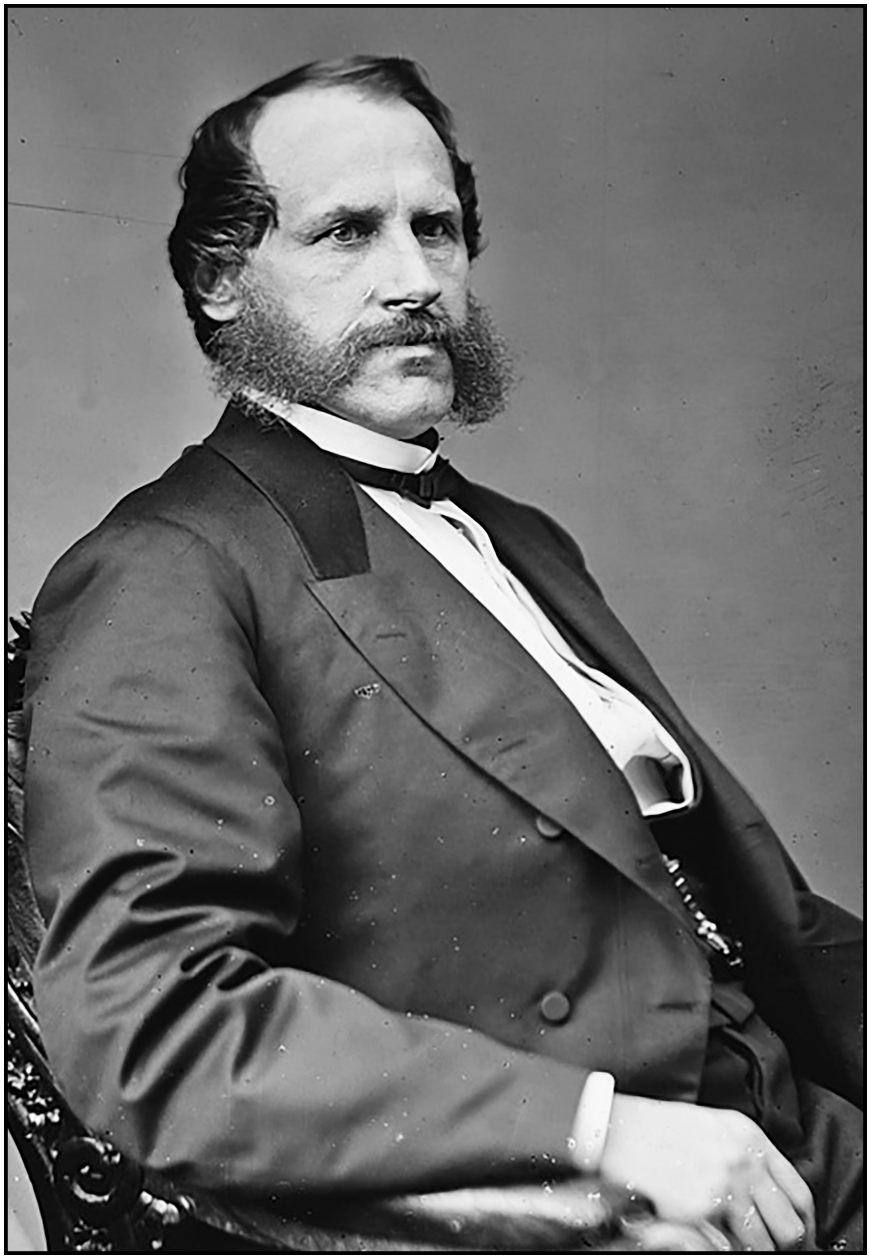
[22] Numerous negative, sometimes harsh, public comments opposing Williams' nomination, on the ground that he was not qualified to serve as Chief Justice, are quoted at length in Sidney Teiser, *The Life of George H. Williams: Almost Chief-Justice: Part Two*, 47 Oregon Historical Quarterly 417, 421-23 (Dec. 1946). The word "disappointment" appears multiple times, and one review claims the nomination "surprised and disgusted every lawyer in the United States who had the honor of the profession at heart." *Id*. at 423.

[23] Teiser, *supra*, at 424-425.

