The Yale Biographical Dictionary of American Law

Roger K. Newman
Hand, Augustus Noble (1869-1954) Judge, United States District Court for the Southern District of New York 1914-1927; Judge, United States Court of Appeals for the Second Circuit 1928-1954. Augustus N. Hand was born and raised in Elizabethtown, in rural Essex County, New York, where his father practiced law. It was there that he spent the summers of his youth with his cousin, Billings Learned Hand, whom he would later join on the United States Court of Appeals for the Second Circuit. Augustus graduated from Harvard College in 1890 and from Harvard Law School in 1894. Following graduation, he practiced law successfully in New York City, dealing with important cases in antitrust, international, and constitutional law. Among his more prominent clients was the Government of Venezuela.

Appointed by President Wilson to a seat on the United States District Court for the Southern District of New York, Augustus served in that position until his recess appointment to the Second Circuit in 1927 by President Calvin Coolidge. In 1928, he received his permanent appointment to the seat vacated by Charles Merrill Hough on the court of appeals, where Augustus joined his formidable cousin on the bench. Although they remained the best of friends and maintained a mutual respect throughout their lives together on and off the bench, each had a different style and took different approaches to the cases they decided. They customarily agreed on the disposition of appeals, but Augustus referred to himself as the "balance wheel in the Hand combination." The opinions of Augustus were direct and to the point and without extended discussion, while the writings of
Learned, upon which he lavished great attention, were marked by a florid and exotic style. No less a figure than Justice Robert Jackson said that he had been taught to “quote Learned, but follow Gus.”

Although Augustus may on occasion have expressed his preference for the work of a district judge over the work of a judge of the court of appeals, he was known as a cooperative colleague who valued teamwork in the opinion-writing process. Indeed, he frequently commented on the failure of the Supreme Court to work as a cooperative team, a notion that resonates to this day.

The author of nearly eight hundred appellate opinions, Augustus Hand’s opinion in *Birnbaum v. Newport Steel Corporation*, 193 F.2d 461 (2d Cir. 1952), has been described as the single most influential decision issued during the first thirty years of federal securities law. The *Birnbaum* opinion, holding that only the purchasers and sellers of securities could sue for fraud, was cited by hundreds of reported cases in the lower federal courts. The issue was not addressed by the Supreme Court until twenty-three years later, when the Court expressly adopted the Augustus Hand precedent.

Another widely cited opinion of Augustus involved his resolution of the controversy surrounding the importation of the book *Ulysses* by James Joyce. A statute prohibited the importation of obscene matter. Rejecting the contention that the now-classic work was obscene, Hand wrote: “That numerous long
passages in *Ulysses* contain matter that is obscene under any fair definition of the word cannot be gainsaid; yet they are relevant to the purpose of depicting the thoughts of the characters and are introduced to give meaning to the whole, rather than to promote lust or portray filth for its own sake." United States v. One Book Entitled Ulysses by James Joyce (Random House, Inc., Claimant), 72 F.2d 705, 706-07 (2d Cir. 1934). He concluded: "We think that *Ulysses* is a book of originality and sincerity of treatment and that it has not the effect of promoting lust. Accordingly it does not fall within the statute, even though it justly may offend many." Id. at 708-09.

In another case of consequence in the First Amendment area, Augustus was constrained to deal with a statute prohibiting the mailing of obscene matter. In that case, United States v. Dennett, 39 F.2d 564 (2d Cir. 1930), the matter in question was a sex-education pamphlet intended for children. Hand wrote: "It . . . may reasonably be thought that accurate information, rather than mystery and curiosity, is better in the long run and is less likely to occasion lascivious thoughts than ignorance and anxiety." Id. at 569. In Sacher v. United States, 182 F.2d 416 (2d Cir. 1950), an opinion that generated much controversy when it was issued, Judge Hand upheld the contempt convictions of attorneys who had represented certain organizers of the Communist Party of the United States. The attorneys' tactics were said to have interfered with the conduct of the trial. The Supreme Court affirmed.
Long obscured by the shadow of his illustrious cousin, Augustus Hand has emerged as a most worthy colleague of his cousin and a significant contributor to national jurisprudence in his own right.

