

*Supreme Court of the United States.*  
*Washington, D.C.*

Pointe-au-Pic, Canada,  
August 31, 1922.

My dear Judge:

Thank you for your lead pencil note, which I have just received. I am greatly surprised to hear of Clarke's determination to retire, for while I knew that he was saying things that indicated his impatience with the burden of his duties in the Court, I did not suspect that it was really serious. From what you say, I assume that it must now be so considered. Clarke was so contemptuous of McReynolds' statements that he was going to retire that he would hardly make them himself without intending to carry them through. I agree with you that it would be far better for him to send in his resignation on the 18th of September, but to make its taking effect date from the 15th of October. The President could then accept his resignation. This would give his action an irrevocable character, so as to prevent his political associates from trying to induce him to withdraw it. This is what he evidently fears, and is I think the reason why he is anxious to put it in so soon. The President might accept the resignation, asking Clarke not to make it known until later, and thus serve Clarke's purpose and his own, because I fancy he might wish to postpone the pressure upon him from many persons for the place. I conceive that Frank Kellogg would like to be appointed. Frank will be sixty-six in December. I conceive that Jim Beck would like to be appointed, and the President could hardly make a weaker appointment. I anticipated the possibility of vacancies before I left Washington in a general way, and I urged upon the President the consideration of the name of Governor Miller of New York, should a vacancy occur. Miller is a man who has impressed himself upon the country as one of great

courage and ability in meeting the issues. He may be beaten in the coming election, because Smith, his opponent, is a strong political quantity. In any event, the vacancy made by Clarke would not be filled by the President until after the election. There will be considerable pressure from Pennsylvania for some candidate. Pepper might be pressed, though his election as Senator, which is now assured, might make the President think that he would better go elsewhere. I am not sure whether Miller would accept. He has eight daughters, and I don't think he has a great deal of money. Still his ambition is judicial, and he made a very able member of the Court of Appeals of New York. He himself would present the Chief Judge of the Court of Appeals for the place – Frank Hiscock, but, as between the two, I think Miller much the abler man, and one whose appointment would be an outstanding one.

I wrote to the President about Day, and have a letter from him and the Attorney General, in which neither seems to be quite certain that Day will retire, or that the President could suggest his retirement. Whether this indicates that the appointment as Umpire is one which may have to be delayed, I don't know. I don't think that we need anticipate that dissenting opinions in the West Virginia case will take long, because we would have a right to say, after the opinion had been agreed to, that if they wished to file dissenting opinions, they must get them ready before one of the majority shall retire.

I am glad to know that you are well, and that your vacation has done you good. I am sorry to hear of the death of Mrs. Van Devanter's mother. She had, however, if I recollect what you told me, attained a great age, so that her passing could not have been unexpected. Of course the void made by the death of a mother is great whenever it comes, but the shock and the sorrow are ameliorated in the thought of the long and useful life which the mother has enjoyed.

With affectionate regard for you both,

Sincerely yours,

William H. Taft

Hon. Willis Van Devanter,  
Associate Justice, U.S. Supreme Court,  
Sans Souci P. O.,  
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