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Clerking for “God’s Grandfather”: Chauncey Belknap’s Year with Justice Oliver Wendell Holmes, Jr.

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Introduction

In the last twenty years, historians have discovered the Supreme Court law clerk. Although the first clerks were hired by the Justices in the 1880s, for much of their existence the clerks toiled in relative anonymity. Law clerks emerged from the shadows, however, when Court scholars began to appreciate the value of studying them, not only because clerks were eye-witnesses to the internal workings of the Supreme Court, but also because the clerks had substantive job duties and arguably wielded influence over the decision-making process.

Most of what we know about law clerks comes from the clerks themselves, usually in the form of law review articles memorializing their Justices and their clerkships or in interviews with reporters and legal scholars.

In a few instances, however, law clerks have contemporaneously memorialized their experiences in diaries. These materials provide a rare window into the insular world of the Court. While the recollections contained in the diaries are often infused with youthful hero worship for their employer—in contradistinction to Justice Oliver Wendell Holmes, Jr.’s claim that no man is a hero to his valet—they offer a real-time, unfiltered peek at the personalities who populated the bench and the issues with which the Court was grappling. Just such a snapshot in time is provided by the diary of Chauncey Belknap, a remarkable Harvard Law School graduate who clerked for Justice Holmes during October Term 1915. Through Belknap’s near-daily records of his clerkship, as well as his encounters with the glittering social set of pre-war Washington, we are permitted a

singular and fascinating glimpse into the colorful experience of working for one of the Court's most famous jurists.

A copy of the diary was obtained from Belknap's long-time law firm, Patterson, Belknap, Webb & Tyler. While portions of the diary have appeared in other books and articles, the diary has never been reproduced in its entirety.¹ This is due, in part, to the fact that the diary is written in a combination of cursive that varies in its readability and Pitman shorthand. Over a two-year period, two of the co-authors (Williams and Winn) carefully transcribed the diary. Once the transcription was complete, a Pitman shorthand expert was retained to translate the shorthand into English. Finally, all four authors had to agree upon words that were challenging to discern because of Belknap's handwriting. If agreement could not be reached, then the word was listed as "unintelligible" in the final text.

As they transcribed the text, Williams and Winn researched and annotated Belknap's references to people, places, and events. The text was subsequently edited to make formatting and style more consistent. For purposes of publication, an abridged version of the diary is presented here. The selected entries and portions of entries reflect the tone of the diary as a whole and highlight the significant events and conversations Belknap recorded. Brief identifications of persons mentioned and explanations of unfamiliar terms, as well as citations, are provided in the endnotes.

Before one turns to the diary, some background on its author is necessary. Belknap was born on January 26, 1891, in Roselle Park, New Jersey, to Chauncey and Emma McClave Belknap. The early years of his life were filled with hardship and loss. His father was a sales executive with the Thomson Houston Electric Company. When Belknap was two years old, his father died of yellow fever during a business trip to South America. Belknap's mother died two years later of appendicitis. Thus, Belknap was effectively orphaned by the age of four.

Relatives raised Belknap and his young sister, Fredericka.² The young children went to live on the Upper West Side of Manhattan with maternal aunt Mary McClave, who was a school teacher. Living quarters were tight, and Belknap slept on the living-room couch. Many weekends were spent farther downtown with his paternal aunts, Cornelia and Elizabeth Belknap, or with his uncle, Frederick H. Shipman. Belknap was close to his uncle, who was the treasurer of the New York Life Insurance Company.

Belknap attended public schools in New York City, graduating from the High School of Commerce. While Belknap was at the High School, a teacher recognized his academic potential. This teacher spoke to Shipman and encouraged him to help Belknap attend Princeton University. It was Shipman's resourcefulness and belief in his nephew that made Belknap's future education possible. Shipman tutored Belknap for a year and subsequently paid his college tuition. To attend Princeton, Belknap was required to pass a test proving that he had Latin skills equivalent to a year of study. He passed this test after studying for one month.³

Belknap attended Princeton while Woodrow Wilson was the university's president. Belknap met Wilson while at Princeton and later recalled that he had "great admiration" for the future United States President. Belknap studied History, Politics, and Economics, and wrote his senior thesis on the British army officer Charles George Gordon, nicknamed Gordon of Khartoum.⁴ Belknap was also the managing editor of the *Daily Princetonian* newspaper and a member of the debate team.

Belknap graduated *cum laude* on June 11, 1912, delivering the valedictory address before his 255 classmates.⁵ After a summer trip to Europe, he arrived late to Harvard Law School.⁶ His intellect more than made up for the missed days, and, at the end of the first year, Belknap's grades earned him a spot on the *Harvard Law Review*.⁷ While at

Harvard Law School, Belknap learned at the knee of some of the institution's most illustrious professors, including Samuel Williston, Ezra Ripley Thayer, Joseph H. Beale, and Austin W. Scott. During his third year of law school, Belknap also had the chance to socialize with a new law professor named Felix Frankfurter—whom Belknap later described as a “fascinating companion.”⁸ On three occasions, Belknap and Frankfurter dined with local Boston attorney Louis D. Brandeis and his wife, Alice.

During his third year of law school, Belknap was called into Dean Ezra Thayer's office and offered a clerkship with Justice Holmes. Belknap later recalled: “He said ‘I had a similar job with Justice Horace Gray . . . and it was the most interesting year of my entire life . . . I think you will find Holmes to be even a more interesting figure than I did Gray.’”⁹ Belknap added that his only reservation

concerned clerking for a Justice as elderly as the seventy-four-year-old Holmes. “I wondered whether he would survive the entire year, and that I might not find myself in the course of the year stranded and looking for a job when law offices were not employing young lawyers.”¹⁰ Belknap, however, decided “to take the chance” on Holmes, who would live for another twenty years. Years later, Belknap's daughter Barbara learned from her history teacher that Holmes always selected the “brightest” student for a clerkship. Barbara went home and asked her father about her teacher's statement, to which Belknap teasingly replied, “Not always the brightest, but the best.”

In the fall of 1915, Belknap arrived in the nation's capital. The recently widowed President Woodrow Wilson occupied the White House. In December 1915, Wilson would marry Edith Bolling Galt, a native of Wytheville, Virginia, and the widow of a jewelry store owner. News of her engagement to President Wilson created a small scandal among the Washington social circles in which Belknap moved in 1915, as wild rumors circulated that President Wilson had been unfaithful to his late wife, or worse, had planned her death.

It was also a Washington preoccupied with the drumbeat of war. To the south, the Mexican Revolution continued to rage. Several of Belknap's diary entries discuss the revolution, including the massacre of American citizens by Pancho Villa's troops in January 1916 and the subsequent dispatch of American troops to the border. And although America had not yet entered the First World War, the violence in Europe filled the newspaper and captured the attention of many in the nation's capital, including Belknap.

During his clerkship with Holmes, Belknap lived in a brick, three-story row house located at 1727 Nineteenth Street NW, in Washington, DC. In the spring of 1912, Commissioner of Indian Affairs Robert G. Valentine invited two of his friends, young lawyer Felix Frankfurter and Assistant Attorney General Winfred T. Denison, to live with



Orphaned at the age of four, Chauncey Belknap was raised by relatives in New York City. It was an uncle, Frederick H. Shipman, who allowed him to attend Princeton University by tutoring him and paying his tuition. Belknap delivered the valedictory address to classmates in 1912 and would later serve on the Princeton board of trustees for twenty years.



Belknap's good grades earned him a spot on the *Harvard Law Review*; he is pictured above in the second row from the front at left with the other twenty-seven editors of the law review in 1914-1915. Dean Ezra Thayer approached him in his third year to offer him a clerkship with Justice Holmes.

him in the large home. A year later, Loring Christie, an attorney at the Department of Justice, and Lord Eustace Percy, a diplomat at the British Embassy, joined them.

Historian Brad Snyder writes that the Dupont Circle home soon became a "political salon" and a gathering spot for supporters of the Bull Moose Party.

[The residents] threw dinner parties, discussed political events of the day, and wooed young women and high government officials with equal fervor. Ambassadors, general, artists, lawyers, Supreme Court justices, cabinet members, and even a future US president dined there. "How or why I can't recapture," Frankfurter recalled, "but almost everybody who was interesting in Washington sooner or later passed through that house."¹¹

Soon its young tenants started calling the house "the House of Truth" in recognition of the philosophical debates between themselves

and frequent guest Justice Oliver Wendell Holmes, Jr.

Over the next few years, the original tenants moved out and were replaced by a new group of bright young men. Several of the temporary tenants were supplied by Justice Holmes, whose legal secretaries lived at the House of Truth. They included George Harrison, who clerked for Holmes during October Term 1913, Harvey Bundy (October Term 1914), and Chauncey Belknap. It was Felix Frankfurter, now teaching at Harvard, who secured lodging for Belknap at the House of Truth. "I never can repay the debt of gratitude I owe to Felix [Frankfurter] for this introduction [to the House]," Belknap later remarked. "It meant that I was immediately introduced to the liveliest and most interesting group of people of my own age and a little older in the city."¹²

Belknap shared the residence with Montgomery Boynton Angell ("MBA" in the diary), Louis G. Bissell, Franklin Ellis, and Edward Henry Hart. Angell was a

graduate of Princeton University (where he roomed with Belknap) and Harvard Law School. Now Angell was working for the Interstate Commerce Commission. He would serve with distinction in World War I before entering private practice with the law firm that eventually became Davis, Polk & Wardell.¹³ The two men would become life-long friends and served as godfathers to one another's children.

Both Bissell and Hart were Columbia Law School graduates and attorneys, with the former working at the Interstate Commerce Commission. Hart would subsequently marry Frances Newbold Noyes, whose name appears throughout the diary. By all accounts, Noyes was already an accomplished young woman when she met Belknap. The daughter of the publisher of *The Washington Star*, Noyes came from wealth and privilege. And her educational background matched that of the men of the House of Truth, as she had studied at both the Sorbonne and Columbia University. Belknap would later describe Noyes as the "principal ornament" at Justice Holmes's afternoon teas.¹⁴ She later worked for the Naval Intelligence Bureau as well as the Y.M.C.A. as an overseas canteen worker during World War I, and she would go on to a successful publishing career before her premature death in 1943.¹⁵ Edward Hart himself would serve as general counsel to the Federal Reserve Bank of New York.

Described by Harvey Bundy as a "jolly man around town" but a "rather queer addition to the venerable salon," Ellis rounded out the group of tenants. Snyder explains that "Ellis's main interests consisted of playing bridge and golf, not law and politics."¹⁶

In some ways, the Supreme Court that Chauncey Belknap experienced would be difficult to recognize today. The Court did not have its own "home" and the Justices did not have their own Chambers. It would be another twenty years before the present Supreme Court building was built. During October Term 1915, the Justices heard cases in the Old

Senate Chamber and worked at offices in their own homes. Given the decentralization of the Court's members, Belknap had few opportunities to interact professionally with the other Justices and their clerks.

When Holmes was appointed to the Supreme Court, he adopted the practice of his predecessor—Horace Gray—and hired law clerks, although Holmes referred to his assistants as "legal secretaries." Holmes' first law clerk was Charles Kennedy Poe, who held the position while simultaneously completing his legal studies at Columbian University's Department of Law—now George Washington University Law School.¹⁷ All subsequent Holmes clerks would be Harvard Law School graduates selected by the law school faculty; they served for one year.

At a minimum, the Holmes clerks were expected to do basic legal research, review petitions for certiorari and prepare reports, and occasionally provide feedback on drafted legal opinions. The Justice also required his clerks to perform basic non-legal clerical duties, such as balancing Holmes's bank account. These duties were hardly onerous. The more memorable part of the clerkship was the time spent with Holmes. He engaged the clerks in philosophical debates, took them to his favorite spots in Washington, including the Old Soldiers' Home, the Augustus Saint-Gaudens sculpture at the Rock Creek Cemetery grave of Clover Adams, and the Washington zoo, and shared his "tall talk" about the Civil War. And the clerks often found themselves "masters of leisure," playing golf, attending Washington soirées, and reading literature, often recommended to them by Holmes.

During his clerkship with Holmes, Belknap himself read an astonishing range of books and plays. They included **Hamlet**, **Romeo and Juliet**, and **King Lear** (Shakespeare), **Don Quixote** (Miguel de Cervantes), **Beyond Good and Evil** (Friedrich Nietzsche), **Law and Public Opinion in England** (A.V. Dicey), **The World Crisis and Its Meaning** (Felix Alder), **Physics and Politics**

(Walter Bagehot), **Marius the Epicurean** (Walter Pate), **Social Control** (Edward Alsworth Ross), **The Three Musketeers** (Alexandre Dumas), **Pure Sociology** (Lester Ward), **La Sorcière** (Victorien Sardou), **The Foundations of Belief** (Arthur Balfour), **An Introduction to the History of the Science of Politics** (Frederick Pollock), **The Greek Commonwealth** (Alfred Eckhard Zimmern), **Human Nature in Politics** (Graham Wallas), **History of the French Revolution** (François Mignet), **Hernani** (Victor Hugo), **The Picture of Dorian Gray** and **Lady Windemere's Fan** (Oscar Wilde), and **Evan Harrington** (George Meredith). And, of course, **The Common Law** by Oliver Wendell Holmes, Jr. Given the sheer number of pages consumed by Belknap, one wonders when he had the time to read legal briefs.

The most dominant figure in the diary entries is Justice Holmes, who hardly needs introduction. The basic details of the Holmes story are well-established. He was the son of the famous Dr. Oliver Wendell Holmes, Sr.; was a thrice-wounded officer of the Twentieth Massachusetts Volunteer Infantry; the author of **The Common Law**; and a justice on first the Massachusetts Supreme Judicial Court and then the Supreme Court of the United States. However, there is a new dimension to the Holmes who appears in the diary. While most accounts by his law clerks feature an aging Holmes on the decline, Belknap presents us with a picture of a vigorous Holmes in his mid-seventies. This is a Holmes who has yet to be canonized by legal scholars and the press but who is at the height of his intellectual powers and still engaged in the whirl of Washington society.