[24] Teiser, *supra*, at 425.



George Williams (1823-1910), U.S. Attorney General (1871-1875).

Washington that Mrs. Williams liked to show off the Williamses' status and position, including the very large and well-furnished home into which they moved after his appointment as AG and in which they frequently entertained.[25] Commentary on the landaulet was entertaining and quite public, with one Williams adversary referring to him indulging "in this gorgeous oriental splendor" when "as good men as he ride on a mule."[26] Williams' non-admirers forever after referred to him as "Landaulet Williams."

The Judiciary Committee also learned that, during a bank panic when Williams temporarily could not access personal funds, he used Department funds to pay personal expenses, although he repaid those funds when he was able, with no loss to the government.[27] And there were rumors, never substantiated, that Williams might have tried to influence the outcome of DOJ litigation which would benefit his financial interests.[28] He apparently wrote two letters to the Committee to defend against these charges.[29] In light of the accumulating allegations, the continuing public opposition based on Williams' alleged lack of qualifications, and behind the scenes pressure from senatorial spouses, the Committee decided to reconsider its vote on the Williams nomination. It scheduled a new vote and in short order every Senator on the Committee conveyed to the White House his intent to vote against the nomination.

A frustrated Grant assigned Secretary of State Fish the task of directing Williams to submit a request to withdraw his nomination, but allowed him latitude to craft the reasons for his withdrawal. "None too gracefully, Williams consented."[30] And with that, the Williams nomination came to an end.[31]

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[25] Teiser, *supra*, at 427; Charles E. Snyder, *Two Sons of New York in Iowa*, The Annals of Iowa 25 (1944), 147, 168.

[26] Teiser, *supra*, at 426.

[27] Nevins, *supra*, at 662-63.

[28] Jacobstein & Mersky, *supra*, at 84.

[29] I have been unable to locate copies of these letters, unfortunately.

[30] Nevins, *supra*, at 663, 664.

[31] Grant's nomination troubles did not. At this point, "the old man got mad," and immediately nominated Caleb Cushing over the tacit objection of his Cabinet. In short order, some Senators produced a friendly letter Cushing had written to Jefferson Davis just before the start of the Civil War, and Grant's second nomination for Chief Justice also flamed out. Morrison Waite was Grant's third, and successful, nominee. Nevins, *supra*, at 664-65.

Exactly why did the Williams nomination fail? Some commentators, including insiders in the Grant Administration, thought the nomination doomed from the start. Indeed, there was widespread public sentiment that Williams simply was not the caliber of lawyer or judge people had come to expect in a Chief Justice – after towering figures like Marshall, Taney, and Chase. Yet, the behind the scenes intrigue focused on specific allegations of wrongdoing rather than any debate about the credentials required of a Chief Justice. This dichotomy was publicly acknowledged at the time, with major newspapers pointing out that the "charges" against Williams were not the "real issue"; rather, "in the opinion of ninety-one-hundredths of the members of the bar, and indeed of all men in the country qualified to judge, he is not fitted by nature, education, or training, for the position."[32] This is the principled explanation for the failure of the Williams nomination.

Another explanation many commentators endorsed was profoundly personal: the role of Kate Williams, who was Williams' second wife. He married her in Oregon after his first wife died. Some believe Kate in fact played the leading role in his defeat, or at least a major part. Indeed, one writer laments the death of Williams' first wife, opining that however "severe a blow" her death was to Williams, "it is certain that he could not then evaluate the real disaster it was to his future career," and had she lived, "undoubtedly he would not have been frustrated in the attainment of the highest judicial post in the nation . . . ."[33]

Kate Williams is reported to have been a striking and beautiful figure, a strong personality, and extremely ambitious, but arrogant and much resented in the Washington social circle of the day. She first came into that circle when her husband was elected to the Senate in 1864, and she was threatened with falling out of it when he lost re-election in 1870, but she reassumed an elevated position when he became Attorney General. In fact, after George became AG, the Williamses built a large, expensive home where they entertained lavishly. Further, Kate expected the wives of Senators to call upon her as the wife of a Cabinet member, not vice versa. And the Williamses purchased the infamous landaulet and horses. All indications are

[32] Jacobstein & Mersky, *supra*, at 84 (quoting New York newspapers).

