Mr. Justice Stanton

by James W. Satola

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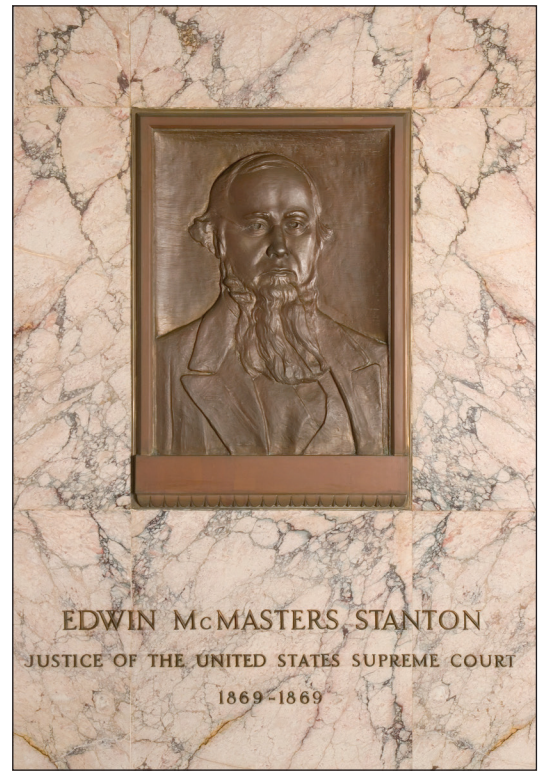
I love U.S. Supreme Court history. Sometimes, the more arcane the better. So, for my *At Sidebar* contribution, I want to share a little bit of what I love.[1] Perhaps calling to mind the well-known story behind *Marbury v. Madison*, here is a lesser-known story of a presidential commission not delivered on time (though in this case, it was not anyone's fault). The story of Mr. Justice Edwin M. Stanton.[2]

As one walks through the Grand Concourse of the Ohio Supreme Court building in Columbus, Ohio (officially, the Thomas J. Moyer Ohio Judicial Center, which had a first life as the "Ohio Departments Building," opening in 1933, then restored and reopened as the home of the Ohio Supreme Court in 2004), one's eye is drawn to nine large bronze plaques mounted on the East Wall, each showcasing one of the U.S. Supreme Court justices named from Ohio.[3] This story is about the fourth plaque in that series, under which reads in brass type on the marble wall, "Edwin McMasters Stanton, Justice of the United States Supreme Court, 1869-1869."

Justice Stanton? One finds no mention of "Justice Stanton" among the lists of the 113 men and women who have served on the Supreme Court of the United States. There is no portrait of "Justice Stanton" adorning the walls of the Supreme Court building in Washington, D.C. Nor are there any grand opinions authored by "Justice Stanton" in the *United States Reports*. Yet, a credible claim could be made that there was, briefly, a "Mr. Justice Stanton"—nominated by President Ulysses S. Grant in 1869, confirmed by the Senate the same day, with judicial commission signed—a role he looked forward to serving.[4] But it was not to be. Stanton never took his seat on the bench. He died just four days after his nomination, before his signed commission was delivered.[5]

Stanton is famous for three things: (1) serving as President Abraham Lincoln's secretary of war,[6] seated at the far left in the famous painting of Lincoln's Cabinet, "First Reading of the Emancipation Proclamation of President Lincoln" by Francis Bicknell Carpenter;[7] (2) being at Lincoln's bedside in the Petersen House after Lincoln was carried there from Ford's Theatre, who, at Lincoln's final moment, eulogized him with the words, "Now he belongs to the ages"[8]; and (3) as the proud owner of a beard that could have qualified



him for early admission as a member of ZZ Top. But there was another role he hoped for throughout his professional life—justice of the Supreme Court of the United States.