Another wrinkle is the appearance of Fanny Holmes in the diary. Fanny herself has proved to be an elusive figure for Holmes scholars, often dismissively described as an odd recluse. Belknap's diary entries offer a different picture. "She was a most extraordinarily entertaining creature," he later explained. "She simply captured everyone by

her wit, her understanding and penetration of human beings and their motives."¹⁸ Fanny called Belknap "Mr. Secretary," and during his clerkship she recruited the young man to help her in her "plot" to plan a surprise birthday party for the Justice. And Belknap also had a front row seat on the practical jokes that she played on her husband. To Belknap, Fanny was a "rare human being" who possessed "deeper insights into human beings than Holmes himself."¹⁹

Belknap had the weekly opportunity to observe Fanny during her "at home teas," a ritual of Washington high society. Every Monday afternoon, Fanny would open her home to visitors, as was expected of wives of Supreme Court Justices. Belknap discusses these teas in his diary, as well as the fact that the Holmeses preferred to entertain young people rather than stuffy politicians and their wives. Belknap would later recall:

Young people in Washington were just devoted to Justice Holmes. He jokingly said to me when I started to work to bear in mind that part of my duty was to make sure that the liveliest girls in Washington attended his and Mrs. Holmes' parties. This was easy to do, because they were all just thrilled at the idea of being there with him, listening to him talk; they would sit on the floor sometimes, at his feet. Mrs. Holmes would pay very slight attention to the Congressmen's wives who would turn up at the open house occasions. She would sometimes whisper to me to "give that 'pouter pigeon' over there this little glass of Cherry Bounce and see if it will bounce her out."²⁰

The picture that emerges is that of a witty woman who gave her husband no quarter and who frequently interacted with the legal secretaries, a startling contrast to the gray, semi-invalid who briefly appears in many Holmes biographies.

Throughout the diary, Belknap records Justice Holmes's spontaneous observations about his fellow "scorpions in a bottle." For most of October Term 1915, the Court was short-handed because of the long illness of Justice Joseph R. Lamar, who would die in January 1916, and the contentious confirmation process of his successor, Louis Brandeis. Accordingly, for most of the Term Justice Holmes sat with Chief Justice Edward Douglass White and Associate Justices William Rufus Day, Charles Evans Hughes (who would resign in June 1916), Joseph McKenna, James C. McReynolds, Mahlon Pitney, and Willis Van Devanter. Justice Brandeis would join the White Court in June 1916, after Belknap's clerkship had ended.

Not only was Belknap privy to Justice Holmes's uncensored views of "the boys," but he had a few opportunities to make his own observations. He attended several sessions of Court when the Justices orally presented their decisions, and his November 29, 1915 diary entry includes humorous reflections on the Justices' unique mannerisms.

Belknap also discusses many of the cases before the Court during the October 1915 Term. The issues involved in these cases included "alien labor" and immigration²¹, a minimum wage case,²² freedom of contract,²³ the regulation of interstate commerce,²⁴ labeling requirements under the Pure Food and Drug Act,²⁵ and eminent domain.²⁶

Finally, the diary contains examples of Belknap's extracurricular activities. Debating with famous visitors to the House of Truth. Outings with Montgomery Angell. Flirtatious encounters with the vivacious Frances Noyes. Long hikes through nearby forests. White House receptions. Golf outings at the Chevy Chase country club. Observing debates from the House gallery. Evenings at the theater. Attending the annual State of the Union Address. Dancing the night away at glittering charity balls. And teaching himself French.

As noted above, only an abridged version of the diary is presented here. We have

selected entries and portions of entries that reflect the tone of the diary as a whole and highlight the significant events and conversations Belknap recorded. These entries are annotated to provide additional information about the individuals and events referenced by Belknap.

Thursday, October 7 [1915]

The N.Y. sleeper pulled into Washington in a heartless downpour. After breakfasting in the station on poor eggs and strange news—that the President is to remarry—trolley to 1727 Nineteenth Street, between R & S streets, Frankfurter's famous House of Truth. It's a narrow, red brick three story affair, a bit dingy outside and in. I soon discovered the passage into our dining-living room, a connected studio of generous proportions, with skylight and broad windows. It saves the house. MBA and I share the second-floor front.

Lunched with MBA, whom I had not seen since we parted in Cambridge last June. He's enthusiastically interested in his work with Commissioner Daniels of the I.C.C., formerly our Professor of Economics at Princeton. Part of the afternoon we heard an argument before the I.C.C.—wretched.

At dinner, made the acquaintance of all our housemates: Lou Bissel, Princeton '04, and a Columbia Law School man is now with the I.C.C....Ed Hart, Yale and classmate of Bissel's at Law School, was formerly at the Commission—he is now fallen from grace to be at the South Eastern Railroad; Franklin Ellis, Harvard, is a jolly man about town, with a good heart and sweet disposition. We will have a good year together.

Friday, October 8

Presented myself at the house of Justice Holmes, 1720 I Street, on the minute of

eleven, and was ushered up to his study on the second floor back, by the Negro messenger [Arthur Thomas]. The Justice was writing at his desk and greeted me cordially. He is a good specimen for 74, with deep sparkling eyes under bushy brows, hair thick and not yet white, flowing white moustache. He stands a trifle over 6 feet, I should say, erect and a clean-cut figure; in his purple velvet jacket with a long cigar, he looks more like a cavalry captain than the popular conception of a jurist.

Soon I was introduced to the well-stocked library which lines the walls of the study and my room, which is immediately adjoining. It reveals versatile tastes, from the Year Books to Walter Lippmann, from [William] James to Rabelais. Over the mantle is what the Justice describes as “the family mausoleum, where I keep all my father’s books in their various editions and my grandfather’s—both of them wrote books.” He inquired whether I was interested in literature and gave me the run of the library in my free time. I chuckled when he complimented my handwriting. Dean Thayer²⁷ is the only other person who has been equally generous, and these two have the worst hands ever man attempted to decipher. The Justice tells the story on himself of Chief Justice Field,²⁸ of Mass., who exclaimed in despair, “Holmes, you are indictable as a fraud at common law, because your handwriting looks legible but isn’t.”

After setting the judicial house in order a little, we went out for a walk and the Justice outlined his theory of economics. I can’t do him justice—who could?—but here is the gist: “I find it helpful to try to think in terms of things and not words. In economics we should think of the disposition of a stream of products, not of ‘ownership,’ etc. Someone told me in horror-stricken tones that 50,000 people own 95% of the wealth of the country. I don’t care. I would if they consumed 95% of the stream of products, but that is a physical impossibility. The amount of that stream

which the rich consume in excess of the poor is so small, that if scattered among all the poor it would be imperceptible. The rich enjoy the products of the vineyards of Champagne, fine silks, and choice foods. But these cannot go round among all; and if you object to the enjoyment of such luxuries, the way to prevent it is to forbid their production. Grow grain in the fields of Champagne. It will only make the world a little duller. If a man is owner of property it merely means that he, rather than anyone else, determines how much of its product shall be put back into this property, and how much shall be deflected into other channels, for the satisfaction of other social needs which the owner foresees.

His judgment of how his property can best serve the needs of society is stimulated by self-interest, for the most profitable channel is the one that society demands most. The socialist regime differs from the regime of private property only in substituting the judgment of the government official for the private individual, in making this decision. My first doubts of the regime of private property were experienced when I read of Andrew Carnegie’s endowment of a Public Library. By deflecting his property to a non-productive enterprise of this sort, he was failing to fulfill his public function.”

I met Mrs. Holmes, a peculiar looking woman of the Justice’s age, with a reputation for extraordinary brilliancy. She was warm with her welcome and hoped I would enjoy Washington.

Saturday, October 9

Wigmore²⁹ has written the Justice for a list of his best cases in the Supreme Court and I have been engaged all day culling them out. The Justice binds his opinions in separate volumes for each year and includes at the back of each volume the sheets of his circulated opinions on which his brother justices have written their comments

“damnatory or otherwise,” as he says. These should make the volumes of considerable historical interest when they find their way into the Harvard Library, whither I presume they are bound. How some of the Justices strip themselves naked: Hughes agrees, “reverently”; while [Mahlon] Pitney comments on a reference to “judicial thought from Kant & Jhering”³⁰—“I agree but dislike the

reference to medieval law and speculative philosophy. It savors of pedantry.”

I am invited to dine with my chief and his wife tomorrow at the Willard—“the Tavern,” he calls it.³¹ Today this question came up for decision—should the Justice’s lady leave her card on the President’s fiancée, Mrs. Galt. After some discussion they came into my room and called up the Chief Justice for



When Belknap met Holmes (pictured here in 1914, a year before Belknap’s clerkship) for the first time, in the Justice’s home study, the clerk thought that with “his purple velvet jacket with a long cigar, he looks more like a cavalry captain than the popular conception of a jurist.” Holmes was seventy-four and would not retire until he was ninety.

advice. And the Chief having no objection, the great step was resolved upon.

Sunday, October 10

Bright fall day. Had 36 holes of atrocious golf at Chevy Chase [Club] on Franklin Ellis' card, playing with MBA against Thaddeus Thompson [sic] and Shoemaker, both U.S. Navy.³² In the evening, dined with the Holmeses, who were both as delicious as the dinner. Mrs. H claims one of the regicides among her ancestors and related an experience on their first visit to England. An acquaintance invited them to her country house and offered as a special inducement to show the hiding place of the sainted martyr king; adding, "Oh, if I could lay my hands on the descendants of one of those murderers, I would strangle them." So they cautiously avoided the house.

The Justice had some amusing tales about his "governor" [Oliver Wendell Holmes, Sr.] and apologized profusely because the water flowed like Champagne owing to Washington Sunday Laws.³³

Monday, October 11

Little work to do, as the Court did not convene till noon today. I went down to the Capitol, presented the Justice's card to the Marshal who informed me that I have the privilege of the bar and showed me into the Supreme Court chamber. Promptly at twelve the gavel rapped, the audience rose, the deputy marshal announced, "The Honorable, the Supreme Court of the U.S.," and they filed into their seats. Lamar's chair was vacant, as he has not recovered from an attack of paralysis.

The court is an imposing array of men, except for Day and McKenna who are insignificant looking, the former being almost emaciated in appearance. Holmes' famous witticism hits this off: when Day's son [William, Jr.], as large in stature as his father

is small, was presented for admission to the Bar of the Court, he remarked, "Oh, a regular block off the old chip!" The New York Alien Labor Law Case consumed the entire day and was argued by counsel whom the Justice aptly characterized as "chaotic-minded."

Tuesday, October 12

A pile of records and briefs on my desk signified work had begun. It is my duty to submit a report of the facts and arguments to the Justice who then avoids the necessity of wading through a chaotic mass of words to get at the essence of the dispute.

This morning he was showing me a book of letters written from his parents while he was at the front on the Civil War. On one page was pasted a slip of paper with the faint penciled scrawl, "I am Oliver Wendell Holmes of the 20th Mass., son of Oliver Wendell Holmes of Boston, Mass." This had been written as he lay wounded within the enemy's lines at Antietam, but later the Confederate line was pushed back and he was not captured.

Bissell, Hart, MBA, and I dined and spent the evening with Frances Noyes at Silver Spring, Maryland, just outside the district. She is an old friend of the other men and of Mrs. Harrison,³⁴ who motored me out. Mr. Noyes is owner of the *Washington Star* and President of the A.P.,³⁵ and his *filia* is keen, vivacious, cultivated—attractive without beauty—a tiring bundle of nerves; at 25, the author of *Mark*, a novel of English high society that I have not read and probably shall not.

Wednesday, October 13

Busy most of the day over records and briefs—none of great interest. Yesterday, says the Justice, Baron Reading, the Lord Chief Justice of England, who is Chairman of the commission to negotiate the British war loan, sat with the [C]ourt, in a special chair

beside the Chief Justice. Only Herschell and Coleridge have been similarly honored.³⁶

My position in the Holmes household has its humorous aspects. Today, Mrs. H declared, “If he doesn’t treat you right, remember I am always right down stairs!” But he is wonderful and talks over his decisions as if I were on an equal plane of learning and power. His assumptions are a trifle embarrassing occasionally.

Thursday, October 14

Busy all day on cases which showed how some lawyers waste their clients’ money.

Last night, the British Ambassador entertained at dinner for Lord Reading, inviting the Supreme Court.³⁷ His solution of the question of precedence between [Chief Justice] White and Reading was happy. Being a man’s dinner, he asked White to be hostess and placed Reading on his right. The Justice thinks the Lord Chief talked well and had the appearance of marked intellectual distinction about the mouth, “but McKenna thought he was a little light on his ‘h’s.”

Lou, MBA, & I saw [George Bernard] Shaw’s *Androcles and the Lion* at the Belasco tonight.³⁸ Shavian humor with a touch of irreverence. As we walked up Connecticut Avenue, about 11:30, we passed the President walking alone in the direction of the White House, with two secret service men 20 feet behind. In an Inverness overcoat,³⁹ top hat, and cane, he does not resemble the Woodrow of Princeton days.

Saturday, October 16

Finished my work early and talked with the Justice. He is fond of propounding the theory that the ideas in most books are in the course of 25 years so worked-over, developed, and absorbed that the book is to all intents dead. He means it is living only in its progeny. That is what makes it hard to appreciate the

cause of the greatness of old books. He had been reading Plato’s *Banquet* and thinks the dominant factor in its greatness is that here Plato, first of all men, points out the interest of a life of ideas rather than of action.⁴⁰

We were also talking of ideals of government. He referred to a book by James J. Hill, whom he regards as one of the greatest of Americans.⁴¹ Hill deplores the day which he sees coming, when our resources will be fully developed or exhausted, the nation weakens, etc. “But,” says the Justice, “I was about that time re-reading some Greek and thought of the little republic which produced those men. Suppose we do fall from Jim Hill to Aeschylus!”

Frank Ellis dropped in about dinner time and took me down to the Metropolitan Club for the meal.

Evening re-reading *Hamlet*.

Monday, October 18

Busy all day accumulating material for an opinion the Justice is writing in *Gegiow v.*



Justice Holmes preferred the company of young people, so his wife Fanny (pictured in her youth) “tried to freeze the old folks out” when she hosted her Monday tea receptions.

Uhl.⁴² He is denying the right of immigration officials to exclude immigrants solely because of a glut in the labor market at the place of their immediate destination, Portland, Oregon. I left him at night with the results of my day's work: nothing on all fours, but also nothing he can't get around.