Hon. Roger J. Miner

Hough, Charles Merrill (1858-1927) Judge, United States District Court for the Southern District of New York 1906-1916; Judge, United States Court of Appeals for the Second Circuit 1916-1927. Born in Philadelphia in 1858, Hough graduated from Dartmouth College in 1879. After reading law in Philadelphia, he joined a law firm there, but later moved to New York, where he practiced law for twenty years. He was appointed by President Theodore Roosevelt to a newly created seat on the United States District Court for the Southern District of New York and served in that office until appointed by President Woodrow Wilson to the seat that had been vacated by Emile Henry Lacombe on the United States Court of Appeals for the Second Circuit.

During his service in the district court, Hough was known as a prodigious worker, conducting 1200 trials and filing 1809 written opinions. He was highly regarded for his expertise in commercial and maritime matters. It is said that Professor Karl Llewelyn of Harvard, a commercial law expert and major jurisprudential scholar of his day, regarded Hough as one of the nine greatest commercial judges in the English-speaking world. The son of a Brigadier General, Judge Hough’s personality has been described as “gruff, conservative, yet witty and warm.”

In one of his best-known opinions, Masses Publishing Company v. Patten, 245 F. 102 (2d Cir. 1917), Hough was constrained to disagree with a district court opinion that had been authored by his future, and better-known, colleague on the court of appeals, Learned Hand. A “revolutionary” journal had brought an action against the Postmaster of the City of New York to enjoin
enforcement of a provision that barred from the mails publications made illegal by the Espionage Act of 1917. Hand granted the injunction on First Amendment grounds. *Masses Publishing Company v. Patten*, 244 F. 535, 543 (S.D.N.Y. 1917). In continuing a stay barring enforcement of Hand's order, Hough wrote that "it [was] at least arguable whether there can be any more direct incitement to action than to hold up to admiration those who do act." 245 F. at 106. Hough's pronouncement has not stood the test of time, but it is telling that Hough and Hand became close friends on the court of appeals. In fact, Hough later wrote to Hand: "I want you to know how many years of my life have been made more pleasurable by knowing you."

Judge Hough's extrajudicial writings included law review articles on such subjects as due process, law in wartime, and the legal profession. With regard to the latter, he wrote: "[W]e [are] the priests who enforce the law, which every [layperson] dislikes except when it serves [his or her] turn. The governing class regards us as servants, disliked but indispensable."

An important work of historical significance by Judge Hough was his compendium of maritime cases, entitled *Reports of Cases in the Vice Admiralty of the Province of New York and in the Court of Admiralty of the State of New York 1715-1788* (1925). In it, Judge Hough resurrected reports of cases that otherwise would have been lost to posterity. His lasting legacy as a historian was a work entitled *The United States District Court for the Southern District of New York: Its Growth, and the Men Who Have*
Done its Work 1789-1919 (1934). This history was found among Judge Hough's papers after his death. It was subsequently published by the Maritime Law Association, of which he was President from 1919 until the end of his life.