Stanton's first thoughts of a judicial career began in 1842, at about the same time he was appointed to a three-year term as reporter for the Supreme Court of Ohio.[9] Prior to the appointment, he was among those being considered for "president judge" of one of Ohio's judicial districts. But one of Ohio's U.S. senators (and former judge), Benjamin Tappan, advised him to decline the offer, if made, in favor of continuing in his more lucrative legal practice, or to perhaps pursue a career in politics.[10]

Stanton went on to become a well-regarded and well-compensated lawyer, whose practice took him, on occasion, to the U.S. Supreme Court,[11] most famously in a case on behalf of the Commonwealth of Pennsylvania, in a dispute with the Wheeling and Belmont Bridge Co. over the building of a wire suspension bridge over the Ohio River at Wheeling, W. Va.[12]

Success in that case gave him a national reputation, motivating him to move his practice to Washington, D.C., in 1856, where he focused on federal patent law.[13] Two years later, he was sent to California as special counsel for the U.S. attorney general to settle land claims related to territory seized from Mexico in 1856 as part of the Mexican-American War.[14] Four years later, he became the U.S. attorney general, appointed by President James Buchannan in the interim period between Abraham Lincoln's election as president in 1860 and what then was the inauguration handover date in March the following year.[15] On the day he began, South Carolina seceded from the Union.[16] When Lincoln took office, he replaced Stanton as attorney general with attorney Edward Bates[17] (sitting at the far right in the previously mentioned portrait of Lincoln's Cabinet). In January of the following year, Lincoln named Stanton his secretary of war.[18]

At the end of 1864, an opening on the Supreme Court arose with the death of then Chief Justice Roger Brooke Taney at age 88. Taney had not been well over the previous many months. Prior to his death, there were a number of aspirants to succeed Taney as chief justice, and others who supported possible nominees to the office. One of these, Judge Ebenezer Rockwood Hoar, who served on the Supreme Judicial Court of Massachusetts (more on him later), who hoped to eventually see a colleague named to the seat, had even expressed his frustration over Taney's tenacity in holding onto his seat, once expressing his "disgust" when Taney recovered from serious illness in February of that year. When Taney survived another bout with illness the following May, Hoar commented that Taney was "clinging to life in the most shameless manner."[19]

There is no record of Stanton being quite as open of a "seat watcher" as Judge Hoar, but at the time, one of his longtime friends offered the observation that the chief justiceship "was the only position … Stanton ever desired."[20] And there were many, including Associate Justice Robert C. Grier, himself a possible candidate for elevation

to the position, who openly supported a possible Stanton nomination, describing him as "the most logical and deserving successor to Taney."[21] One account describes support given by Methodist Bishop Matthew Simpson, of Philadelphia, who paid a call on Lincoln at the White House to advocate for Stanton, after which Lincoln is reported as stating: "Bishop, I believe every word you have said. But where can I get a man to take Secretary Stanton's place? Tell me that, and I will do it."[22] But it was not to be. Stanton ultimately withdrew himself from consideration in favor of remaining in his role as secretary of war.[23] Lincoln eventually named Salmon P. Chase, whose resignation as secretary of the treasury Lincoln had accepted earlier in the year, as the next chief justice—a choice Lincoln may have decided upon prior to Taney's death.[24] (Chase is pictured standing second from the left, next to Stanton in the Carpenter painting).

After President Lincoln's death on April 14, 1865 (memorialized by Stanton's famous words), Stanton continued on as secretary of

war under President Andrew Johnson. Stanton's remaining at the post showed some tenacity on his part. His days in the Johnson Cabinet have been described as "acrimonious," with Stanton and Johnson in open conflict over the post-Civil War reconstruction efforts, where Stanton sided with congressional "radicals" in supporting strict reconstruction efforts, whereas Johnson, a former governor, U.S. representative, and U.S. senator from Tennessee, sought a quick and more conciliatory plan.[25] During this time, Congress passed legislation that became known as the Tenure of Office Act, under which the president was forbidden from dismissing any member of his Cabinet without the consent of the Senate.[26]

The friction between Stanton and Johnson caused Johnson to ask for Stanton's resignation, including Johnson handing Stanton a removal order. But Stanton refused to give it. Instead, he locked and barricaded himself in his office for weeks, sleeping on the couch, claiming that his removal would violate the recently enacted Tenure of Office Act.[27] The Senate ultimately set aside President Johnson's removal order, but the action later became the subject of one of the articles of impeachment brought against Johnson.[28] After Johnson's survival of the impeachment efforts by one vote, Stanton resigned his position as secretary of war.[29]