Tuesday, October 19

The Justice had just finished his opinion when I reached his house. "See what you think of this," he said and insisted that I sit down while he stood at his desk reading. It was characteristically vigorous and free from the junk which clutters so many opinions. I told him I had not realized how strong the side could be made, and he seemed pleased. Worked on a new batch of cases all day and walked home as far as the British Embassy with the Justice. I spoke of my astonishment at the speed with which he finished his opinion. He laughed: "Yes, my brothers sometimes chaff me a little about it—but it's largely a question of putting your mind to it. With most cases, it's the impact without your bit there that counts, just prolonged pressure."

Dinner at University Club with David Lawrence, Princeton 1910, and now Associated Press correspondent.⁴³ He has just returned from a visit to [General Venustiano] Carranza at Vera Cruz and poured out a vivid story of his journalistic achievements. The worst part of the newspaper reporter's life would be that his standards of success, the getting of a scoop, generally necessitates conduct bordering on the dishonorable.

Thursday, October 21

The Justice has most of the work in his hands and was unusually chatty even for him. "My boy, is this the 21st of October? Fifty-four years ago this afternoon I was wounded

in the Battle of Balls Bluff,⁴⁴ twice. I thought they'd done for me"—and then I had the whole story.

Saturday, October 23

The Justice was aroused this morning by a statement of Felix Adler's in his new book on *The World Crisis*,⁴⁵ that ethical development is the end of man. To him, it [life] is the end more than a means to the end; it is simply living, functioning to the full extent [of your] power. It has a flavor of Goethe.⁴⁶

Monday, October 25

The Justice must have been annoyed at the conference on Saturday. He doesn't like Pitney, and today he didn't hesitate to say so. "He is essentially a small-minded man, not to be compared with the President's [other] appointees, Hughes, Van Devanter and Lamar.⁴⁷ Hughes is to my mind a very great man. But Pitney has the contentious, small spirit that gets in the way. He bothers counsel far too much on the bench and is too belligerent. I think he will have to be spoken to. And yet he is an exceedingly conscientious man, who studies his cases carefully."

The Justice was working on his decision in *Zeckendorf v. Steinfeld*⁴⁸ and was anxious to use a quotation he remembered in the Year Books: "*Ne glosez point le Statut; nous le savoms meuz de vous, gar nous les feimes*" originally called to his attention by "Fred Pollock."⁴⁹ As he left, he asked me to try to discover it. I hurried down to the Capitol, heard the few opinions handed down, and then made for the Supreme Court library on the floor below. As I was about to give it up, this needle in a haystack, I happened upon a reference which on verification in the Library of Congress proved to be what he was looking for. I was waiting with it when he came in and his delight was so genuine it was a pleasure to

see. "Come to my arms, my boy, you're an angel." He was still chuckling over it as I went downstairs.

Tonight I started on [Walter] Bagehot, *Physics and Politics*.⁵⁰

Tuesday Oct 26

The Justice is still elated over my little discovery. I hate to think how nearly it escaped me. "Good morning, young hero," was his greeting. I think his impact on the case was doubled by his joy at being able to use the little sentence, over 600 years old. Will someone be setting one of OW's sparkling little gems in the midst of his own jewel, 600 years hence?

Working all day on the resubmitted cases, evening on Bagehot. This book is a good example of the Justice's theory that 25 years marks the life of most books. Some of Bagehot's thinking rings dull to one who has heard Pound lecture.⁵¹

Thursday, October 28

At work all morning on a peculiarly tangled bankruptcy case. The Justice was finishing an opinion in a close interesting case about which his mind was not decided until the end, *United States Fidelity and Guaranty Co. v. Riefler*.⁵² I have done quite a bit of work on the authorities for it, but found little to help.

Friday, October 29

It seems from the papers of the Justice that the Minimum Wage Law is to be knocked out 5 to 4. Day, McKenna, Hughes, and Holmes dissent. The Justice seems to have noted with pleasure Pitney's comment in conference, "Communitistic proposition," and his own vigorous "I take the more pleasure in voting to affirm that I regard the law as the

imbecile product of incompetence." Imagine Pitney's expression!⁵³ The Justice gave me a little volume of his speeches, which is not so widely known as it should be.⁵⁴ Dean Thayer, whose competence as a critic of the experience of speakers could hardly be exceeded, said the Harvard Law Assoc. address, which is last in the book, was the most impressive thing he had ever heard.

Sunday, October 31

Languid Indian summer day, but MBA and I undertook to be vigorous, and started out early for a tramp with lunch stowed away in our pockets. After a trolley to Georgetown, we walked across the Potomac Bridge and turned upstream, following the wooded rocky shore as far as the Chain Bridge. It was a tough scramble in the heat, and we were glad to take the pike for a stretch. After luncheon beside a brook on the road-side, we continued at a good pace through riotous autumn coloring, occasional trim farms, with corn stalks dotting the fields.

We stopped for water at a fresh-painted farmhouse, which seemed to have risen like a mushroom from the decaying ruins of an older stone edifice. The occupant was an open-faced, well-spoken gentleman who, on discovering our Princeton affiliations, declared himself Yale '84. He directed us over paths through his farm and woodland to a bluff or crag which juts out into the Potomac and commands an unsurpassed view both up and down the stream. Here we stretched out on the rocks in the warm sun and listened to the song of the rapids far below us. Blessing the happy chance which guided us to the good man's house, we boarded a trolley for home.

The day's adventures were not yet over. I was interviewing some coon hunters, who displayed proudly a beautiful possum captured the night before. He wrapped his tail around my finger and I supported him for the admiration of the crowd until he suddenly dropped and scurried for refuge beneath the

skirts of a charming passenger. Then there was commotion, then there were shrieks, and a rush to the other end of the car, while Mr. Possum curled himself up under the seat and was easily returned to the bag. Tonight Frances Noyes's married sister invited us out to dinner, but we resisted the temptation and went early to bed.

Monday, November 1

The Justice engaged on a condemnation case—lands for the Ashokan Reservoir to serve New York City.⁵⁵ He left the record in my hands to see if the evidence supported his opinion, which it unquestionably did to spare. But as I read the opinion in his unfinished form, it did not impress me as many of his have. The Court came down with an opinion through Hughes, knocking out the Arizona Alien Labor Law.⁵⁶ This was the case I wrote up for the Review last year—I sustained myself.⁵⁷

This was the day of Mrs. Holmes's first tea—for the youngsters. All the men I know in town were there—with one unmarried lady, Frances Noyes, and her sister Mrs. Blagdon.⁵⁸ But the Justice performed in his very best style, looking younger and handsomer than ever. His genial "My dear boy, how are you?" would put each new arrival at ease, while Mrs. H does her part to perfection.

Finished Bagehot tonight, and started in on some French, which I must learn to read, at least. Today the Justice read some great lines from Verlaine's "Grotesques," translated in the *New Republic*, and I was forced to admit I could have made nothing of them in French.⁵⁹

Sunday, November 7

More fall in the air than heretofore. MBA and I off for a tramp over the country we discovered last week on the Virginia shore. We set out at Jackson, which was our *terminus ad quem*⁶⁰ last week, and after a

chat over the fence with our jolly old friend Dr. Scott, we scampered down the ravine to the riverbank and worked our way along its fringe of underbrush and trees to a tiny Japanese lake, between two cliffs not far back from the Potomac.

Here, in the sunshine far above the water, we took out our sandwiches and then stretched out for a smoke and talk, while the fine gold of spider webs danced over our heads. Through the afternoon we clambered over palisades, pushed through underbrush, and eventually emerged at Great Falls, from whence we took the trolley home. Then it was a jump into the raiment of respectability, and tea with Frances Noyes, at their city home, N. St. and Vermont Ave., a beautiful old-fashioned house. From there we hurried over to supper with the Tuckers and had an evening of good talk.

Monday, November 8

On my arrival, the Justice was deep in his new case, which is nothing of moment—a contract suit by the government. He put me to work on a record and briefs of a case—*Penn R.R. Co. v. Jacoby*,⁶¹ which involves the effect of reports of the I.C.C. as prima facie evidence to a jury. I have tried to make myself letter perfect on it, for he wants to talk about it and it is no simple matter to furnish the material for his cunning intellect.

Mrs. Holmes's tea this afternoon. I went downstairs late, and she didn't begin to pour until six or later. As I handed over a cup she whispered, "I was waiting to see if I couldn't freeze the old folks out." She certainly prefers the "youngsters" and the Justice has far more fun with Frances Noyes than with her older and more sedate sisters. Mrs. Holmes talked of Justice Brown, who was a delightfully entertaining old gentleman.⁶²

I took Frances Noyes home and remained to dinner. Mr. Noyes more animated than usual and full of interesting comment on the administration. They are one of the few



Frances Noyes (above at wheel) socialized frequently with Belknap and attended teas at the Holmes residence. She became a writer of detective fiction and short stories and married Belknap's friend Edward Henry Hart in 1921.

Washington families who are able to forgive the President his social gaucherie—although they are keenly alive to it—and who recognize how large he looms before the country and the world. It is a testimony of their good judgment, for none can miss more the authenticity of the Tafts.

American reports, the Justice compared the writers to cuttlefish; they seek protection for their feeble intellects in the obscurity of an inky cloud of words. They have a fear of sharp thinking.

Tuesday, November 9

With few submitted cases to occupy me this week, I am the master of a magnificent leisure, which I prepare to utilize in studying a book on literary style entitled, *The King's English*,⁶³ no one knows better than I how frequently I massacre it. The Justice was busy with an opinion and postponed my report on *Penn R.R. Co. v. Jacoby*.

During an evening at home, I read French and half of *Romeo and Juliet*.

Thursday, November 11

In speaking of the diffuse, loosely reasoned opinions which fill so many of our

Friday, November 12

Most of my day was free to give to *The King's English*. It discloses so many pitfalls that I shall soon hesitate to take a pen into my hand.

Saturday, November 13

On my arrival this morning, the Justice said, with one of his finest smiles, "Well, my boy, I have a belly full for you. We have to decide on the constitutionality of the Migratory Bird Law,⁶⁴ and the Chief Justice inquired if I knew any young men from Cambridge whom we could put to work on the authorities. I thought of you, and although I won't turn you over to the Furies, we might see what we can do with it." I smiled,

recalling [Harvard Law School Professor Eugene] Wambaugh's contemptuous treatment last year of the arguments to uphold the law. But the Justice is strongly unimpressed by them. "I am convinced that it would be best for the country to sustain it, and when that is true I think we are entitled to go a long way."

I suggested the analogy of the *Insular Cases*.⁶⁵ He replied that those had never given him the least trouble. "You know, that is the one matter about which Roosevelt talked to me when he called me down here before my appointment. He said he wanted to know if I was 'sound' on the insular matter. I told him I presumed I was talking to a gentleman who would understand that I preserved my judicial independence; but I had no hesitation in telling him what I had often said when the matter of the post was furthest from my mind, that I saw no possible objection in the Constitution to the question. Moreover, I don't believe any provision in the Constitution applies *ex proprio vigore*⁶⁶ to the Islands. Brown's talk about fundamental matters I have never been able to comprehend. I always try to find one hint of Congress extending the Constitutional provision to the matter in question.

Roosevelt could never understand the judicial attitude toward a question. Everything was black and white with him. Take the Northern Securities Case,⁶⁷ which came up shortly after he had appointed me, and which he was very anxious for us to decide against the merger. I dissented from the decision in favor of dissociation. [Philander C.] Knox⁶⁸ told me afterward that Roosevelt was so angry he swore he would never ask me to the White House again, but he did, and we talked about it all over long afterward."

Sunday, November 14

A dismal rainy day, fit only for the fireside, blazing logs, a pipe and a book. I provided myself with all and had some happy hours over the concluding pages of *Marius*;⁶⁹

he turns from Epicurus to Christ, but gives his life for his friend before he is baptized.

Felix Frankfurter came down from Cambridge for the weekend. We saw little of him during the day, but had a crowd in for dinner: Norman Hapgood, the editor of *Harper's Weekly*; Thurlow Gordon; Robert Szold; [George] Rublee, the new Federal Trade Commissioner; and half a dozen others.⁷⁰ Hapgood and Felix debated the President's preparedness program with warmth and brilliance, and it seemed to most of us that Hapgood made out a strong case for the administration. After dinner I had a long chat with [William] Stoddard, the Washington correspondent of the *Boston Transcript*.⁷¹ We were all entertained by Dr. Irving, who gave a vivid description of a bicycle trip through the war-swept Balkans, from Constantinople to Sarajevo. He has less admiration for the Servians than George M. Trevelyan,⁷² who talked about them at Cambridge last year; Irving thinks the Bulgars [sic] superior as a people.

Monday, November 15

The Court adjourned today until after Thanksgiving, but a conference kept the Justice at the Capitol all day. I could find no migratory bird material in the home library, and therefore spent the day on some reading of every own—a few chapters in Lester Ward's *Outline of Sociology*.⁷³ When the Justice came in and saw what I was reading, he advised me to start in with Ross's *Social Control*,⁷⁴ "a stranger and more original piece of work."

Tuesday, November 16

The resubmitted cases have arrived and I spend part of the morning on them. Toward noon, the Justice and I went for a walk and he stopped for a few minutes to cut some coupons at the Riggs Bank. We were talking

about the protective tariff. "It has always seemed to me," he said, "that protectionists and free traders start their arguments from different premises. If national rivalries are disregarded and war [unintelligible] as obsolete, the free trade reasoning is irresistible. But if statesman must take into account the probability of war, then the necessity of making a nation of self-supporting is a weighty consideration in favor of protection. The Chief Justice, who is a Louisiana man, told me he was converted to protection by the Civil War, when his mother had to make him a suit of clothes out of the piano cover."

When lunch time came . . . [the Justice] asked me to stay for luncheon and I had great fun watching "the Missus," as he calls her, bait him, keep him amused, and send him back to his work refreshed and invigorated by the hour with her.

Thursday, November 18

I read over a couple of unimportant opinions of the Justice's. This duty has been purely a formality so far, and even if there were doubts in my mind, I should have to get myself into the state of mind of a court overruling a jury before venturing to differ. I had time to follow Ross through some discussions of the natural state, as evolved in the California mining centers before the advent of law.

The Justice gave me a free afternoon, which I spent on French and straightening out several economic conceptions on the effect of luxury. I dined with the Noyeses, and Frances and I gave up a visit to see John Drew⁷⁵ as she was suffering from the arrival of a wisdom tooth gone askew.