Hon. Roger J. Miner

Contents

Introduction xi

The Yale Biographical Dictionary of American Law 1

List of Contributors 611

Photograph Credits 621
<table>
<thead>
<tr>
<th>Entry subject</th>
<th>Entry author</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abrahamson, Shirley</td>
<td>Gordon B. Baldwin</td>
</tr>
<tr>
<td>Abram, Morris B.</td>
<td>Roger K. Newman</td>
</tr>
<tr>
<td>Abrams, Floyd</td>
<td>Tom Goldstein</td>
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<tr>
<td>Acheson, Dean</td>
<td>Gaddis Smith</td>
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<tr>
<td>Adams, John</td>
<td>Herbert Sloan</td>
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<td>Adams, John Quincy</td>
<td>Paul C. Nagel</td>
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<td>Alexander, Raymond Pace</td>
<td>Kenneth W. Mack</td>
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<td>Alexander, Sadie</td>
<td>Kenneth W. Mack</td>
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<tr>
<td>Allen, Florence</td>
<td>Virginia G. Drachman</td>
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<td>Altgeld, John</td>
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<td>Ames, Fisher</td>
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<td>Areeda, Philip</td>
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<td>Mark Shaw</td>
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<td>Malcolm Ebright</td>
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<td>Eli N. Evans</td>
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<td>Philip Schofield</td>
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<td>Travis Beal Jacobs</td>
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<td>Berman, Emile</td>
<td>Martin Garbus</td>
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<td>Bettman, Alfred</td>
<td>Laurence Gerckens</td>
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<td>Mark A. Graber</td>
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<td>Harold Hongjuh Koh</td>
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<td>Morris S. Arnold</td>
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<td>Blatchford, Samuel</td>
<td>Timothy S. Huebner</td>
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<td>Blumberg, Julius</td>
<td>Robert Blumberg</td>
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<td>Laura Robb</td>
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<td>Boies, David</td>
<td>Richard Cohen</td>
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<td>Bok, W. Curtis</td>
<td>Jerome J. Shestack</td>
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<td>Bonaparte, Charles</td>
<td>Arthur J. Gajarsa</td>
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<td>Bonbright, James</td>
<td>Albert L. Danielsen and David R. Kamerschen</td>
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<td>Richard Paul Fuке</td>
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</tbody>
</table>
Borah, William E.  
Borchard, Edwin  
Borden, Lizzie  
Bork, Robert H.  
Boudin, Leonard  
Bourquin, George  
Brackenridge, Hugh Henry  
Bradford, William  
Bradley, Joseph P.  
Bradwell, Myra  
Brandeis, Louis D.  
Brant, Irving  
Brennan, William J. Jr.  
Brewer, David J.  
Breyer, Stephen  
Brill, Steven  
Bristow, Benjamin  
Brown, Henry  
Brown, John R.  
Brownell, Herbert  
Bruce, Lenny  
Bryan, William Jennings  
Bryce, James  
Buckner, Emory  
Burch, Rousseau A.  
Burger, Warren E.  
Burling, Edward  
Burlingham, Charles C.  
Burr, Aaron  
Butler, Benjamin F.  
Butler, Pierce  
Cadena, Carlos  
Cahn, Edgar and Jean  
Cahn, Edmond  
Cairns, Huntington  
Calabresi, Guido  
Calhoun, John C.  
Campbell, John A.  
Cardozo, Benjamin N.  
Carpenter, Matthew H.  
Marian C. McKenna  
Justus D. Doenecke  
Wayne K. Hobson  
Steven G. Calabresi  
Lewis A. Kornhauser  
Alexis J. Anderson  
Paul D. Carrington  
H. Jefferson Powell  
Daniel W. Hamilton  
Jane M. Friedman  
Philippa Strum  
Jeffrey L. Littlejohn  
Stephen J. Werchiel  
Michael J. Brodhead  
Erwin Chemerinsky  
Louise Story  
Peter N. Ubertaccio  
Trevor Morgan Broad  
Thomas G. Walker  
John P. Burke  
Ronald K.L. Collins and David Skover  
Kendrick A. Clements  
Robert B. Stevens  
Roger K. Newman  
Michael Kent Curtis  
Kenneth F. Ripple  
Duane W. Krohne  
Andrew L. Kaufman  
Buckner F. Melton, Jr.  
Ronald L. Brown  
Samuel R. Olken  
Henry Flores  
E. Clinton Bamberger  
Roger K. Newman  
Joseph P. Duggan  
Philip Bobbitt  
Alexander Moore  
Robert Saunders Jr.  
Andrew L. Kaufman  
Joseph A. Ranney
Carter, James Coolidge
Carter, Robert
Catron, John
Chafee, Zechariah
Chase, Samuel
Chase, Salmon P.
Chipman, Nathaniel
Choate, Joseph H.
Choate, Rufus
Claiborne, Louis
Clark, Charles E.
Clark, Grenville
Clark, Tom
Clark, Walter M.
Clark, Ramsey
Clay, Henry
Clayton, Henry D.
Clifford, Clark M.
Clinton, Bill
Coase, Ronald
Cobb, Thomas R.R.
Cochran, Johnnie L., Jr.
Coffin, Frank M.
Cohen, Benjamin V.
Cohen, Felix S.
Cohen, Julius Henry
Cohen, Morris R.
Cohn, Roy
Colden, Cadwallader
Coleman, William T., Jr.
Commager, Henry S.
Comstock, Anthony
Conkling, Roscoe
Cook, Walter Wheeling
Cooley, Thomas M.
Corbin, Arthur L.
Corcoran, Thomas G.
Corwin, Edward S.
Countryman, Vern
Covington, Hayden