[33] Sidney Teiser, *The Life of George H. Williams: Almost Chief-Justice*, 47 Oregon Historical Quarterly 255, 270 (Sept. 1946).

that Kate sought status and essentially demanded that others acknowledge it. So, how did that factor into the defeat of George's nomination for Chief Justice?

According to one observer, "[h]ere was where Williams paid for that second marriage. Every woman in Washington who resented Mrs. Williams' arrogance busied herself in the fracas."[34] Another attributed the failed nomination to "the wiles of a woman – Mrs. Williams, through her ambition to head the social life of Washington, and to force recognition of what she believed to be her dominant position . . . ." Thus, the "influence of the wives was brought to bear on their husbands – the senators," with the result that members of the Judiciary Committee "made many charges against Mrs. Williams,"[35] adding fuel to the fire and making it easier to oppose the nomination.[36] One commentator put it gently, opining that "the real opposition of the Senate was not to the Judge himself and related to social matters which he could not remedy or publicly explain."[37]

Thus, we have two strong bases for the voting against Williams' confirmation: he was unqualified on the merits considering public expectations for a Chief Justice, and his wife Kate had made bitter social enemies with spouses in high places. Perhaps some Senators put weight on the misconduct charges which, if true, were troubling and potentially disqualifying. That said, one has to wonder if those charges were the "real issue," or more "any stick to beat a dog."[38] Shortly after Williams' death,[39] an Oregon admirer wrote that had Williams merely stayed the course, he would have been

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[34] Snyder, *supra*, at 169.

[35] Teiser, supra, at 430.

[36] See *id*. at 431 ("it is very obvious that the Committee would not have taken so grave a view of the situation had not the feminine element first been injected into it").

[37] T.W. Davenport, *The Late George H. Williams*, 11 Quarterly of the Oregon Historical Society 279, 284 (Sept. 1910).

[38] With apologies for the phrase, and assurances that I love dogs, having two such loyal companions. But I heard Justice Scalia use it once in a talk, and it has stuck in my head ever since, as an apt description for giving ostensible reasons that are not the real reasons for what one is doing – especially when what one is doing is reprehensible.

[39] Williams eventually returned to Oregon where he lived a long and distinguished life, even winning election and serving as Mayor of Portland, passing away on April 4, 1910.

confirmed,[40] but that seems fantasy, not least because numerous sources indicate Grant made him withdraw.

My assessment is that the Senators initially may have been inclined to confirm a former colleague with plausible legal credentials, but were caught off-guard both by the strength of principled, negative public reaction to the nomination, and by the strength of home-front lobbying.[41] Also, when the misconduct charges arose, Kate Williams did not respond with grace; she went on the attack. Kate publicly accused Senators on the Committee, including Roscoe Conkling, of misusing public funds, and she employed an agent to send anonymous blackmailing letters to the White House and cabinet members.[42]

SENATOR ROSCOE CONKLING AND THE SUPREME COURT

I close with Roscoe Conkling, surely a unique figure in the history of the Supreme Court. Conkling was President Grant's first choice to replace Chief Justice Chase in 1873. Whether Conkling declined Grant's offer to nominate him because he was uninterested in judicial work, preferred politics and the Senate, or for other reasons, we will never know. He is not the

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[40] See Harvey W. Scott, *An Estimate of the Character and Service of Judge George H. Williams*, 11 Quarterly of the Oregon Historical Society 223, 224 (June 1910) ("The miserable contention that arose over this nomination was due to sectional and social jealousies. Though the confirmation was delayed, it was known that it would carry; but Judge Williams, with a magnanimity that ever was one of his characteristics, caused President Grant to withdraw his name."). This generous assessment cannot be squared with any other account.

[41] In an article written 25 years after these events, Williams himself had little to say about his failed nomination, and some of what he did say is almost certainly untrue. He declares that Grant nominated him "without my knowledge or consent," and that when he realized the Senate would oppose his nomination, "I requested the President to withdraw my name, which he did with reluctance, and assurance, if I so desired, he would stand by me to the bitter end." George H. Williams, *Reminiscences of the United States Supreme Court*, 8 Yale L.J. 296, 299 (1899). Neither of those statements comports with the accounts of others. As to why the Senate opposed him, Williams says only: "I shall not go into that matter at this time; suffice to say that the reasons for the Republican opposition to me in the Senate were not such as were given to the public by the newspapers." *Id*.