Friday, November 19

These are wild bland days like spring. After a little work on an opinion, I read Ross

until about noon the Justice suggested a walk. I referred to Ross' original development of the function of religion as an agent of social control, and this led the Justice from religion into cosmology. "I call myself a bet-abilitarian. I can't know the nature of the universe, but I simply bet that during my lifetime and the short time thereafter with which I am concerned, it will continue to be a succession of causes and effects. As soon as I find an effect without a cause, reasoning becomes impossible. But a spontaneous destruction or modification is perfectly conceivable."

Monday, November 22

The Justice has been reading with interest an article in the *Harvard Law Review* by the head of the minimum wage tribunal in Australia, describing its operation and effect.⁷⁶ This led the Justice to talk about the constitutionality of the minimum wage law which is still undecided although it was argued last December.⁷⁷ Apparently, Day, McKenna, Hughes, Holmes are for it, with Pitney, Van Devanter, Lamar, and McReynolds opposed, and the Chief Justice, who is writing the opinion, in doubt. The Justice said he is afraid it will be knocked out and he read me a dissent he had prepared if such proves to be the case. If this has to come forth as a dissent, it will rank beside his opinion dissenting from *Lochner v. New York*,⁷⁸ as a classic utterance of those who believe that the Court does not stand in the way of all social reform. On the merits of the policy [of minimum wage], the Justice is a skeptic, but, as he expresses in his draft of a dissent, the advantage of trying this sort of a social experiment on a small scale outweighs his fear that its interstitial cost may exceed its value.

We had a long walk together, the Justice philosophizing on one of his favorite themes that man is in the universe and not the universe in him. This he calls "the supreme act of faith" (because it can't be proved), the belief that one is not god, with the universe his dream. "The

French skeptics when they deposed God set up man in his place. They were not skeptical enough. If man exists in the universe, he is a very small part of it and true skepticism should lead to as sincere humility as belief.”

I introduced the subject of beginning practice and suggested that in New York young men had little opportunity to cultivate their abilities as trial lawyers. He said he knew almost nothing about conditions at the bar today and had always backed business initiative. “I began in Boston, which was the nearest and easiest place for me; and I don’t believe the place a man starts or the position he attains has much to do with his happiness in life if he philosophizes well.”

The Justice’s tea was bright as ever. I declined an invitation to dine with Frances Noyes and her sister and spent an interesting evening over *The Common Law*.

Tuesday, November 23

The Chief Justice thinks he has accumulated all the possible material on the migratory bird case, and so I will have no work to do at it after all. But there are a number of cases submitted, and I shall be too busy and too poor to go home for Thanksgiving.

I walked downtown with the Justice and he took me to see the tiny toy shop where [Abraham] Lincoln used to buy toys for Tad.⁷⁹ When the Justice first came to Washington, the old gentleman in the store could remember Lincoln’s coming in of an afternoon and buying something for all the children, saying with a smile, “I don’t know whether they have all been good, but I’ll let their mother decide that.”

Friday, November 26

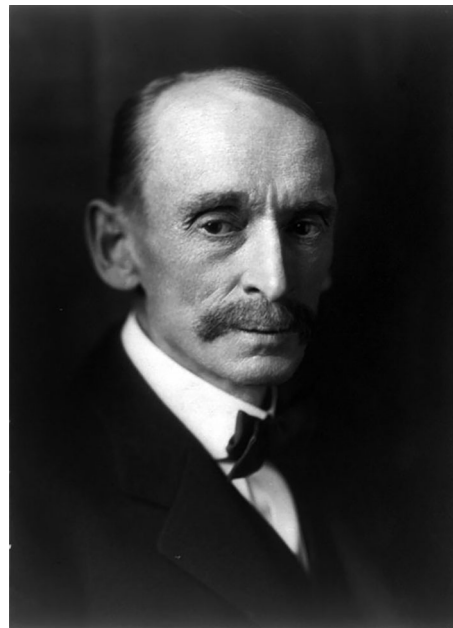
Finishing up the week’s cases at the Justice’s. He has been reading *Hamlet* over

again and is full of it. “In this play,” he said, “and in most of them Shakespeare does not reveal himself as a profound psychologist. But he had a sense of the wonderful mystery of life which he puts into the mouths of his greatest character. What I like about him is his song and tall talk.”

Monday, November 29

The Court resumed after two weeks’ recess. I went down to hear the opinions come down, but there was nothing of moment except the New York Alien Labor Law, on which my note in the review last year proved an accurate prophecy.⁸⁰

The difference in the styles of delivery of the judges is marked. Pitney reads every word, as if fearful lest some drop of evidence should remain hidden. His voice



Justice Holmes worried considerably about Justice William Rufus Day’s declining health. “[Day (above)] is one of the most high-minded men and loyal friends I know,” he told Belknap. Yet Holmes complained that Day’s “opinions set like plaster-of-paris; there is no budging them. That is one of the points in which men differ most.”

is husky and unpleasant. Van Devanter's clear, ringing voice is a welcome contrast, but his oral opinions seem directed at the back benches full of wide-eyed laymen, who see a glimmer when he labors the obvious. Hughes also uses his powerful voice, refers but little to his notes, and might be delivering an earnest campaign speech. Day swallows his words against the impression of embarrassment. Holmes has a refined, cultivated voice, and a clear enunciation; he gives only the essentials, and a few of the little rhetorical ornaments of which he is proud, and is soon finished. McKenna seems older than Holmes, although a few years his junior. He reads off the facts and states the results in a few words. White, the Chief Justice, has the most remarkable manner. With hands unnecessarily moving—flapping adequately expresses their behavior—he goes through a series of cases with scarcely a reference to a note and in a confidential voice and attitude which seems to invite one to step up beneath him and find what is really going on.

The afternoon tea was sprightly as ever. One of the guests, Mrs. Hugh Wallace, a daughter of Chief Justice Fuller, and “an old pal” of the Justice's, so he calls her, brought her niece who was a young stick.⁸¹ Frances Noyes asked us to dinner and we had a fine evening together, at least I did.

Thursday, December 2

The Justice put me to work on a complicated Employers Liability case argued before them yesterday but on which he had failed to make up his mind.⁸² “I want you to give me something definite and concise when I get home, something I can make the basis of an opinion.” After several hours in the Department of Justice Law Library, I could find nothing to upset the judgment below and drew up an opinion along those lines which the Justice accepted.

Monday, December 6

The Justice very busy—three cases allotted to him this week and which he hopes to complete. I took Miss Geer down to the Court to hear the opinions read, but there was little of interest and we were unable to get into either Senate or House, which had their opening sessions today. A suffrage parade, in brilliant purple and yellow costumes, was received on the Capitol steps by a Congressional delegation. They were the bearers of a monster petition for a Constitutional Amendment as the usual resolution proposing it was introduced in Congress today.⁸³

Walter Lippmann, a young Harvard graduate, has now gained a considerable reputation as a writer on politics and social [theory/reform], and is now on the staff of the *New Republic*, joined us at the House of Truth for a while. He is quiet, but not unassuming; his talk is not nearly so brilliant as his books. His ideas on public [theory/reform] are definite and he supports them with thoughtful argument.

Few young people at the Justice's tea, but he was in as high spirits as ever. Evening at home, reading.

Tuesday, December 7

The Justice read me his first opinion; it is an employers' liability case meriting the summary treatment it receives. I started in on the submitted cases, which are numerous and perplexing this week.

As the Justice had generously turned over to me his ticket for the House Gallery when the President delivers his message,⁸⁴ I went down to the Capitol early and captured a seat in the front row, adjoining the diplomatic gallery. For half an hour before the President's entrance, the floor was an animated scene. Old Uncle Joe Cannon was the center of a constantly changing group, congratulating him on his return.⁸⁵ I also recognized [James R.] Mann, the Republican leader,

looking happy over the great reduction of the Democratic majority;⁸⁶ while Champ Clark, with a yellow gardenia in his buttonhole, circulated about greeting old friends.⁸⁷

Soon the Cabinet came in and took seats, on the left of the rostrum, just below where I was sitting. I recognized Garrison, McAdoo, Daniels, Redfield, Houston, and Wilson.⁸⁸ The three front rows of benches were vacated on the Speaker's request for the use of the Senate which had been invited by the House to hear the message on its floor. Out of the hum of voices rose one a little stronger than the rest, calling upon the Speaker. "A message from the Senate" was announced, and a formal acceptance of the invitation of the House was delivered. Shortly thereafter the Senators filed in, led by Lodge and Kern,⁸⁹ I think. [Oscar] Underwood was received with a burst of applause in which his former colleagues on the Democratic side of the House led.⁹⁰

Now the galleries were filled, crowds even sitting on the steps. The entrance of Mrs. Galt, the President's fiancée, had created a stir and many eyes were turned in her direction. In the diplomatic gallery were many representatives of the allied powers, but I saw no Germans. A Committee of the House is announced by the Speaker to escort the President in, and [James Paul] Clarke,⁹¹ President pro tempore of the Senate, who is seated beside the Speaker, designates Senators to accompany the House Committee. They retire and the House is silent for the first time during the morning. In darts a short, quick-moving, middle-aged man, the Doorkeeper of the House; standing in the aisle behind the first row of benches, he announces: "Mr. Speaker, the President of the United States."

Everyone rises, on the floor and in the galleries and amidst loud applause the President enters through a door to the left of the Speaker's Chair. The cheering and hand-clapping increases in volume as the President steps up to the Clerk's desk and shakes hands cordially with the Speaker, who

has pledged his support to the new preparedness program. Presently there is quiet, the members resume their seats, the galleries follow suit, except for the unfortunate late arrivals who strain on tiptoe from the rear. But it is unnecessary, for the President reads in a firm voice with a careful enunciation and inflection that carry each deliberately uttered word to his farthest auditor.

The message is a plea for preparedness against military attacks; preparedness through an increase of armaments, personnel, and the mobilization of industry. There are likewise a few telling sentences of bitter reproach for the hyphenated Americans who are threatening the preparedness of the nation; and these win the loudest applause, in which Republicans join. The reading occupied just an hour, and at one-forty the President retired, followed by the Senators, and the House took an adjournment. I am very grateful to the Justice for the opportunity to observe this impressive bit of ceremony that Wilson's keen political insight has revived.

Tom Miller, the member for Delaware, asked me to lunch with him and his wife, and afterward I hurried back to work.⁹²

We had an interesting discussion about the message with Lippmann, who considers it the "worst of many bad ones." MBA and I were far from agreeing or being convinced by his arguments. A young man named Todd, secretary to Meyer London, the only socialist member of Congress, came in during the evening and talked more soundly than every socialist before.⁹³

Thursday, December 9

The Justice is now on his third case and is hoping to get it up "snug" by the end of the week. The speed with which he turns out his wonderful compact sentences is marvelous to see. Last week he was caught by Pitney in a slip on the Employers' Liability Act; he despises those little cases anyway, but I think

felt especially bad that Pitney should have been the one to detect it.

We spent the evening at the theater, David Warfield in [David] Belasco's new play *Van der Decken*.⁹⁴ Surely Belasco would never have produced it if he hadn't written it himself. It was a disappointing version of the Flying Dutchman legend, well-staged, but with little else to recommend it. After the theatre, we had a good talk by the fireside, and late to bed.

Friday, December 10

The Justice read over to me a vivid opinion. It is nothing but a contract claim against the government, on appeal from the Court of Claims, but he has put into it a bit of what he calls "the eternal granite" and it has a good swing. He was thinking on fire with a vengeance to turn out three such jobs in a week.

Evening reading Pollock's *History of the Science of Politics*, a good review of the college course on Theory of the State.⁹⁵

Monday, December 13

The Justice is puzzled over a case in which the Court is asked to mandamus a Massachusetts circuit judge who refused the [petitioner] access to depositions sealed in a previous suit.⁹⁶ He set me to work on an examination of authorities. *Marbury v. Madison* stands in the way unless this can be worked out as an exercise of appellate jurisdiction, and not an order for the delivery of the papers.⁹⁷ He is determined to give the order and read me a vigorous opinion covering all but the procedural point. I commented on its strength. "Do you think there is anything discourteous or uncivil to the judge below," he said. "He will know he made a mistake," I replied. "Well, I think I'll try it on the boys and see if they swallow it,"

he said with a twinkle. "The boys" is more of a compliment to some of the other brethren than to the Justice.

When he got home I had a collection of material which determined him to alter part of the opinion, "to get around what that skunk Marshall said in *Marbury v. Madison*." As we walked downstairs to join Mrs. Holmes for tea, he told about the minister who preached a sermon trying to interpret away a text opposed in spirit to some of his doctrines. On his way home, he asked a parishioner what he thought of it and some doubt as to the success of the effort was expressed. "Well," said the preacher, "I own I wish the Apostle had never used the words."

I talked with Mrs. H. She told me about Arthur Hill and Roosevelt.⁹⁸ He'd come down, and left his card at the White House, and that way was invited to luncheon. On his return, Mrs. H said, "Well you've been captured. Let me tell you just what happened. You sat at the President's right and he talked to almost all the time. He talked about—oh—Eastern trade routes, referred to a few obscure battles, got on to literature and then you had rather a poor dessert." "Were you behind the wall?" asked Hill.

"You see," said Mrs. H, talking now to me, "Roosevelt needed a group of smart young men in every big city in the country. Hill was his aim and he went out to capture him. When Hill returned to Boston, he told [illegible], 'I have seen a King.' And by supporting Roosevelt he almost cut his practice in two. People avoided him on the street and his wife and children suffered."

Tuesday, December 14

The Justice was happy this morning over having solved to his satisfaction the mandamus case which had raised some doubts yesterday. I think it a powerful piece of work. A large number of certioraris came in to-day and I was hard at work on them. Evening at

home, beginning *Notre Dame de Paris*;⁹⁹ I know enough French now to get the gist of the story without constant reference to the dictionary.