Lewis A. Grossman
Tomiko Brown-Nagin
Timothy S. Huebner
Rodney A. Smolla
James A. Haw
Frederick J. Blue
Paul Searls
Robert Stanley
Jean V. Matthews
John Briscoe
Stephen N. Subrin
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Michal R. Belknap
Willis P. Whichard
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Melba Porter Hay
Paul M. Pruitt, Jr.
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Michael Nelson
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Paul Finkelman
Charles J. Ogletree, Jr.
J. Peter Byrne
William Lasser
Dalia Tsuk Mitchell
Jameson W. Doig
Dalia Tsuk Mitchell
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Thomas E. Carney
Louis H. Pollak
Milton Cantor
Ronald K.L. Collins
David M. Jordan
Kermit Roosevelt III
Alan R. Jones
Barbara Aronstein Black
Allan J. Lichtman
Kenneth D. Crews
David A. Skeel, Jr.
Shawn Francis Peters
Cox, Archibald
Cranach, William
Cravath, Paul D.
Cromwell, William Nelson
Crosskey, William W.
Cummings, Homer S.
Currie, Brainard
Curtis, Benjamin R.
Curtis, Charles P.
Curtis, George Ticknor.
Cushing, Caleb.
Cushing, William
Cutler, Lloyd N.
Dacey, Norman F.
Daggett, David
Dallas, Alexander James
Dana, Francis
Dana, Richard Henry, Jr.
Dane, Nathan
Daniel, Peter V.
Darrow, Clarence
Daugherty, Harry M.
Davis, David
Davis, Jefferson
Davis, John W.
Davis, Kenneth Culp
Day, William Rufus
Days III, Drew.
Deady, Matthew Paul
Dean, Arthur H.
Dean, John W.
Deboevoise, Eli Whitney
Dellinger III, Walter E.
Dent, Marmaduke
Dershowitz, Alan M.
Dewey, John
Dewey, Thomas E.
Dickerson, Earl
Dill, James Brooks
Dilliard, Irving