Other congressional activity played a key role in what would culminate in Stanton's nomination to the Court. Under President Lincoln's tenure, and to ensure that there would be a pro-Union majority on the Supreme Court, Congress increased the number of justices on the Court from nine to 10. Three years later, under President Johnson, essentially to ensure that he would have no opportunity to name a Supreme Court justice, Congress passed legislation reducing the number of justices from 10 to seven, to be accomplished by death or resignation of justices from the Court.[30] When President Ulysses S. Grant was elected in 1868, there were eight justices on the Court. With Johnson now out of the way, Congress passed yet another statute increasing the number of justices to nine, the number at which it remains today.[31]

Stanton clearly wanted to be named to the new seat, and even took it upon himself to make a social call on the new president at the White House in the hope of bringing up his interest through casual conversation.[32] Toward this effort, Stanton and his wife Ellen sent their "calling cards" to Grant's wife, Julia, but she was not home and they left without ever seeing either President or Mrs. Grant.[33] Stanton then turned (again) to the assistance of Bishop Simpson to make a pitch on his behalf to the president.[34] In doing so, he sent a confidential letter to the bishop, the key points of which were that while his health was too fragile to continue as an active attorney representing clients, it was "perfectly suitable" for the bench, and that "the country owed him the appointment" on account of his leaving a successful private practice to serve the country as secretary of war.[35]

President Grant took a different direction. To the newly created seat, on Dec. 14, 1869, he named Attorney General Ebenezer Rockwood Hoar,[36] who five years earlier had lamented Chief Justice Taney's "shameless clinging to life" in holding on to his seat as chief justice. The Senate was not enamored with the selection of Hoar, though he was considered extremely qualified, based on his refusal to back various senators' partisan suggestions for lower court nominees, his active support of a merit civil service system for the federal government, and his opposition to President Johnson's impeachment proceedings.[37]

The following day, another actor from the previous nomination saga came to Stanton's rescue. On Dec. 15, Associate Justice Robert C. Grier announced his resignation, with the effective date of Feb. 1, 1870,[38] thus creating a second seat for Grant to fill. Upon Justice Grier's announcement, Wisconsin's junior U.S. senator, Matthew Carpenter, circulated a petition in the Senate to name Stanton to the seat being vacated by Justice Grier, collecting 38 names. One of Ohio's U.S. representatives, John Bingham, did the same in the House, collecting 118 more. The following Saturday, Dec. 18, 1869, Carpenter delivered the petition to President Grant.[39]

Grant did not particularly like Stanton.[40] One commentator, relying on Grant's own memoirs and contemporaneous accounts of Grant's close friends, described Grant's "waning" regard for Stanton.[41] Nor was Grant noted for the care he put toward his appointments. One author noted that Grant "spent an inordinate amount of time on appointments to petty offices," that he was "capricious and fitfully personal" in his appointments, and that he chose his Supreme Court appointments "with about the same discernment that went into his selection of consuls and postmasters."[42]

On Dec. 19, 1869, the day following delivery to Grant of the congressional petition to nominate Stanton, Grant, accompanied by Vice President Schuyler Colfax, went to Stanton's home on K Street in Washington, D.C., to personally extend the nomination to Justice Grier's soon-to-be-vacant seat on the Court.[43]

Stanton was not in very good health throughout his time as secretary of war, or afterward, suffering from severe asthma, exacerbated in the winter evening months by having to light and keep a coal furnace, which eventually led to the weakening of his heart.[44] One account suggests that when President Grant visited Stanton to tender the nomination he was also accompanied by his 11-year-old son Jesse, who is reported as saying to his mother upon return to the White House, "Oh, mamma! … Mr. Stanton looked so badly when we went in—just like a dead man."[45] Admittedly, not the usual auspicious start to a Supreme Court nomination.

President Grant sent Stanton's nomination to the Senate on Dec. 20.[46] The Senate confirmed the nomination the same day,[47] even though the resignation of Justice Grier was not to become effective until Feb. 1 of the following year.[48] On Dec. 21, Stanton gave his written acceptance to the confirmation.[49]

Stanton's Supreme Court appointment created a strong division of opinion, as reflected in contemporaneous newspaper accounts. Some greeted the news with unreserved joy. As noted in the *Philadelphia Enquirer* on the day after Stanton's confirmation:

> Yesterday Mr. Stanton was nominated by the president to the seat on the Supreme Court of the United States left vacant by the resignation of Mr. Justice Grier. Almost immediately afterwards the Senate took up the nomination and confirmed it by a majority so large as to make it as complimentary to Mr. Stanton as it was crushing to the captious few whose affiliations with their late friends in rebellion were notorious.[50]