Thursday, December 16

By the end of the morning I was far enough ahead with my work to be sure of finishing up tomorrow. I took the afternoon to visit the Gallery of the House it was a too *bushwa* choice.¹⁰⁰ [Representative Claude] Kitchin of N.C., the Democratic leader, was pressing the bill for extending the emergency war revenue bill to meet a threatened Treasury deficit. The House went into a Committee of the Whole and all the old Republican ammunition was fired off again by the old guns—Uncle Joe Cannon, Longworth, Fordney, Mondell and Mann.¹⁰¹ Cannon, usually mighty, made a five minute speech evincing more physical than intellectual vigor, while the House hung on the old man's words. Longworth's delivery was good, but Mann's logic was the most appealing. Kitchin closed the debate for the majority—a rough ready speaker, inviting but without polish, he stirred his supporters to bursts of enthusiasm and laughter. The Republicans seemed able to meet his crude wit. They sat silent, after fruitless efforts to interrupt, silent and disdainful. There was truth in Mann's criticism that the Democratic leader had done very little to defend his case on its merits.

Evening at home, reading *Notre Dame*.

Sunday, December 19

MBA joined the Storeys for a walk this morning, with old Moorfield Storey, a genial, stiff-fibred abolitionist, as our guide.¹⁰² He had been Sumner's secretary in 1867–69 and took the keenest delight in pointing out the landmarks of the Washington of his day—



Of Chief Justice Edward D. White (pictured), Holmes told Belknap: "He has mellowed in recent years. I sometimes thought him lacking in dignity when he fulminated and roared from the bench, but this has mostly disappeared. Of course, when he is trying to drive a thing home in conference he roars fit to shake the building, but that is simply getting it out of him—the man's manner."

Gideon Welles's house, now occupied by the Ewings, where the severe old secretary sat and so roundly abused his colleagues;¹⁰³ the site of Seward's house, and the beat of the sentry who guarded it after the night of the assassination; the house where he had attended the balls of the day, and where he heard Ewarts pronounce some of his most piquant bon mots.¹⁰⁴

Helen Taft, Frances Noyes, and others to luncheon in the H of T.¹⁰⁵ Afterward to tea at Mrs. Draper, who nearly fills a huge mansion on K St. and Connecticut Avenue,¹⁰⁶ then to the Noyeses'. Ed Hart and I to dinner at Sophie Johnston's,¹⁰⁷ with Helen Taft, who is clever and entertaining but evinces no charm of manner.

Wednesday, December 22

I have omitted to note on Sat. Dec. 18th, the marriage of the President and Mrs. Galt,

which has been the leading topic of conversation in Washington circles since the engagement was announced on the day I arrived here last fall. After dining that evening with Mrs. Woodward, we were walking up 18th St. for a call on Daniels, the Interstate Commerce Commissioner, when we realized suddenly we were in the midst of the crowd of curious onlookers before [Galt's] house, at just about the hour of the ceremony.

An awning leading from the gutter to the door of the little red brick house was the only decent indication of the event on which the nation's eyes were turned, an event which could have far-reaching political consequences. Only the blindest adulation could fail to observe that this marriage, following so close on the death of Mrs. Wilson, has displeased the country. Scandalous stories are freely circulated about the one man whose reputation I once predicted would never be sullied by even the suggestion of misconduct. But he has exposed himself to the innumerable malicious talkers who have crowded in licking their lips at the death of another's reputation.

All to-day, I was engaged in the cases and certioraris, and dined with Frances Noyes, an entertaining evening.

Thursday, December 23

My hopes of getting aboard a New York express at 4 p.m. were soon dispelled. The Justice had got himself into a bothersome Indian land case, one of the things with which Congress wastes the time of the Supreme Court, instead of making a lower federal court the final arbiter. I was running down authorities for him all day and when he finally set forth for a visit to the dentist at 4, he charged me with the duty of starting an entirely original investigation of the matter, on my own hook. I had little to contribute on his return.

Before I left, the Chief Justice's opinion on the minimum wage¹⁰⁸ arrived long overdue. The Justice's face as he read it was a study. Finally he burst, "Oh, I hope I'm not prejudiced but I think this is awful stuff"—and he read most of it aloud, commenting on the clumsy effort to popularize the result by refusing to classify women with minors, paupers [rest of sentence is unintelligible].

As I said goodbye and wished him a Merry Christmas, he picked up his pen and, with a twinkle in his eye and a twist of his moustache, said, "Well my boy, have a fine break, and meanwhile your old Uncle will see whether he can write something solemn and nasty about the Chief's opinion. I'd like to say I take a keener delight in upholding the law because I simply abominate its policy, but the Chief is so solemn about it I mustn't let any levity detract from my words." So he settled down, halfway in as he was and I was off. Mrs. H conferred her Xmas present upon me. It was to have been at the bottom of a stocking over my fireplace tomorrow morning, she said, but my sudden departure upset her plans.

I had to stay for dinner at the House of Truth tonight, some of Frank's crowd, and uninteresting enough, in Heaven's name. I tried to get Frances when I discovered I was doomed to stay, but she was engaged and Sally Beecher was a poor substitute. At 12:30, I boarded the sleeper for N.Y. I recommend a stupid and prolonged dinner as a sovereign remedy for train insomnia.

Saturday, January 1 [1916]

Up late, in time to set out with MBA for a Farm Breakfast given by Charles Henry Butler, the Reporter of the Supreme Court, in honor of South American visitors, at his house on I Street.¹⁰⁹ Butler was a genial host and welcomed the party in his library through a carefully prepared address in Spanish, ponderously humorous. Most of the Justices were there; Redfield, the Secretary of Commerce;

Frances Sayre, the President's son-in-law; and many of the generally famous occupants of the newspaper columns.

I had a long talk with Dr. Bunge, apparently an attorney-general or solicitor-general for Argentina and a professor of law.¹¹⁰ His English was fluent and he had an alert curiosity untempered by any trace of diffidence. "And what is your salary?" was one of his first questions. His opinion of American legal education was greatly lowered when I informed him of the place of the Roman law in our curriculum. "It is the refinement of a refinement—the dessert, the liqueur" I said. "Ah, no, say rather it is the soup, the oysters," he replied. He expects an increase in the law business with South America, parallel to the expansion of the trade which has followed upon the wake of the new currency systems.

In the afternoon, a round of perfunctory calling; evening, dance at Sophie Johnstone's and later at Joe Garrison's—supper with Frances.

Monday, January 3

This morning's papers brought news of Justice Lamar's death. He had not been sitting since last spring and a paralytic stroke made it unlikely he could ever resume his work. The Justice was expecting it, but had not heard of it until I told him. "He is a real loss, a real loss," he said with deep feeling. "He was a dear fellow and a strong judge of decided convictions with which I often disagreed, but which we must all respect."

The Court took an adjournment until Thursday, and Pitney, Van Devanter, and McReynolds accompany the body to Georgia. Among the names suggested for his successor are [Secretary of Interior Franklin K.] Lane, [Secretary of Agriculture David F.] Houston, [John W.] Davis, the solicitor-general, Taft, [Secretary of War Lindley M.] Garrison. The papers name no one already on the bench;¹¹¹ I

suppose politics has generally been the channel to the Court, rather than rising through the judicial ranks. But nearly all of Taft's undoubtedly excellent appointments came from the bench—Pitney, Van Devanter, Lamar, and Lurton.¹¹²

The international situation has become critical with the sinking of the P. & O. liner Persia by an Austrian submarine, following on the heels of Austria's note disavowing previous submarine outrages which had been the subject of protests. The President hurried back from his Virginia honeymoon, and people wear grave faces.

Tuesday, January 4

On a long walk with the Justice, I drew him to talk on the men who have been with him on the bench.

"Chief Justice Fuller was in all the administrative facets of his office a model Chief Justice. He easily adjusted details, without the fuss and friction of our present chief. But while White is a stronger man intellectually, because of his defective style and odd manner of reasoning, he does not receive full justice. I think he is a big man, but not in just the right niche. He lacks the judicial habit of mind and would [unintelligible] of a life of a work in the Senate where he was already prominent when he was appointed. He has mellowed in recent years. I sometimes thought him lacking in dignity when he fulminated and roared from the bench, but this has mostly disappeared; of course, when he is trying to drive a thing home in conference he roars fit to shake the building, but that is simply getting it out of him—the man's manner."

"Take [Joseph] McKenna—I didn't consider him a big man for many years, but now I am coming to recognize his importance. His poor health was an element which conspired to impair the quality of his work, and his jerky style of writing concealed the meat of his

thinking. As a rule, the quality of a man's thinking in his opinions is a fair criterion of his helpfulness in conference. But, of course, they all have their specialties—it is always enlightening to hear Van Devanter on one of those western land cases, for instance or Hughes on—well, anything he has made his own.”

“[Rufus] Peckham¹¹³ was a strong judge, strong rather than subtle or profound. I always said his major premise was ‘God damn it.’ [John Marshall] Harlan,¹¹⁴ who had been a powerful man on the Court was manifestly weakening in his later years—his mind was petrifying. So few men put a spark out of themselves with their work. I think Field was one of those few, and Wells in Massachusetts.¹¹⁵ Horace Gray just missed it.¹¹⁶ He had his finger in everything, and the ability to manage everything in a high degree. I think it was Fuller who once said if it were necessary to establish a unit to suppress a country-wide insurrection, Gray would be the man to put at the head of it.”

So he chatted on delightfully, beyond my memory to set down. It is a full life just to know the men he has known—and to be a part of their performance!

This afternoon I started Graham Wallas's *Human Nature in Politics*, a depressing effort to be both truthful and cheerful as to the future of democratic government, after a psychological analysis of the electorate. Zimmern refers to it in the highest terms,¹¹⁷ and the Justice also commends it. Evening, Elizabeth Harding's dinner, announcing her engagement to Frank Ellis; later masked ball at the Gaffs'. Frances called for me and I had a merry time at supper with her.

Monday, January 10

I called for Katherine and took her and Frances to the Holmeses' tea—not so much fun as usual, because of the invasion of the official set. But the old Chief Justice was a

mountain of radiant benevolence and good humor. To dinner with Sally Beecher, where I met Alcuma, an ambitious young Argentinian, first secretary of the embassy here. He was cultivated, had traveled in England and the Continent, and had been secretary to the president down there. Being modest about his English, he said little until led on. But he showed a knowledge of our politics far exceeding the average university standards; and he expressed an admiration for the restraint and sobriety of the discussions in our legislative bodies—more especially the House of Commons, with which he was more familiar than with our own houses.

After dinner, to the Charity Ball at the Willard with our party, where we careened about the crowded ball rooms until the heat drove many out.

Tuesday, January 11

A new lot of cases in, which kept me busy all day. The Justice was telling me yesterday of his opinion—a clever bit of statutory construction which he finished and had got away to the printer before I arrived Monday—that meant a Sunday morning and afternoon on the job. Today it came back and he gave it to me to read; it was a choice thing, for all its technicality. Hughes returned it marked “In the best style known to the Court.”

Dinner at home, and the evening over Nietzsche's *Beyond Good and Evil*, as revolting a bit of sophistry as I have ever dipped into, but withal sharp and amusing. . . .

Friday, January 14

Monday's opinions at hand—one by Hughes covering the case which in the lower court was the subject of my first *Law Review* note; also a powerful opinion by Hughes under the Pure Food Law,¹¹⁸ forbidding the distribution of quack drugs.

Justice Day very ill and the Justice extremely worried. "I do hope Day pulls through," he said. "I am very fond of him. He is one of the most high-minded men and loyal friends I know. His opinions set like plaster-of-paris; there is no budging them. That is one of the points in which men differ most. Day is like Judge Devens of Massachusetts,¹¹⁹ while White more closely resembles Chief Justice Morton.¹²⁰ They are tenacious, but amenable to persuasion and will often come around in a day or two."

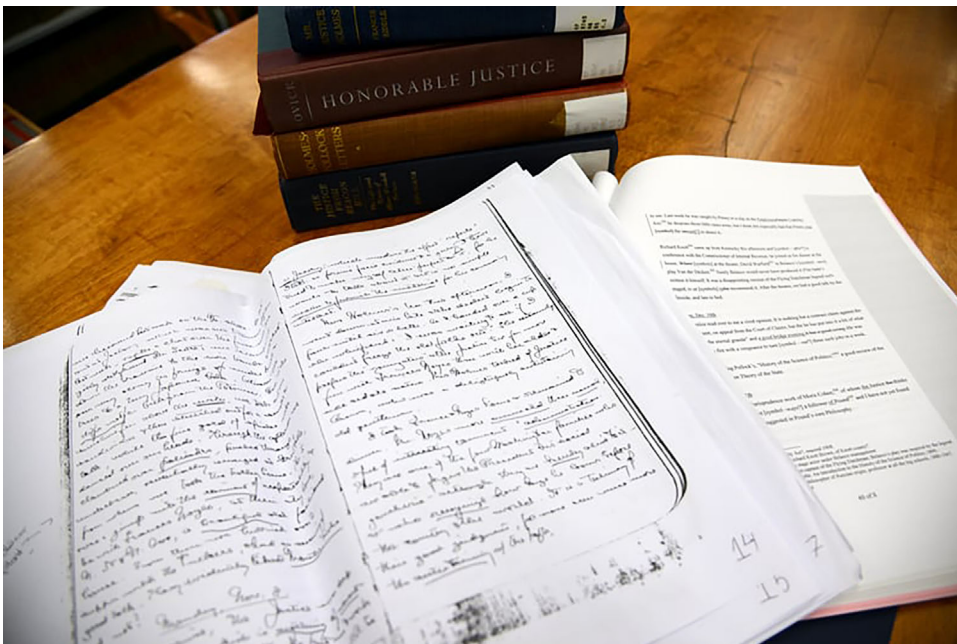
I walked out to the Riggs Bank with the Justice and on our way back we skirted the north side of Lafayette Square. I called his attention to the old Gideon Welles house, which I have always admired. "Yes," he assented, "one of the first in Washington; whenever I pass it with White he says it was the scene of the most atrocious crime in history, for there Slidell hatched the Confederacy.¹²¹ White was a Whig and had a desire to break away. In fact, he told me they would never have got out if they had not been misled into believing they would have active support

from the Northern Democrats. Beckham was a member of a regiment drilling to support them, but of course when the split came it was rigid and all went over to the Union."

Mexico turbulent, massacres at the North, and lots of tall talk in the Senate. But the President keeps his head and stands firm.

Saturday, January 15 to Saturday, January 29

I must spare a negligent and merry two weeks in a few lines. For pomp and ceremony, I have seen nothing quite exceed the Pan American Ball given on the 19th in honor of the President by the South American ambassadors. Its setting in the Pan American building was appropriate and picturesque, the luxuriant foliage, glimmering fountains, and twinkling lights on the patio furnishing a background for resplendent diplomatic uniforms and sparkling *décolleté*. The President and his wife entered to the Star Spangled



Belknap used a combination of cursive and Pitman shorthand to write in his diary. This is the first time the document has been transcribed in its entirety.