[42] Snyder, *supra*, at 169.

only person to decline the Chief Justice position, but the club is small.[43]

Declining Grant's offer, however, did not leave Conkling out of the process. He was a member of the Senate and, more importantly, of the Judiciary Committee. And Conkling was the final Senator to withdraw his support for the Williams nomination. For that, Kate Williams made him a special target of her wrath; she "had taken a dislike to Senator Roscoe Conkling . . . who was as arrogant as she was; and she spread wild stories about him."[44] These stories included that he misused public funds to gain re-election to the Senate,[45] a story that infuriated Grant and which he declared utterly false.[46] She also spread stories that Conkling was having an affair with Mrs. Kate Chase Sprague, the "handsome and haughty and ambitious" daughter of the late Chief Justice who "was a rival of Mrs. Williams for social leadership in Washington."[47]

Conkling seems to have endured these events relatively unscathed. He remained a staunch supporter of Grant, leading a movement in 1880 to nominate Grant for a third term in office. But after the election of 1880 things went sideways for Conkling; he resigned his Senate seat in protest of certain events, and he was not re-elected by the New York Legislature. Suddenly, Conkling found himself in private law practice in New York.

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[43] *See, e.g.*, Ross E. Davies, *William Cushing, Chief Justice of the United States*, 37 Univ. of Toledo L. Rev. 597 (2006). Cushing, however, appears to have served as Chief ever so briefly before declining/resigning and returning to his Associate Justice position.

[44] Snyder, *supra*, at 169.

[45] *Id*. n.50.

[46] Nevins, *supra*, at 663.

[47] Snyder, *supra*, at 169 n.50. Kate Chase Sprague is a story in her own right. The beautiful and talented daughter of Salmon Chase, she married the "boy Governor" of Rhode Island, William Sprague, who later became a U.S. Senator. But their marriage was troubled, and she and Conkling carried on a long affair, although exactly when it began is unknown. See John Oller, *American Queen: The Rise and Fall of Kate Chase Sprague* (Da Capo Press 2014). Twenty-five years after his failed nomination, Williams himself would describe Sprague as a woman "whose beauty and accomplishments were unequalled in Washington society." *See* Williams, *supra*, at 297. It is hard to imagine him writing such words had his own Kate still been living, but she had passed away in 1894, at age 61, after becoming enfeebled and weak following a 110-day religious fast in the wilderness. Teiser, *supra*, at 436. Truth is stranger than fiction.

And yet Conkling was not done with the Supreme Court. The new President elected in 1880, James Garfield, was assassinated early in his term, and Conkling's close friend and ally, Chester Arthur became President. On February 21, 1882, Arthur wrote to Conkling, effectively begging him to permit Arthur to nominate Conkling to serve as an Associate Justice, and seeking an immediate answer. Conkling did not respond. On February 24, 1882, Arthur wrote Conkling again, informing Conkling that Arthur had nominated him. The Senate promptly confirmed Conkling. Our friend Conkling then truly made history. Writing from New York on March 3, he informed the President that he had been in Utica, and only just received the President's letters.[48] The "high and unexpected honor" of being selected and confirmed as a Justice was "greatly valued," "but [Conkling was] constrained to decline."[49]

Thus, we have the explanation for the 1882 postcard on the next page, in which Conkling is portrayed as a mule strewing Justices, a bench, and briefs in all directions. It is a fine caricature of a great piece of Supreme Court trivia: Roscoe Conkling – the only person who (1) refused to be nominated for Chief Justice of the United States, (2) voted on the nominations of Chief Justices and Associates Justices, and (3) was nominated and confirmed as an Associate Justice, but then declined the position!

[48] *Ex Ante: The Conkling Nomination*, 6 Green Bag 2d 334 (Summer 2003).

[49] *Id*. See also *Ex Ante: Subpar Presidents*, 6 Green Bag 2d 224 (Spring 2003).

The Department of Justice Is Born