The same article continued:

> To his new position Mr. Stanton takes the same great mind, the same genius and firmness, and to those he adds every quality that goes to make a wise, just and learned judge…. The country honors and exalts itself, not Edwin M. Stanton, when it offers any office it can bestow.[51]

Papers in Kansas reflected the same sentiments at the time of the appointment:

> Edwin M. Stanton is a man of a peculiar type; impassioned, and yet singularly correct in judgment; of strong feelings, and yet singularly uninfluenced by them in his discharge of any public duty. He is a lawyer of very high ability. There is no man living to whom the country owes a greater debt…. His great services are recognized by the rebels in the only way in which vice can honor virtue—by an intensity of hatred rarely surpassed. No other man … has been more persistently and malignantly abused and blackguarded, and his nomination would be received with a howl of execration from the very men whose gnashing of teeth and impotent rage delight every patriot. Whether the president may conclude that in other respects the appointment of Mr. Stanton is desirable, we can confidently presume that the hearty hatred with which Mr. Stanton is honored will be to the president a strong recommendation.[52]

And in the days afterward:

> Judge Grier, associate justice of the United States Supreme Court, has resigned, in consequence of old age and ill health. The president has appointed Edwin M. Stanton to the position, and the Senate at once confirmed the appointment. This change places the Supreme Court under the control of live men and true Republicans.
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> This country owes Edwin M. Stanton a vast debt. He left the Cabinet broken in health, because he had devoted all his time and energy to the services of the country. He left it a poor man, because he served his country without stealing from it. His appointment to an office, the salary of which he will receive during his life, even after he retires from the office, is a fair start toward justice, in a pecuniary point of view.[53]

Sentiment was similar in parts of New York:

> While we can hardly go so far as the *New-York Tribune* does, and say that "the decision to appoint Edwin M. Stanton to the supreme bench will meet the cordial and hearty approval of the whole country,"—for we think there are a few rebels and Democrats who must be excepted if we take in the whole country,"—yet we believe that the nomination and confirmation of the great war secretary will be very heartily approved by the masses of the Republican party.
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> We have taken more than ordinary pleasure in testifying our approval of the president's action in nominating Mr. Stanton as one of the associate justices of the Supreme Court…. We are pleased, also, with the very prompt and almost unanimous action of the Senate on his nomination. A similar course has seldom been taken before…. The whole matter pretty effectively disposes of the malicious rumor which was current not long ago, to the effect that Mr. Stanton's mental faculties had become impaired [by the excessive and enormous strain to which they were subjected in that long and anxious period when we were fighting for national existence].[54]

In Illinois:

> The appointment of Edwin M. Stanton to fill the vacancy on the supreme bench occasioned by the resignation of Judge Grier, and his immediate confirmation by the Senate, is one that will be eminently satisfactory to the great mass of the people…. With his accession to the bench the judiciary of the nation enters, we trust, on a higher and better plane of influence on political and general questions.[55]

And in Stanton's home state of Ohio:

> The appointment and unusually prompt confirmation by the Senate, of Edwin M. Stanton as successor to Judge Grier to the United States Supreme Court, was a befitting and worthy honor paid a loyal, distinguished and patriotic citizen, whose eminent service in the cause of the Union during the late rebellion will never be forgotten by a grateful people.[56]

Reaction in the South, however, was of a different view, with papers in Arkansas referring to Stanton as "an unscrupulous knave":

> The appointment of Edwin M. Stanton as a supreme judge of the United States is a sad abatement of the dignity of that high tribunal. It detracts from the character for integrity and honor of the nation…. The appointment of an unscrupulous knave, like Stanton, to the supreme bench, is a fearful innovation upon a better practice of bygone days of regarding this as a position which, like its own ermine, it were sacrilegious wantonly to defile.[57]

Another in New Orleans described Stanton as "undeniably unfit" for the position:

> Edwin M. Stanton has become a judge of the Supreme Court of the United States…. If we take the public character of Mr. Stanton from the descriptions of his admirers, he is the most unfit man possible for a judicial station…. For years this man exhibited … the temper and caprices of a natural born tyrant…. Whatever Mr. Stanton's other merits might be, his history and his habits demonstrate in him the most positive moral disqualifications to be judge. Of all situations under government, that of judge of the Supreme Court is the one for which he is manifestly, notoriously, undeniably unfit. Of all places in the government, the Supreme Court is that which is most likely to be damaged in character and usefulness by his presence therein.
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> There ought not to be two opinions of the indecency of putting a man with Mr. Stanton's history, habits and conditions upon the bench of the Supreme Court.[58]