Banner, the Secretary of the Treasury led the dancing, and the floor was a gala spectacle. I have spent the usual proportion in more normal gadding about.

Several visits to the House only reinforce the impression that from its particular brand of deliberation the country has little to gain. It is the best confirmation I know of Le Bon's analysis of the mind of a deliberative assembly, in his *Crowd Psychology*.¹²² The reasoning is on a low scale, the eloquence juvenile and clumsy.

In our ample leisure I have been sticking close to the French with gratifying results.

Loring Christie, who is private secretary to Borden, the conservative prime minister of Canada, passed a Sunday in the House of Truth, where he formerly lived. As Felix Frankfurter put it in a matchless phrase, he revealed much by his reticences and something by his talk. He spent some time in England for the chief last year and had unmitigated disgust for most of the liberal leaders, Asquith included.¹²³ The latter he describes as a tired old man, frequently a bit squiffy,¹²⁴ and more of the conciliatory politician than the vigorous leaders our world requires.

Yesterday the President loosed a bomb into the arena by nominating Louis D. Brandeis for the Supreme Court vacancy. His name had been mentioned, so far as I have observed, only by the *New Republic*. He is a Jew, radical on labor and social questions, and in spite of his Kentucky birth, a member of the Boston Bar, which is already represented on the Court by my chief. A storm of protest greets the nomination in this morning's press and the worst type of Senator derides it as an absurdity. I should like to see him confirmed, thus swinging the majority of the Court to the progressive element and giving it the support of a great and cultivated intellect. His personality, as I observed it during dinner at his house in Boston last year, is remote as possible from the agitator for which he is denounced in the capitalist papers.

But he is a situation for the minimum wage [case]. With Lamar dead, the Court is four and four on it. Now the addition of the counsel who argued for the law will surely break the deadlock, for he can participate in the decision.¹²⁵ Will it come out counting Lamar's vote against the law, since the decision was in fact reached as he was on active service? Then would the dead literally rule the living!

Tuesday, February 1

The Court has taken a recess until February 21—most of the others having now accumulated [opinions to write], but my chief's steady application keeps him "up snug." He is perplexed by a knotty corporation reorganization tangle, and is trying to find the angle of cleavage, where as he likes to put it, you must insert the knife . . . [Holmes]: "An opinion should be like an etching—you select the feature on which you wish the attention to be concentrated, you work it out with all refinement and skill, and then you draw in the outlines with a bolder hand."

I am at work on the cases and motions, which raise nothing of interest this week. Frankfurter has sent on a list of the Justice's opinions to be included in an article he is preparing for the March Review, in honor of the Justice's 75th birthday,¹²⁶ and I am struggling for opportunities to verify the list in his absence, as it is a profound secret. Mrs. H is in the conspiracy and promises to get him out.

The President is stumping the Middle West for his preparedness policies, drawing huge crowds with the vociferous enthusiasm which may or may not mean the steady pressure that will bring over Congressmen reluctant to vote the necessary taxes.

Thursday, February 3

Working with the Justice on a close trademark and unfair competition case, Mrs.

H being called in as an expert witness on the purchasing habits of the average prudent hosiery buyer.¹²⁷ It was generous of him to accept a few of my suggestions for modifications on his first draft, but he doesn't feel at all sure of making it go.

We had a good walk up around DuPont Circle at noon, the Justice giving an amusing but strictly confidential account of how the Pipe Line cases were hammered out by the Court.¹²⁸ It seems Day had them to yearn over for more than a month and ultimately returned them to the Chief, who then allotted them to himself. After having them by him some weeks, on the Tuesday before the Court's final adjournment in June, he asked the Justice if he would take them and have them ready for Monday. The Justice agreed, and by Friday had an opinion circulated. On Friday, Hughes came in with suggestions—"Just strike out this sentence and this one, and insert these words, etc." Day followed and gave a new keynote to the opinion by insisting on the insertion of the expression, "The defendants were before the statute common carriers in all but name."

The Justice had taken a broader ground and sustained the power of Congress regardless of previous status of the pipe lines. But his brethren thought it inexpedient, in the present mood of Congress, to communicate the tempting intelligence of how far the Court thought they might go within Constitutional Limits. It is to me one of the most striking instances of the exercise of political functions, political without the insidious connotation of partisan. The Justice became vehement on the subject of the Court and by forcing on them "upward and onward" noisy reform movements of the day. "They are generally a cheap substitute for the real thing."

Friday, February 4

At work with the Justice, cleaning up the submitted cases for distribution. Dinner party

at Noyes's, and at 9:30, I left to attend the President's Reception of the Judiciary at the White House.¹²⁹

The long line of cars, with an occasional superannuated horse cab, circled slowly in to the East Portico. At the cloak room I was lucky to find Mr. and Mrs. Drey, and we agreed to go through the long ordeal together. Ascending to the East Room, we found under the glittering chandeliers a closely packed throng of people, passing three times the length of the East Room and eventually making their exit through the south door, in single file, to approach the receiving line. We took our places and bore with the crush, to be repaid in just over an hour by the consciousness that we were under the vigilant eye of a secret service officer and must be approaching close to the President.

Suddenly, as we passed through a door, a stately gentleman in gold braid inquired the name, turned and announced, "Mr. Belknap, Mr. President"—there was a nod of greeting, a smile from Mrs. Wilson, and so on down the line of exhausted but devoted Cabinet wives who were nearing the end of a wearisome evening. The President looked fresh and vigorous despite the exertion of his stumping tour in the West. His wife is gracious in manner, and pleasant looking though with slight resemblance to her photographs. Mrs. Holmes said, "The ugliest woman ever held out to be pretty!"

We progressed to the state dining room and repasted ourselves with imminent danger to our garments, and then joined the crowd floating from room to room to identify the newspaper headliners—Speaker Champ Clark, a bit squiffy but no more so than usual; Senator Ollie James, with the bulk of an elephant and about the same intelligence;¹³⁰ Secretary Josephus Daniels, beloved by all good naval men, and all the rest of the Cabinet, Senate, and House.¹³¹ The Justices, the guests of honor, retired early. When I drove home with the Dreys, at 11:30, the marine band was still playing in the

vestibule and the crowd still hung about the state apartments.

Wednesday, March 8

To resume after a lazy silence, this is the Justice's seventy-fifth birthday as well as Ash Wednesday. In order to avoid any conflict with the sanctities, Mrs. H had her party last night, with entertainment in two installments. First with dinner of the elders, with a pungent flower of youth imported chiefly by the Justice and less effectively by a Dutch baron and myself.

When we had retired upstairs to smoke, the Justice returned to literature and we heard his version of "My Hunt for the Captain."¹³² A severe neck wound, lacking not half an inch to be mortal, had him out of the battle field [at Antietam]. Two days later, after passing through the surgeon's hands, he was making his way along the outskirts of Hagerstown in pretty groggy fashion when a little boy ran over and inquired if the ladies who had sent him could do anything to help. The captain [Holmes] asked for water and was invited to rest in the old slave house. "I spied around," said he, "and observed a grand piano and one of my father's books and decided it looked like a pretty good thing. The ladies I then thought old but I would now call them young and they would discourse on the universe or play to my choice.

When a box of excellent cigars was produced, belonging to the ladies' brother, who was, I believe, a Confederate officer, I decided it was an adventure worth seeing through. So there I stayed the better part of a week, while the governor [Holmes's father] was prowling about as he relates. Finally, they told me I really must communicate with the family, so I started off and sent the telegram which brought my father to my side. And you know he tells of the rational indifference on the meeting, how he took me by the hand and said merely, 'How are

you, boy?' But he doesn't tell as a preliminary about his greeting after Ball's Bluff, where I showed my young soldier's contempt for his lack of restraint. This was play-acting and we both knew it." A picture-snap-shot—of the old Perkins house in Hagerstown, received this winter from the tenant, stands on the mantel in the study, a treasured possession of the Justice's.

As the cigars shortened, the ladies joined us upstairs and the evening was gay with laughter and talk. I was becoming worried for the success of the secret design of Mrs. H, when Mrs. Gillette rose to leave and by 10:30 the house was empty of its guests. At least, so the Justice thought, as he changed upstairs for his purple velvet smoking jacket and an hour with a book before bed time. But at that minute nearly a dozen of his 'lads and gals' were gathered in the little darkened reception room, where an illuminated owl peered from over the chimney piece. . . . he had just remarked to Mrs. H, "That was a funny birthday party—where were all my young 'uns—the only one there was the Secretary," when from below stairs he was summoned by the chirping of some twenty birdlike whistles. He came slowly downstairs and stood in the darkened doorway, with wonder and delight written on every feature. Then the lights were flashed on and the doors to the dining room were thrown open; and there was the birthday cake to be cut, and the parcels to be circulated, and talk to go round, until at the end of the evening we all settled down on the floor in a cluster at his feet. So the party terminated, a play of gaiety and laughter.

Today I have been busy all day with the submitted cases. Dinner with Frances tonight. Mr. and Mrs. Noyes are recently back from Jamaica where they encountered a young English officer wounded in the Battle of Loos. They had captured three lines of German trenches when he fell and dragged himself back to the reserve lines for two hours. Had they held the trenches taken? — Oh, no — there was nothing to reinforce their decimated

numbers. “But that wasn’t my fault,—that was up to the staff.”

Thursday, March 9

Our cases all day and dinner at the House [of Truth] tonight. Dorothy Kirchwey Brown, on my left, whose father is the new warden of Sing Sing prison gave a frank description of the frightful conditions under which some 1,600 convicts are lodged, many of them very entertaining and interesting high-class crooks.¹³³

Saturday, March 11

The Justice read me a graphic letter from Einstein, our diplomatic representative in Sofia, Bulgaria, which made one inhale the fumes of the Balkan cauldron.¹³⁴ He described how walking to the club one evening he passed two freshly murdered men bleeding in the gutter, and his difficulties in extending to the British representative a right of asylum in the American embassy, which was a hotel room. The Justice’s reply was as piquant as only his own flavor can make the ordinary. “I seem to be a favorite with the Nation,” he laughingly remarked, referring to the Jews. “This fellow Einstein is of their persuasion, and there are Brandeis, Frankfurter, Lippmann, and Warburg, all of them have of that same Jewish flair that I like.”¹³⁵ Someone must collect his letters someday. Truly few can have been destroyed. Here is an answer he dashed off to a valentine—a rosebud with the message beneath a hinged petal:

*On the day of Valentine
A rosebud asked: Will you be mine?
Dear rose go not too near the worm,
For he though aged and infirm
Thy pretty petals would devour
Now glowing pink to sun and shower—
Wait until late in the sky
He soars aloft, Thy Butterfly.*

Thursday, March 16

One of the cases was constantly talking of how [the defendant] had ‘breached’ the contract. I spoke to the Justice of the remarkable popularity of this useless and ugly word is attaining in the American bar—“Yes,” said he, “the American people has the instinct of a turkey buzzard for a rotten phrase.”

Monday, March 20

The Justice at work on a difficult taxation case, on which the Court stands 3 to 4. “The Chief is against me,” he said, “but then he goes on the principle that nothing is taxable. I have always said we get more for our taxes than for anything else, because we get living in civilized society.”

After reaching its opinions the Court took a recess until April 3rd. The Justice doesn’t need it, but McReynolds and Pitney are way behind.¹³⁶ He got home early and we worked over the cases all afternoon, with a visit to the Department of Justice Library. Mrs. H’s tea was invaded by twice her usual number, but it was a gay party and the cherry bounce went its rounds.

Tuesday, March 21

We are at another opinion today—a contractor trying to get reformation of a contract with the government, denied in a monumental effort [in a 20-page opinion] by the Court of Claims. The Justice said of the writer, “He thought to make himself immortal by making himself eternal. It’s a damn sight harder to deal with an ass than with an able man. Either I’m a fool or they are damn fools.” Having thus cleared the air, he gave it to them and, by the end of the day, it was ready for the press.¹³⁷

Friday, March 24

Busy all this morning on some new cases—complicated facts but no problems of

interest. A California attorney called to apply for a writ of error to the State of Maine, which he urged with a combination of Yankee persistency and Western bluntness of feeling that was most offensive. The Justice showed some patience, and even listened to the fellow's resumption of his argument after the refusal of the writ had been signed.

Saturday, March 25

At work on a memo study of the facts in a certiorari petition. At noon out with the Justice to fish in his pond, which is judicial language for cutting BB coupons.¹³⁸ He was tickled over an excellent joke on me. Last month his bank books disappeared and after prolonged search I had a new set made out. As we set forth this morning I reminded him of the books and he said, "Yes, and by the way my boy, if you'll look in your desk drawer where you keep my checks, I think you'll find the long-lost books." I opened it, and there they were, a most natural place for me to have mislaid them. When we were on the street, I very silent and discomfited, he turned to me with a twinkling eye: "Well, young feller, I hope you're feeling pretty keenly about the books—have I stirred quite a bit of pain?" My suspicions began to be aroused until he finally admitted he had found them at the bottom of a pocket he had sworn to be empty, and then he had slyly tucked them in my drawer in the hope that I would find them.

This afternoon read further in *The Common Law* and tonight diverted myself with *Lady Windemere's Fan*.¹³⁹ I had often thought of a plot along the same lines for a story and was interested in Wilde's development of it.

Thursday, March 30

The Justice had a call this morning from W.T. Denison, recently Secretary of

the Interior of the Philippine Islands, and one of "his boys" during Denison's residence in Washington as assistant attorney general. The climate had compelled him to leave the Islands after little more than a year's residence, which was enough, however, to convince him that policy there is not only mistaken but absurd. We declare we are governing the islands until the natives are themselves capable of undertaking it, Denison says, and thereby make it impossible for any intelligent Filipino to support our occupation without confessing his countrymen's incapacity.

I told the Justice I am difficult in retaining the obscure and minute details of which Holdsworth's book is largely comprised. "My dear boy," he said, "It isn't ability to recite on a book that counts. I couldn't recite on any book I have read. But your mind is like a piece of paper which once creased more easily assumes the same folds again. You absorb unconsciously and gain a critical ability you are unaware of."