Ken Gormley
Craig Joyce
Robert D. Joffe
Frank Lipsius
Pamela Brandwein
John Braeman
Jack L. Sammons
Alfred L. Brophy
Thomas A. Reed
Richard Calhoun
Nancy V. Baker
Scott Douglas Gerber
Daniel R. Ernst
James C. Turner
Wesley W. Horton
Frank D. Wagner
Sheldon S. Cohen
Robert A. Ferguson
W. Dean Eastman
E. Lee Shepard
Randall Tietjen
James N. Giglio
Stuart Shifman
William J. Cooper Jr.
E. Barrett Prettyman Jr.
Reuel E. Schiller
Alice Fleetwood Bartee
Tony Mauro
Ralph James Mooney
James I. Matray
Michael A. Genovese
George B. Adams
Tony Mauro
Robert M. Bastress Jr.
Paul A. Sracic
Bruce Kuklick
Nicol C. Rae
Leonard S. Rubinowitz and Marcus Shepard
Andrew T. Fede
Roger K. Newman
Fortas, Abe
Fraenkel, Osmond K.
Frank, Jerome N.
Frank, John P.
Frank, Leo Max
Frankel, Marvin E.
Frankfurter, Felix
Freund, Ernst
Freund, Paul A.
Friedman, Lawrence
Friendly, Henry J.
Fuchsberg, Jacob
Fuld, Stanley H.
Fuller, Lon
Fuller, Melville W.
Gaines, Myra
Gardner, Erle
Garland, Augustus
Garrison, Lloyd K.
Garrity, W. Arthur, Jr.
Gaston, William
Gellhorn, Walter
Gertz, Elmer
Gesell, Gerhard
Gibson, John Bannister
Gibson, Phil S.
Gideon, Clarence
Gilmore, Grant
Ginsburg, Ruth Bader
Giuliani, Rudolph
Glueck, Sheldon and Eleanor
Goldberg, Arthur J.
Goldmark, Josephine
Goodenow, John M.
Goodman, Louis E.
Goodrich, Herbert F.
Grant, Ulysses S.
Gray, Horace, Jr.
Gray, John Chipman
Green, Leon
John P. MacKenzie
Roger K. Newman
Walter E. Volkomer
Mary M. Schroeder
Eric M. Freedman
Gary P. Naftalis
Mark Silverstein
John E. Semonche
Kenneth L. Karst
Robert W. Gordon
Stephen R. Barnett
Marianne Artusio
Bernard S. Meyer
Robert S. Summers
James W. Ely Jr.
Elizabeth Urban Alexander
Michael Asimow
Michael B. Dougan
Albert K. Butzel
Joel K. Goldstein
John V. Orth
Peter L. Strauss
Sharon F. Kissane
Seth Waxman
Roger K. Newman
Charles J. McClain
Anthony Lewis
Ellen A. Peters
Philippa Strum
Chris McNickle
Jinney S. Smith
Abner J. Mikva
Nancy Woloch
Donald F. Melhorn Jr.
Eric L. Muller
Michael Greenwald
Brooks D. Simpson
Robert M. Spector
Stephen A. Siegel
David W. Robertson
Hoffman, David
Hoffman, Julius
Hoffman, Ogden
Hogan, Frank
Hohfeld, Wesley
Holmes, Oliver Wendell
Holtzmann, Fanny
Hoover, J. Edgar
Hough, Charles
Houston, Charles H.
Howe, Mark de Wolfe
Hudson, Manley O.
Hufstedler, Shirley
Hughes, Charles Evans
Hurst, J. Willard
Hutcheson, Joseph C., Jr.
Hutchins, Robert M.
Hutchinson, Anne
Iredell, James
Jackson, Andrew
Jackson, Charles
Jackson, Robert H.
Jaffe, Louis L.
Jamail, Joseph
James, Fleming, Jr.
Jaworski, Leon
Jay, John
Jefferson, Thomas
Jenner, Albert
Jessup, Philip
Johnson, Andrew
Johnson, Frank M., Jr.
Johnson, John G.
Johnson, Lyndon .B
Johnson, Nicholas
Johnson, Reverdy
Johnson, William
Jones, Thomas Goode
Jones, Walter
Justice, William Wayne
Howard Schweber
Pnina Lahav
Christian G. Fritz
H. Richard Uviller
Carl Wellman
Sheldon M. Novick
Roger K. Newman
Athan Theoharis
Roger J. Miner
Genna Rae McNeil
L. Kinvin Wroth
James T. Kenny
Robert Thompson
Richard D. Friedman
Lawrence M. Friedman
Charles L. Zelden
Otis L. Graham, Jr.
Michael P. Winship
Willis P. Whichard
James W. Ely, Jr.
L. Kinvin Wroth
John Q. Barrett
Richard B. Stewart
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Guido Calabresi
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Peter S. Onuf
Ronald D. Rotunda
Morton A. Kaplan
Hans L. Trefousse
Jack Bass
Roger K. Newman
Jeff Shesol
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Roger K. Newman
Frank R. Kemerer
<table>
<thead>
<tr>
<th>Name</th>
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<tbody>
<tr>
<td>Kales, Albert M.</td>
<td>Anthony Champagne</td>
</tr>
<tr>
<td>Kalven, Harry, Jr.</td>
<td>Geoffrey R. Stone</td>
</tr>
<tr>
<td>Kamisar, Yale</td>
<td>Jerold H. Israel</td>
</tr>
<tr>
<td>Kaplan, Benjamin</td>
<td>Arthur R. Miller</td>
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<td>Jack Rosenthal</td>
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<td>Kaufman, Irving R.</td>
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</tr>
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Linde, Hands A.  
Lindsey, Ben  
Lipsig, Harry  
Lipton, Martin  
Littell, William  
Livermore, Samuel  
Livingston, Edward  
Livingston, Henry  
Livingston, Robert  
Livingston, William  
Llewellyn, Karl  
Lockhart, William  
Lockwood, Belva  
London, Ephraim  
Loss, Louis  
Lumpkin, Joseph  
Lusky, Louis  
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Madison, James  
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Manton, Martin  
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Marshall, John  
Marshall, Louis  
Marshall, Thurgood  
Martin, Luther  
Mason, Alpheus T.  
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Mitchelson, Marvin
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Moore, James William
Moore, John Bassett
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Morris, Gouverneur
Morris, Norval
Morris, Richard B.
Morrison, Alan
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Rawle, William
Reagan, Ronald
Redlich, Norman
Reed, Stanley F.
Reeve, Tapping
Rehnquist, William H.
Reich, Charles A.
Reinhardt, Stephen
Rembar, Charles
Reno, Janet
Rice, Thomas Dartmouth
Richardson, Elliot L.
Richberg, Donald
Ridgely, Nicholas
Rifkind, Simon H.
Rives, Richard T.
Roane, Spencer
Roberts, Owen J.
Robinson, Leila
Rodell, Fred
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Roosevelt, Franklin D.
Roosevelt, Theodore
Root, Elihu
Rosenberg, Julius and Ethel
Rosenman, Samuel I.
Rostow, Eugene V.
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Rubin, Jerome
Ruffin, Thomas