Others described Stanton as a man without conscience:

> It was announced some months ago in a shape that was the next thing to being official, that the highest judicial tribunal of our country was of the opinion that the reconstruction acts were unconstitutional. The Supreme Court is to be so constituted, now that it has passed under radical control, as to pronounce those acts in exact accordance with the constitution. There can be no doubt as to what Stanton will do. He is a man without a conscience.[59]

Even a few Northern papers decried the appointment, such as one in Pennsylvania:

> The nomination of Edwin M. Stanton to a position on the bench of the Supreme Court of the United States is the most outrageous insult that Grant could have offered the American people. A blood-besprinkled tyrant hiding his crimson-hued hands beneath the judicial ermine is a picture most revolting to those who love their country, and Stanton presents just such a disgusting spectacle. Well may the people groan in spirit, and exclaim "How long, O God, shall such things be?"[60]

And another in New York:

> President Grant had a great opportunity just now of promoting this enlightened and business-like policy of letting bygones go. There were two vacancies in the United States Supreme Court. On that *highest bench, of nine members*, the North already had seven…. The South had not one member of this Court…. Instead of giving the non-represented section both, or even one, of the vacant seats on the supreme bench, President Grant nominated his attorney general, Hoar, of Massachusetts, an extreme anti-Southern man…. The president's other nomination is even more sectional. It wears the aspect of a studied resolve to depress and punish the reconquered section. It is that of Edwin M. Stanton, the ex-secretary of war. Concerning this gentleman, nearly every citizen has a strong opinion. One party deem his services invaluable during the war, and his character as honorable as his merits are great. The other party regard him as the incarnation of all that is despotic, arbitrary and tyrannical. Must all must agree that his temper and characteristics are not those that befit the bench, and must concede that his antecedents make his appointment to judicial functions peculiarly offensive, to a large portion of the people, and especially to the unrepresented portion of the country.[61]

In the end, the controversy over Stanton's appointment was for naught. On the early morning of Dec. 24, 1869, Stanton died of a coronary thrombosis.[62] At the time, his commission as associate justice had been signed by the secretary of state, but not delivered.[63] President Grant later sent the commission to Stanton's family,[64] a distinguishing characteristic from that earlier story involving Marbury, where the signed presidential commission was *never* delivered.[65] Grant thereafter decided to appoint former Pennsylvania Supreme Court Justice William Strong to the Grier seat, but he made sure not to make the nomination until *after* Justice Grier retired, as he did not want to again create "the curious spectacle of a judge dead and buried in state while his predecessor sits on the bench and goes to the funeral."[66]

It is true that Stanton died before ever taking the oath of office as an associate justice of the Supreme Court, and that he assumed no duties as a justice. But it is interesting that, as noted in a newspaper account on the day of Stanton's death, the sitting justices on the Court immediately assumed responsibility for Stanton's funeral arrangements:

> This morning those of the judges of the Supreme Court who were in the city called at Mr. Stanton's late residence for the purpose of making arrangements for the funeral. They will have charge of the whole matter.[67]

The following day, however, it was reported that the justices later came to a different conclusion:

> It was at first supposed by Chief Justice Swayne [*sic*] that the Supreme Court should have the honor of taking charge of the funeral, but as Mr. Stanton was not to become of the Court until the first of February, he could not properly be said to be a member of the Court at this time, as there are now all the justices there the Court allows.[68]

There was a final "acknowledgement" of Stanton's status as a "Supreme Court justice." Three weeks after Stanton's death, Ohio Rep. John Bingham introduced in the House a bill to give Stanton's family one year's salary as an associate justice.[69] After some minor revisions, on March 15, 1870, the Senate passed the bill,[70] as reported in a contemporaneous congressional record:

> The joint resolution (H.R. No. 190) appropriating to the widow and children of the late E.M. Stanton, for their use, a sum equal to one year's salary of an associate justice of the Supreme Court of the United States was read twice by its title…. [The Resolution] provides that in consideration of the distinguished services and untimely death of Hon. Edwin M. Stanton there shall be paid to his widow, for the use of herself and children, a sum equal to one year's salary of an associate justice of the Supreme Court of the United States, to which office he had been appointed at the time of his death.[71]

So now we return to the present day. While Stanton heard no arguments as a justice, voted in no cases, never wrote any opinions, and is not listed in any record of the line of Supreme Court justices, he might legitimately still be considered "Mr. Justice Stanton." In at least one courthouse in the country, there it is, an acknowledgement of the Justice no one has heard of, "Edwin McMasters Stanton, Justice of the United States Supreme Court."