Somehow George Meredith's name came up.¹⁴⁰ "He was the most brilliant talker I have ever heard. I went down to see him when I was a young man with Leslie Stephen. His reputation was limited to the little group which saw his genius and his name was scarcely known. But I didn't like his disregard of the personalities about him. I don't mean myself because I was an unknown Boston lawyer. And he had a vulgar underbred grimace which was offensive. When I saw him again as an old man he was too deaf to indulge in anything but a monologue."

The Justice talked entertainingly of his interest in legal history, the philosopher's interest in the struggle for life among ideas, like the old German oath as the basis of the contract, now leaving only a dwindling anemic and attenuated remnant in the promissory oath of the witness or the juror.

Monday, April 3

After a recess of two weeks, the Court resumed its sessions today and handed down

a heavy batch of opinions, none of public interest. The Justice has got into difficulties with his opinion taxing the inheritance of foreign property [unintelligible]. Van Devanter is especially recalcitrant, on the 14th Amendment. “God knows what will be evolved out of the bowels of the 14th Amendment. Each judge sees in it the embodiment of his own prejudices,” the Justice said. I spent a good part of the day accumulating authorities on the point from the states.

Dinner with Frances, who helped to cultivate my French accent during the evening.

Wednesday, April 12

The Justice read me his opinion [in a criminal law case], which is clear, artistic and short, full of meat with one bold sentence which covers the case: “This is not a foxhunt.”¹⁴¹ I remarked upon it and he said he owed the idea to John Gray, who said years ago that the theory of the English criminal law was that the law breaker, like the fox, was entitled to so many minutes of law – i.e., shame to escape.¹⁴²

I was called upon for something amusing to go into a letter to [Justice] Day, who has gone back to Boston to convalesce from a wasting illness. He read me the letter which was a gem—or a collection of them. Here is a sample: “Our Court will soon dispatch its business satisfactorily until the Chief acquires that attribute of the Almighty which will enable him by pressing a spring to plunge a bore into the infernal regions.”

Tonight a dinner party with the Holmeses, which Mrs. H and I collaborated upon and got together a merry crowd. Things swung along without flagging till well toward midnight, and as I bade her good night she turned to the Justice and said, “Well, don’t you think my friend and I gave you a good party?” He beamed.

Thursday, April 13

The long delayed special issue of the *Law Review*,¹⁴³ got out in honor of the Justice’s 75th birthday, arrived this morning, with contributions from Sir Frederick Pollock, Eugene [sic] Ehrlich of Vienna, Pound, Wigmore, etc.¹⁴⁴ He was deeply moved at the tribute, more so than by any honor he had ever received, he told me. “When I was a young feller,” he said, “I sometimes thought if an angel should sit at the foot of my bed and say, ‘You’ve done the trick,’ I’d be willing to see the Prince Rupert’s drop of life burst into a thousand fragments.¹⁴⁵ I suppose this is about as near to that as any man comes in a lifetime.”

Conclusion

Belknap’s clerkship ended with the close of October Term 1915. Holmes informed him that it was customary for the legal secretaries to receive a summer vacation, adding that he would call upon Belknap’s services if necessary. The Justice, however, never did. Belknap subsequently secured a position at the New York firm of Burlington, Montgomery & Beecher, hoping to gain experience in their litigation practice. The move to New York, however, did not end his relationship with the House of Truth. Belknap maintained life-long relationships with many of the House’s former tenants. The group called themselves “the minds” and met for dinner parties at one another’s homes.¹⁴⁶ And it was an original House of Truth tenant, Winfred Denison, who convinced Belknap to leave Burlington, Montgomery & Beecher after only a few short months and join him at the New York law firm of Stetson, Jennings & Russell.

Belknap’s tenure with this second firm was short-lived, as the United States entered the war and the former Holmes clerk enlisted in the United States Army. Belknap was assigned to the staff of General of the Army John “Black Jack” Pershing, whose headquarters were

located in France. Belknap would also serve on the front lines with a young lieutenant colonel named George Marshall, who later became Chief of Staff of the Army and Secretary of State. While Belknap's interactions with General Pershing were limited, he worked closely with Marshall. "We were in the same dugout, in the same sub-cellars; we were together constantly."¹⁴⁷ Belknap developed a deep respect for the young officer, whose devotion to duty reminded him of Holmes. The feeling of respect was mutual, and Marshall would later write that Belknap was "an interesting example of the rapidity with which an American can adapt himself to the performance of an intricate and delicate task."¹⁴⁸ At the end of the war, Belknap would hold the rank of major and receive the *Legion d'Honneur* for his work translating between the French and American generals.¹⁴⁹

After the war, Belknap returned to Stetson, Jennings & Russell before joining a new firm created by Denison and former New York Federal Reserve general counsel James Freeman Curtis. The firm would eventually become Patterson, Belknap, Webb & Tyler, where Belknap worked until his retirement in 1982. His clients included the Rockefeller Foundation and the Metropolitan Opera. Outside of his legal practice, Belknap maintained ties with his beloved Princeton and served on its board of trustees for twenty years.

In 1926, Belknap married Dorothy Lamont, the daughter of American Steel Foundries president Robert P. Lamont. Lamont would later serve as Secretary of Commerce in the Hoover Administration. The union between Belknap and Dorothy produced three children and seven grandchildren, including grandson Gilles Carter. He described Belknap as a charismatic and handsome man who possessed a wonderful sense of humor, a lawyer dedicated to his work and the training of younger attorneys, and a loving and devoted grandfather. Moreover, Carter recalled the life-long

intellectual curiosity of a grandfather who devoured history books, kept up with the latest issue of *Scientific American*, loved looking up new words in the dictionary, and was "interested in everything." More than sixty years after he taught himself French, Belknap mastered Italian so he could draw greater pleasure from the operas he attended.¹⁵⁰

His grandson added that his grandfather's interests extended to the more pedestrian joys of life. Belknap enjoyed supervising the planting and harvesting of fruits and vegetables on his farm on Connecticut, and he was "delighted" by small discoveries like Reddi-whip in a can (which he called "the cat's meow") and Beatles records.

Chauncey Belknap died of cancer on January 24, 1984 at the age of ninety-two. His legacy included a series of small but important lessons learned from Justice Holmes, lessons that he constantly shared with his family: make good use of small bits of time, always have something in your pocket to do, and don't wait aimlessly at the train station.¹⁵¹ Belknap also lived up to the advice that Holmes offered all of his clerks—living is an end, not a means to an end, and you must make sure that you take a good "whack" at your brief time and fully function before your little swirl of electrons dissipates back into the mysterious cosmos.

ENDNOTES

¹ The most extensive discussion of the diary appears in an article by Scott Messinger, who focuses solely on Belknap's clerkship experience. I. Scott Messinger, "The Judge as Mentor: Oliver Wendell Holmes, Jr. and His Law Clerks." *Yale Journal of Law & the Humanities*, Volume 11, no. 1 (1999) [pp. 119–152]. The diary is also referenced in Brad Snyder, **House of Truth: A Washington Political Salon and the Foundations of American Liberalism** (Oxford University Press, 2017) and Thomas Healy, **The Great Dissent: How Oliver Wendell Holmes Changed His Mind—and Changed the History of Free Speech** (Metropolitan Books, 2013).

² Fredericka Belknap would attend Barnard College. From 1929 to 1954 she held the position of director of the personnel bureau at the New Jersey College for Women. “Wayne Woman Gets College Post,” *The Philadelphia Inquirer*, August 16, 1954.

³ Interview with Barbara Belknap.

⁴ Oral History of Chauncey Belknap, New York Bar Foundation Project, April-May, 1975.

⁵ “300 Get Degrees from Old Princeton: William Dean Howells and G.H. Palmer are Now Doctors of Literature,” *Evening Star* (Baltimore, Maryland), June 11, 1912.

⁶ **The House of Truth**, 102.

⁷ *Id.*

⁸ Oral History, 7.

⁹ *Id.* at 10.

¹⁰ *Id.*

¹¹ **House of Truth**, 2.

¹² *Id.* at 102.

¹³ “Montgomery B. Angell Is Dead: Senior Partner in Law Firm, 70,” *The New York Times*, November 27, 1959.

¹⁴ Oral History, at 15.

¹⁵ “Frances N. Hart, Fiction Writer, 53,” *The New York Times*, October 26, 1943.

¹⁶ **House of Truth**, at 102.

¹⁷ Todd C. Peppers. “The Mystery of Charles Kennedy Poe.” *Supreme Court Historical Society Quarterly* Vol. XXXI, No. 3 (2009): at 6-9.

¹⁸ Oral History, at 16.

¹⁹ *Id.* at 17.

²⁰ *Id.* at 15-16. Cherry bounce is a brandy-based drink.

²¹ *Heim v. McCall*, 239 U.S. 175 (1915), *Truax v. Raich*, 239 U.S. 33 (1915), and *Gegiow v. Uhl*, 239 U.S. 3 (1915).

²² *Stettler v. O’Hara*, 243 U.S. 629 (1917).

²³ *Steinfeld v. Zeckendorf*, 239 U.S. 26 (1915).

²⁴ *Penn. R.R. Co. v. Jacoby*, 242 U.S. 89 (1916).

²⁵ *Seven Cases of Eckman’s Alterative v. United States*, 239 U.S. 510 (1916).

²⁶ *New York v. Sage*, 239 U.S. 57 (1915).

²⁷ Ezra Ripley Thayer was the Dean of Harvard Law School from 1910 to 1915. The law school was rocked by his suicide in the fall of 1915.

²⁸ Walbridge A. Field, Chief Justice of the Massachusetts Supreme Judicial Court from 1890 to 1899.

²⁹ John Henry Wigmore was the Dean of Northwestern Law School and a noted legal scholar. He wrote **Wigmore on Evidence**, published in 1904.

³⁰ Emmanuel Kant and Rudolf von Jhering, eighteenth- and nineteenth-century German philosophers.

³¹ The Willard Hotel, now the Willard Intercontinental Washington.

³² Thaddeus Austin “Thad” Thomson, Jr., was a graduate of the United States Naval Academy. In 1915, he was stationed at the Naval Gun Factory, Naval Yard in

Washington, D.C. Shoemaker possibly refers to James Marshall Shoemaker of Montana, who was a 1915 graduate of the Naval Academy.

³³ Traditionally, the purchase of alcohol has been restricted by Blue Laws on Sundays in certain jurisdictions. These restrictions were repealed in Washington, D.C. in 2013.

³⁴ Mrs. Harrison is probably the wife of George Harrison, who clerked for Justice Holmes the previous Term.

³⁵ Frank Brett Noyes, Frances Noyes’s father, was the president of the Evening Star Newspaper Company and founded the Associated Press, later becoming its president as well.

³⁶ Lord Chief Justice of England, Baron Reading’s visit was noted in the *Washington Post* on October 14, 1915. Lord High Chancellor Herschell sat with the Supreme Court in 1883. Lord Chief Justice Coleridge sat with the Supreme Court in 1889.

³⁷ The British Ambassador from 1912 to 1918 was Sir Cecil Spring Rice.

³⁸ The Belasco Theatre, formerly the Lafayette Square Opera House, was built in 1895 at the current site of the U.S. Court of Federal Claims building.

³⁹ A long coat with a top layer like a short cape, popular during this time.

⁴⁰ Also known as **The Symposium**; Percy Shelley’s translation calls it **The Banquet**.

⁴¹ James J. Hill built a vast network of railroads across the United States Hill authored **The Trust: Its Book** (which he co-authored, about taxation law) and **Highways of Progress**.

⁴² 239 U.S. 3 (1915).

⁴³ David Lawrence graduated from Princeton in 1910 and became a prolific journalist, covering eleven Presidents.

⁴⁴ As a member of the Twentieth Massachusetts Volunteer Infantry, Holmes took part in the Battle of Ball’s Bluff on October 21, 1861 in Loudon County, Virginia. It was a disastrous encounter for the Union Army in general and the Twentieth Massachusetts in particular, as Holmes’ regiment suffered significant losses. First Lt. Holmes himself was initially hit by a spent bullet and later shot in the chest.

⁴⁵ Felix Adler, **The World Crisis and its Meaning** (D. Appleton, 1915).

⁴⁶ Johann Wolfgang von Goethe, German writer and statesman.

⁴⁷ President William Howard Taft had appointed Justices Hughes, Lamar, Lurton, Pitney, Van Devanter, and White.

⁴⁸ *Steinfeld v. Zeckendorf*, 239 U.S. 26 (1915).

⁴⁹ Translated, “Do not gloss the Statute; we understand it better than you do for we made it.” Y.B. 33 Ed. I. Mich., Rolls Ed., 83. Holmes did use this quote in his opinion in the *Steinfeld* case. *Steinfeld* at 30. “Fred Pollock” is a reference to Sir Frederick Pollock, a British jurist and

historian with whom Holmes maintained a long correspondence.

⁵⁰ Walter Bagehot, **Physics and Politics** (1872).

⁵¹ Roscoe Pound was a critic of the Supreme Court's "freedom of contract" line of cases and an influential legal educator who became dean of Harvard Law in 1916.

⁵² *United States Fidelity and Guaranty Co. v. Riefler*, 239 U.S. 17 (1915).

⁵³ The case is *Stettler v. O'Hara*, 243 U.S. 629 (1917). It was first argued before the Court on December 16, 1914, and was restored to the docket for re-argument on June 12, 1916. It was again reargued on January 18, 1917. Holmes originally drafted a dissent that he shared with Belknap (see November 22, 1915 diary entry). The Court decided the case in April 1917. Because Justice Brandeis had been involved in the case as an attorney, he did not take part in its consideration. The result was an equally divided Supreme Court, which meant that the Oregon Supreme Court's original holding, which upheld the constitutionality of the minimum wage law in question, prevailed.

⁵⁴ Likely Oliver Wendell Holmes, **Speeches** (Boston: Little, Brown & Co., 1900).

⁵⁵ *New York v. Sage*, 239 U.S. 57 (1915).

⁵⁶ *Truax v. Raich*, 239 U.S. 33 (1915).

⁵⁷ Belknap may have written the essay "Freedom of Contract Under the Constitution" (no author identified), which appears in the March 1915 issue of the *Harvard Law Review*. The essay references *Raich* along with the New York alien labor law case.

⁵⁸ Belknap perhaps uses "sister" here to mean "fellow woman," as Frances's only sister, Ethel, is Mrs. Lewis.