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Thompson, Smith
Tiedeman, Christopher G.
Tilghman, William
Tobriner, Matthew
Tocqueville, Alexis
Todd, Thomas
Tourgee, Albion W.
Train, Arthur
Traynor, Roger J.
Tribe, Laurence H.
Triber, Jacob
Truman, Harry S.
Tucker, St. George
Turner, Donald
Turow, Scott
Tuttle, Elbert
Tweed, Harrison
Van Buren, Martin
Van Devanter, Willis
Van Schaack, Peter
Vance, Cyrus R.
Vanderbilt, Arthur T.
Vinson, Fred M.
Voelker, John D.
Vollmer, August
von Briesen, Arthur
Wade, Henry
Wagner, Robert F., Sr.
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Walker, Timothy
Wallace, Lawrence G.
Walsh, Lawrence E.
Waring, J. Waties
Warren, Charles
Warren, Earl
Washburn, Emory
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Weinfeld, Edward
Weinstein, Jack B.
Weintraub, Joseph
Welch, Joseph N.
West, John B.
Wharton, Francis
Wheaton, Henry
White, Byron R.
White, Edward D.
Wickersham, George W.
Wiener, Frederick Bernays
Wigmore, John H.
Wilentz, David
Wilentz, Robert
Willebrandt, Mabel Walker
Williams, Edward Bennett
Williams, Roger
Williston, Samuel
Wilson, James
Wilson, Orlando W.
Wilson, Woodrow
Wirt, William
Wisdom, John Minor
Witkin, Bernard
Woodbury, Levi
Woolsey, John M.
Wortman, Tunis
Wright, Charles Alan
Wright, George Grover
Wright, J. Skelly
Wyche, William
Wythe, George
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