That's my story, and I'm sticking to it. ⊙

Endnotes

[1]Thank you to Becky Savage, reference librarian at the Supreme Court of Ohio Library, and the Supreme Court of Ohio Library staff for their assistance gathering the contemporary 1869-era newspaper

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items cited in this article.

[2]In selecting a subject on which to write, I used the opportunity to learn a few new facts about an event in Supreme Court history that had not been written about extensively in the almost 148 years since its unfolding. I started with a telephone call to the Supreme Court Historical Society to ask about material it might have on the Stanton nomination, including, perhaps, contemporaneous newspaper accounts. At the time, there was little more than a few brief one-or-two sentence mentions in long-past Supreme Court Historical Society "Yearbook" articles. Then, after collecting material from other sources just days before sitting down to write this article, I received my copy of *Journal of Supreme Court History*, and noted the second article: *The (Very) Abbreviated Supreme Court Career of Edwin M. Stanton*, by Albert B. Lawrence of Empire State College in Syracuse, NY. Albert B. Lawrence, *The (Very) Abbreviated Supreme Court Career of Edwin M. Stanton*, 2017 J. Sup. Ct. Hist., Vol. 42, No. 2 (2017). Fortunately (for me), that article focuses primarily on Stanton's Supreme Court advocacy career, and later involvement as secretary of war under Presidents Abraham Lincoln and Andrew Johnson—though it ends with a brief account on the Stanton Supreme Court nomination. So now, after 148 years, readers have not one, but *two*, recent articles on the very brief Supreme Court career of Stanton.

[3]The other seven plaques are of Justices Noah Haynes Swayne, John McLean, Stanley Matthews, William Rufus Day, William Burnham Woods, and John Hessin Clarke, as well as Chief Justices Salmon Portland Chase and Morrison Remick Waite. These plaques have been part of the building since the building's original 1933 opening as the Ohio Departments Building. If the building were built today, there would be two more plaques, recognizing Justices Harold Hitz Burton and Potter Stewart, who were appointed after the building was constructed. Across the hallway of the Grand Concourse, on the West Wall, are 10 similar plaques of the eight presidents from Ohio (William Henry Harrison, Ulysses S. Grant, Rutherford B. Hayes, James Garfield, Benjamin Harrison, William McKinley, William Howard Taft, and Warren G. Harding—a list which includes four of the eight presidents who have died in office, likely not a fact mentioned in the Ohio Chamber of Commerce promotional literature) alongside two of the three speakers of the U.S. House of Representatives from Ohio, Nicholas Longworth and Joseph Warren Keifer. *See* Supreme Court of Ohio Office of Public Information, The Thomas J. Moyer Ohio Judicial Center 10-13 (2017 ed.) (promotional booklet). The third speaker of the House from Ohio, John Boehner, served after the building's construction.

[4]There have been others who were nominated and confirmed to seats on the Supreme Court but refused to serve: Robert Hanson Harrison (1789), William Cushing (1795, as the second chief justice; he did serve otherwise as an associate justice); John Jay (1801, for a second term as the fourth chief justice; he earlier served as the first chief justice), Levi Lincoln (1811), William Smith (1826 and 1837), and Roscoe Conkling (1882). Henry J. Abraham, Justices, Presidents, and Senators 41 (5th ed. 2008).

[5]Lawrence, *supra* note 2, at 167.

[6]As secretary of war, Stanton was memorably portrayed by actor Kevin Kline in Robert Redford's 2010 film "The Conspirator" (the title of the film refers to the military trial of Mary Surratt), *see* http://www.imdb.com/title/tt0968264, and more recently by actor Bruce McGill (famous to many for his role as Daniel Simpson "D-Day" Day in the 1978 film "Animal House," *see* http://www.imdb.com/title/tt0077975) in the 2012 film "Lincoln," alongside actor Daniel Day Lewis in the title role. *See* http://www.imdb.com/title/tt0443272.