⁵⁹ Paul Verlaine, a French poet who died in 1896, authored the *Grotesques*.

⁶⁰ Latin: a goal, object, or course of action.

⁶¹ *Penn. R.R. Co. v. Jacoby*, 242 U.S. 89 (1916).

⁶² Justice Henry Billings Brown served as an Associate Justice of the Supreme Court from 1890 to 1906.

⁶³ **The King's English** was written by Henry Watson Fowler and Francis George Fowler and first published in 1906 by Clarendon Press.

⁶⁴ *Missouri v. Holland*, 252 U.S. 416 (1920), dealt with the Migratory Bird Treaty Act of 1918, but this unidentified earlier case appears to be laying the domestic groundwork for that major decision.

⁶⁵ These cases addressed the application of the Constitution to the United States territories acquired as a result of the 1898 Treaty of Paris. They included: *De Lima v. Bidwell*, 182 U.S. 1 (1901); *Goetze v. United States*, 182 U.S. 221 (1901); *Dooley v. United States*, 182 U.S. 222 (1901); *Armstrong v. United States*, 182 U.S. 243 (1901); *Downes v. Bidwell*, 182 U.S. 244 (1901); *Huus v. New York & Porto Rico Steamship Co.*, 182 U.S. 392 (1901).

⁶⁶ By its own force or vigor.

⁶⁷ *Northern Securities Co. v. United States*, 193 U.S. 197 (1904), dissolved a company formed by the stockholders of the Great Northern and Northern Pacific railroad companies, which had essentially formed a monopoly. Although the Supreme Court ruled as Roosevelt wanted, he was infuriated by Holmes's dissent.

⁶⁸ Philander C. Knox served as U.S. Attorney General from 1901-1904, a Pennsylvania senator (1904-1909, 1917-1921), and Secretary of State (1909-1913).

⁶⁹ **Marius the Epicurean** by Walter Pater. Belknap had written about this book in the previous entry: "I spent most of the afternoon and evening over *Marius*; not the least noteworthy feature of the book is the interest which Walter Pater arouses in the bare story of a mental and spiritual life. It is more a philosophic essay than a piece of fiction."

⁷⁰ Norman Hapgood (Harvard Law School Class of 1893) was a journalist, writer and editor. Thurlow Gordon (Harvard Law School Class of 1911) maintained a long correspondence with Holmes; in 1912, Gordon was a special assistant to the Attorney General. Robert Szold, a young attorney, worked as assistant to Solicitor General John W. Davis from 1915-1918. George Rublee helped establish the Federal Trade Commission and played a prominent role in international affairs.

⁷¹ William Leavitt Stoddard graduated from Harvard with a degree in journalism 1908, was a member of the War Labor Board during World War I, and authored books on writing and Shakespeare.

⁷² George M. Trevelyan was a British historian who later taught at Cambridge and Trinity University.

⁷³ Lester Ward, American botanist and sociologist, wrote **Outlines of Sociology** in 1898.

⁷⁴ Edward Alsworth Ross, American sociologist and eugenicist.

⁷⁵ John Drew was a famous actor of the time as well as an uncle to fellow actor John Barrymore.

⁷⁶ Henry Bourne Higgins, "A New Province for Law and Order: Industrial Peace through Minimum Wage and Arbitration," *Harvard Law Review* Vol. 29 (1915): 13-39.

⁷⁷ *Stettler v. O'Hara*, 243 U.S. 629 (1917).

⁷⁸ 198 U.S. 45 (1905).

⁷⁹ Thomas "Tad" Lincoln was the fourth son born to Abraham and Mary Lincoln.

⁸⁰ See October 11, 1915 diary entry; *Heim v. McCall*, 239 U.S. 175 (1915).

⁸¹ Melville Fuller was Chief Justice of the Supreme Court from 1888 to 1910. His daughter married Hugh Campbell Wallace, who became Ambassador to France from 1919-1921.

⁸² *Reese v. Philadelphia & R. R. Co.*, 239 U.S. 463 (1915). Justice McReynolds wrote the opinion for the Court affirming the judgment below finding the railroad not liable for the death of an employee.

⁸³ This petition had 500,000 signatures; it would be five more years before Congress passed the 19th Amendment in 1920, granting women the right to vote.

⁸⁴ In 1913, Wilson became the first President since President John Adams in 1800 to deliver his State of the Union message in a spoken address to Congress. President Thomas Jefferson began a 112-year tradition of sending a written letter rather than giving a speech.

⁸⁵ Joseph Cannon, an Illinois Representative and former Speaker of the House, served for forty-six years in Congress.

⁸⁶ James R. Mann, an Illinois Representative from 1911-1919, was the Minority Leader of the House.

⁸⁷ Champ Clark, a Missouri Representative, was the Speaker of the House.

⁸⁸ Lindley Garrison, Secretary of War; William McAdoo, Secretary of the Treasury, married to Woodrow Wilson's daughter, Eleanor Randolph Wilson; Josephus Daniels, Secretary of the Navy; W.C. Redfield, Secretary of Commerce; David F. Houston, Secretary of Agriculture; and William B. Wilson, Secretary of Labor.

⁸⁹ Henry Cabot Lodge was a Senator from Massachusetts for over thirty years; John Kern was a Senator from Indiana from 1911-1917.

⁹⁰ Oscar Underwood, Alabama senator from 1915 to 1927.

⁹¹ James Paul Clarke was an Arkansas senator and the president *pro tempore* of the Senate.

⁹² Tom Miller was a Representative for Delaware from 1915-1917. He served in World War I and later in the administration of President Warren G. Harding, but was convicted in 1927 of conspiring to defraud the U.S. Government.

⁹³ Meyer London, a New York Representative from 1915 to 1919, was one of two Socialist Party members elected to Congress. Lawrence Todd, an American journalist best known for serving as a correspondent for a Soviet news agency for three decades beginning in the 1920s, was London's personal secretary from 1915 to 1916.

⁹⁴ David Warfield, American stage actor under Belasco management. Vander Decken was the first captain of the *Flying Dutchman*; Belasco's play was inspired by the legend.

⁹⁵ Frederick Pollock, **Introduction to the History of the Science of Politics** (Macmillan and Company, 1895).

⁹⁶ *Ex parte Uppercu*, 239 U.S. 435 (1915).

⁹⁷ *Marbury v. Madison*, 5 U.S. 137 (1803).

⁹⁸ Arthur Dehon Hill was a well-known attorney in Boston, a friend of Holmes and, later, Frankfurter.

⁹⁹ Translated as **The Hunchback of Notre Dame**, by Victor Hugo.

¹⁰⁰ *Bushwa* was an informal word for rubbish or nonsense circa 1915-1920.

¹⁰¹ Nicholas Longworth, Ohio Representative; Joseph W. Fordney, Michigan Representative; Franklin Wheeler

Mondell, Wyoming Representative; and James Mann, Illinois Representative and House Minority Leader.

¹⁰² Charlie Storey graduated from Harvard in 1912 and from Harvard Law School in 1915. He was working at the Justice Department, and Belknap saw him frequently. However, Charlie was married and did not have the same social freedom as did Belknap. Moorfield Storey, Charlie's father, had served as president of the American Bar Association in 1896 and became the first president of the National Association for the Advancement of Colored People (NAACP) in 1909.

¹⁰³ Gideon Welles was Secretary of the Navy from 1861-1869.

¹⁰⁴ William H. Seward was Secretary of State from 1861-1869. *Piquant bon mots*: anecdotes.

¹⁰⁵ Helen Taft was the wife of William Howard Taft and the First Lady from 1910-1913.

¹⁰⁶ The Drapers lived at 1705 K Street.

¹⁰⁷ Sophie Johnston or Johnstone appears throughout the diary. She is likely the wife of James M. Johnston, an 1870 graduate of Princeton University who later worked at Riggs & Company.

¹⁰⁸ *Stettler v. O'Hara*, 243 U.S. 629 (1917). The opinion referred to in the diary entry was not printed because the Court was equally divided. See note 53 above.

¹⁰⁹ This was the Montsweag Farm Breakfast, named for Butler's farm in Maine. Over 100 men attended the breakfast. The guests of honor were delegates to the Pan-American Scientific Congress. Menus were printed in Spanish and accompanied by sketches of the Montsweag Farm and contiguous territory. *The Washington Post*, January 2, 1916. Butler wrote **A Century at the Bar of the Supreme Court of the United States** (G.P. Putman's Sons, 1942), discussing his experiences with the Court, including his stint as Reporter of Decisions from 1902 to 1916.

¹¹⁰ Carlos Octavio Bunge came from a distinguished Argentinian family. His sister, Delfina, was a writer and philanthropist. His brother, Roberto, was a leader of the Socialist party. Bunge was a highly regarded intellectual whose contributions to science in the early twentieth century were primarily in the area of psychology.

¹¹¹ "President Expected to Name Successor to Lamar at Once," *The Washington Times*, January 3, 1916.

¹¹² Horace Lurton served as an Associate Justice from 1909 to 1914. He was sixty-five years old when he was confirmed, making him the oldest Justice at the time of his appointment in the history of the Court.

¹¹³ Rufus Peckham sat on the Supreme Court from 1896 to 1909.

¹¹⁴ John Marshall Harlan sat on the Supreme Court from 1877 to 1911.

¹¹⁵ Stephen J. Field sat on the Supreme Court from 1863 to 1897. Holmes may be referring to John Wells, who sat on the Massachusetts Supreme Court from 1866 to 1875.

¹¹⁶ Horace Gray sat on the Supreme Court from 1882 to 1902.

¹¹⁷ Alfred Eckhard Zimmern was a British classical scholar and historian.

¹¹⁸ *Seven Cases of Eckman's Alternative v. United States*, 239 U.S. 510 (1916).

¹¹⁹ Charles Devens was an associate justice of the Massachusetts Supreme Judicial Court and Attorney General under Rutherford B. Hayes during the late nineteenth century.

¹²⁰ Marcus Morton was chief justice of Massachusetts Supreme Judicial Court from 1882 to 1890.

¹²¹ John Slidell was a former Louisiana senator and a staunch defender of Southern rights. During the war, Slidell and James Murray Mason were captured by the United States Navy shortly after they embarked on a diplomatic mission to England aboard the *RMS Trent*. International anger over their capture in violation of maritime law led to their eventual release.

¹²² Gustave Le Bon was a French psychologist and author.

¹²³ Herbert Henry Asquith, 1st Earl of Oxford and Asquith, was the Liberal Prime Minister of Great Britain from 1908-1916.

¹²⁴ United Kingdom slang for "drunk."

¹²⁵ Because of his involvement in the case, Justice Brandeis ultimately recused himself from the Court's decision. See notes 53 and 108 above.

¹²⁶ Holmes turned seventy-five on March 8, 1916.

¹²⁷ *Strauss v. Notaseme Hosiery Co.*, 240 U.S. 179 (1916). Holmes did ultimately write the opinion of the Court in this case about whether defendants were liable for infringement or unfair competition for imitating an unregistered, and therefore unprotected, trademark.

¹²⁸ 234 U.S. 548 (1914). The cases were argued October 15, 1913, but not decided until June 22, 1914. Addressing a series of specific issues, the Pipe Line cases considered the constitutionality of the Hepburn Act, which regulated corporations and persons engaged in the interstate transportation of oil. The Court upheld the law as constitutional because the interstate transportation of oil constituted interstate commerce.

¹²⁹ *The Baltimore Sun*, February 5, 1916. The newspaper reports that more than 2,000 people attended the event.

¹³⁰ Oliver "Ollie" James, Senator from Kentucky

¹³¹ Notably, Daniels relied heavily on his Assistant Secretary, Franklin Delano Roosevelt, to help manage the day-to-day affairs of the Navy.

¹³² His father's popular written account of his search for his injured son.

¹³³ Dorothy Kirchwey Brown was the daughter of George Washington Kirchwey, a Columbia professor

who served as the warden of Sing Sing from November or December 1915-July 1916. He replaced and was in turn replaced by Thomas Mott Osborne, a millionaire and prison reformer who voluntarily served a sentence in Auburn and whose reforms led to political unpopularity such that an inmate (one who benefited from the rampant corruption within the prison system) was able to instigate an investigation that led to the indictment of Osborne. The indictment was later discharged, restoring Osborne to his position as warden.

¹³⁴ Lewis Einstein, American historian and diplomat, went to Bulgaria in 1915 and published a book in 1918 about the Ottoman Empire and anti-Armenian atrocities. He also had a long-time correspondence with Justice Holmes.

¹³⁵ Paul Warburg, born in Germany, moved to New York in 1902 and became a successful banker. Warburg wanted to reform the banking system and was appointed to the Federal Reserve Board in 1914.

¹³⁶ Belknap later described Justice McReynolds as "thoroughly lazy." Oral History, at 47. He added that, at the end of October Term 1915, Holmes had to write several opinions originally assigned to McReynolds.

¹³⁷ *Ackerlind v. United States*, 240 U.S. 531 (1916).

¹³⁸ Probably a reference to bearer bond coupons.

¹³⁹ Oscar Wilde's play about marital faithfulness and family loyalty.

¹⁴⁰ Belknap had been reading a novel by George Meredith, a Victorian era British writer, a few days earlier.

¹⁴¹ *Kelly v. Griffin*, 241 U.S. 6, 13 (1916).

¹⁴² John Chipman Gray was a Massachusetts lawyer and Harvard legal scholar and professor. He was half-brother to Supreme Court Justice Horace Gray.

¹⁴³ *Harvard Law Review*, Volume 29, Issue 6 (April 1916).

¹⁴⁴ Eugen Ehrlich was an Austrian legal scholar and sociologist of law.

¹⁴⁵ Prince Rupert's drops result when molten glass is dropped into cold water, forming tear-shaped hardened glass. The teardrop itself will withstand the blow of a hammer, but if the tail of the tear is even slightly damaged, the whole tear will shatter.

¹⁴⁶ Barbara Belknap interview

¹⁴⁷ Oral History, 23.

¹⁴⁸ David Margolick, "Chauncey Belknap, Lawyer, Dies: Led One of the Largest Firms in City." *The New York Times*, January 25, 1984.

¹⁴⁹ Barbara Belknap interview

¹⁵⁰ Interview with Gilles Carter.

¹⁵¹ Barbara Belknap interview.