[7]*First Reading of the Emancipation Proclamation of President Lincoln*, Wikipedia (Apr. 16 2017, 11:11 AM), https://www.en.wikipedia.org/wiki/First_Reading_of_the_Emancipation_Proclamation_of_President_Lincoln.

[8]William Marvel, Lincoln's Autocrat, The Life of Edwin Stanton 370 (2015) (though the author casts some doubt as to whether Stanton actually said these words).

[9]*Id. at* 34.

[10]*Id*.

[11]Lawrence, *supra* note 2, at 156. Stanton has also been credited as the first attorney to put forward a defense of "temporary insanity" on behalf of a defendant in a case involving a New York congressman, Daniel Sickles, who shot and killed District of Columbia prosecutor Philip Barton Key, son of Francis Scott Key (author of the "Star Spangled Banner") and nephew of Chief Justice Roger Brooke Taney. Sickles was acquitted. *Id.* at 159

[12]*Id.* at 156. The case is captioned in the United States Reports as *State of Pa. v. The Wheeling & Belmont Bridge Co.*, 54 U.S. 518 (1852).

[13]*Id.* at 157.

[14]*Id*.

[15]*Id.* at 159.

[16]*Id.*

[17]*Id.* at 160.

[18]*Id.*

[19]Marvel, *supra* note 8, at 350.

[20]Doris Kearns Goodwin, Team of Rivals 676-677 (2005).

[21]Marvel, *supra* note 8, at 350; *see also* Goodwin, *supra* note 20, at 677 (noting Grier's comment to Stanton that "it would give me the greatest pleasure and satisfaction to have you preside on our bench…. I think the pres[ident] owes it to you."); William T. Harper, Second Thoughts: Presidential Regrets With Their Supreme Court Nominations, 91-92 (2011) (noting Lincoln's serious consideration of appointing Stanton to the position).

[22]Goodwin, *supra* note 20, at 677.

[23]*Id*.

[24]John Niven, Salmon P. Chase 374 (1995).

[25]Goodwin, *supra* note 20, at 751.

[26]Michael Korda, Ulysses S. Grant, The Unlikely Hero 145 (Harper ed. 2013).

[27]Goodwin, *supra* note 20, at 751. One newspaper account, in an obituary upon Stanton's death, recounted this episode as one of great humor, which Stanton enjoyed: "Like most strong characters, he had a keen sense of humor, as was proved on the ever-memorable occasion when General Lorenzo Thomas attempted to take possession of the War Department. The comedy played on that occasion was one of the most amusing in this whole history of statecraft, and Mr. Stanton evidently enjoyed hugely the comic side of the affair." *Obituary, Edwin M. Stanton*, Evening Telegraph, Dec. 24, 1869, at 1.

[28]Goodwin, *supra* note 20, at 751-52; Korda, *supra* note 26, at 146.

[29]Goodwin, *supra* note 20, at 752; Korda, *supra* note 26, at 146.

[30]Jean Edward Smith, Grant 506 (2001).

[31]*Id*.

[32]Marvel, *supra* note 8, at 459-60.
[33]*Id*. at 460.
[34]*Id*.
[35]*Id*.
[36]Smith, *supra* note 30, at 506.
[37]Abraham, *supra* note 4, at 102.
[38]Supreme Court Historical Society, The Supreme Court Justices, Illustrated Biographies 177 (Clare Cushman ed., 3d ed. 2013).
[39]Marvel, *supra* note 8, at 461-62.
[40]Lawrence, *supra* note 2, at 166.
[41]Marvel, *supra* note 8, at 459.
[42]William S. McFeely, Grant 385-86 1981.
[43]Marvel, *supra* note 8, at 462.
[44]*Id.* at 457, 461.
[45]H.W. Brands, The Man Who Saved the Union, Ulysses Grant in War and Peace 87, 513 (2012).
[46]Smith, *supra* note 30, at 506.
[47]Supreme Court Historical Society, *supra* note 38, at 177.
[48]Some have suggested that Grant's nomination of Stanton was primarily a strategy to move along his days' earlier nomination of Hoar to the newly created ninth Supreme Court seat, which languished in the Senate for seven weeks before the Senate rejected the nomination by a vote of 24 to 33. Abraham, *supra* note 4, at 102; Lawrence, *supra* note 2, at 154, 167.
[49]Marvel, *supra* note 8, at 462.
[50]*Edwin M. Stanton in the Supreme Court*, Phila. Inquirer, Dec. 21, 1869, at 4.
[51]*Id.*
[52]*Resigned*, Daily Kan. Tribune, Dec. 21, 1869, at 2.
[53]*Judicial Appointment—Significant*, White Cloud Kan, Chief, Dec. 23, 1869, at 2.
[54]*Mr. Justice Stanton*, Buffalo Com., Dec. 22, 1869, at 2.
[55]*Judge Stanton*, Decatur Weekly Republican, Dec. 23, 1869, at 4.
[56]Belmont Chron., Dec. 23, 1869, at 2.
[57]*Edwin M. Stanton*, Daily Ark. Gaz., Dec. 22, 1869, at 4.
[58]*The New Judge of the Supreme Court*, Times-Picayune, Dec. 23, 1869, at 4.
[59]Nashville Union & Am., Dec. 22, 1869, at 2.
[60]Luzerne Union, Dec. 22, 1869, at 2.
[61]*The Judiciary and the South*, Brooklyn Daily Eagle, Dec. 22, 1869, at 2.
[62]Abraham, *supra* note 4, at 102.
[63]Lawrence, *supra* note 2, at 167.
[64]*Id*.
[65]One later author suggests that Stanton's death might have saved Grant the embarrassment of perhaps naming one of the "conspirators" in the Lincoln assassination to the bench, as alleged by various contemporaries of Stanton and Lincoln. More recent scholars have not subscribed to the Stanton "conspiracy" theory. Harper, *supra* note 21, at 103-04.
[66]Supreme Court Historical Society, *supra* note 38, at 177.
[67]*Obituary, supra* note 27.
[68]*Edwin M. Stanton in the Supreme Court*, *supra* note 20.
[69]Marvel, *supra* note 8, at 464.
[70]*Id*.
[71]H.R. 191, *as reported in* Cong. Globe, 41st Cong., 2nd Sess. 1946 (1870).

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progress each participant has made. Each participant has an opportunity to speak about the issues which have most occupied them during the preceding weeks. Team members and participants are urged to offer their thoughts about each report, and the discussion is open and free among team members and participants. Often, other participants have more experience with one another's challenges and issues and thus more to offer their fellow participants than the team members.

Conclusion

There are many ways to effectively implement a federal reentry court program. The summary above demonstrates that District courts can, and do, customize approaches based upon their particular needs and local practices. As noted above, reentry programs provide a unique opportunity for federal judges to positively impact the lives of the returning citizens and their families. ⊙

Endnotes

[1]Judge Newman, a U.S. Magistrate Judge in the Southern District of Ohio, served as the FBA's national president from 2016 to 2017. Matt Moschella, a partner at Sherin & Lodgen in Boston, is the FBA Sections and Divisions Council chair and was appointed by Judge Newman as the FBA's general counsel. This article was written, in part, by Judge Newman and Matt Moschella, but also by numerous authors in the federal court districts described herein. These co-authors include, among others: Chief Judge Edmund Sargus, Judge Walter Rice, career law clerk Penny Barrick, Chief Probation Officer John Dierna, and Probation Officers Kristin Keyer and Marquita Howard (Southern District of Ohio); Judge Page Kelley and Judge Donald Cabell (District of Massachusetts); Judge Nannette Jolivette Brown, Judge Jane Triche Milazzo, Judge Susie Morgan, Chief Probation Officer Kito Bess, and FBA Board of Directors member Kelly Scalise (Eastern District of Louisiana); Judge Daniel C. Irick, Michelle Yard, Jim Skuthan, Meghan Boyle, Ali Kamalzadeh, and Michael Vitale (Middle District of Florida); Judge Donovan Frank (District of Minnesota); and Chief Judge Ruben Castillo and FBA President-Elect Maria Vathis (Northern District of Illinois). Judge Newman and Matt Moschella thank these co-authors for their significant time and effort spent on this article and for their dedication to the success of federal reentry courts nationwide.
[2]PCRA stands for "Federal Post-Conviction Risk Assessment" tool, which is an evidence-based actuarial tool developed by U.S. Probation to predict recidivism.