



THE SUPREME COURT HISTORICAL SOCIETY

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Society Plans 6th Annual Meeting

On Monday, May 18th, the Society will hold its Sixth Annual Meeting in Washington, D.C. Ralph Becker, serving once again as Chairman of the Annual Meeting Committee reports that plans are well under way to make this year's meeting the best ever.

As in past years, the Annual Lecture will be delivered at 2:00 PM in the Restored Supreme Court Chamber in the Capitol. The speaker this year is Professor George L. Haskins, Biddle Professor of Law at the University of Pennsylvania. Co-author of a volume on John Marshall in the Oliver Wendell Holmes Devise *History of the Supreme Court of the United States*, Professor Haskins will discuss aspects of Marshall's tenure as the fourth Chief Justice of the United States.

The annual meeting of the Board of Trustees will be held in the Supreme Court Chamber, followed by the annual meeting of the general membership beginning at 6:30 PM. A special tour of the Supreme Court building will be available for interested members and guests, and will begin in the Great Hall at 5:30 PM. The tour will include the Library, the Justices' Conference Room and Dining Room. In addition, a short film on the Supreme Court will run continuously in the theater on the ground floor throughout the afternoon.

The annual reception will begin at 7:00 PM in the East and West Conference Rooms, with dinner being served promptly at 8:00 PM in the Great Hall. Chamber music will be provided by members of the United States Marine Corps Band, and a program will follow by the United States Navy "Sea Chanters."

Within the next several weeks, every member will receive an invitation and program with further details. Members are advised that due to the limitations of the Great Hall, reservations for the reception and dinner will be limited. Beginning on Monday, April 20 reservations will be confirmed as checks are received, on a first-come first-served basis, with no

more than four reservations being accepted per member. Additional information concerning reservations may be obtained from the office of the Executive Director (202) 347-9888.



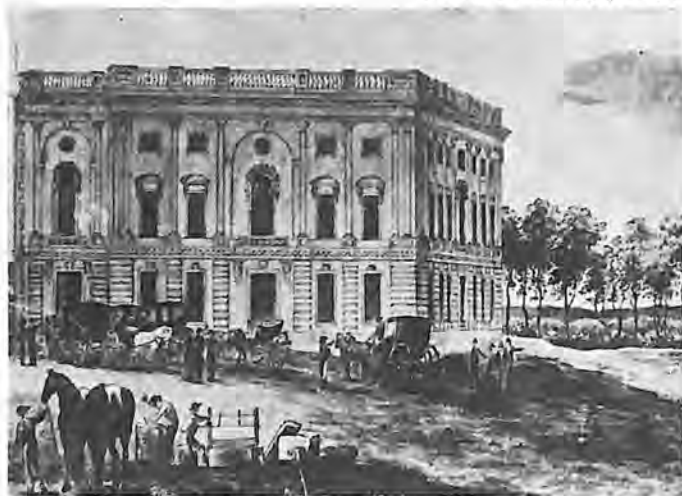
John Marshall of Virginia, the fourth Chief Justice of the United States, will be the subject of this year's annual lecture. William Wetmore Story, a nephew of Marshall's great friend Justice Joseph Story of Massachusetts, captured "the great Chief Justice" in a characteristic pose in this statue on the West front of the Capitol.

Residences of the Court: Past and Present

Part II: The Capitol Years

By an Act of Congress the Capitol of the United States was moved from Philadelphia "to the District and place aforesaid [Washington, D.C.] on the first Monday in December, in the year one thousand eight hundred." The first unit of the Capitol building, known as the north or Senate wing, was ready for occupancy by the various departments of the government in the fall of 1800, and the Congress held its first joint session in the new building on November 22, 1800. President John Adams had taken up residence in the President's Mansion — to become better known as the White House — earlier that month. However, two months were to pass before consideration was given to where the Supreme Court would meet. Suitable space

Courtesy of the Library of Congress



The Capitol's north wing was all that was completed when the Court held its first session in the new capital city in Feb. 1801. was very limited in the new capital city, and no particular space had been planned to accommodate the Court. On the same day that President Adams submitted to the Senate his nomination of John Marshall to be Chief Justice of the United States, the Commissioners of the City of Washington wrote to the Senate and House of Representatives requesting "that an arrangement may be made for the accommodation of the Supreme Court of the United States in the Capitol." The next day, January 21, 1801, the Senate resolved that the Secretary of the Senate be directed to inform the Commissioners that "the Senate consents to the accommodation of the Supreme Court in one of the committee rooms, as proposed in their letter." The House of Representatives agreed to this arrangement several days later. On February 2, 1801, the Court sat for the first time in Washington, D.C., and joined the Senate, House of Representatives, Library of Congress and Circuit Court for the District of Columbia as tenants of the Capitol building, which measured a little less than 125 square feet and only three stories high.

The first room assigned to the Court was a small

room on the ground floor in the southwest corner of the building. The Architect of the Capitol, Benjamin Henry Latrobe, described the room to President James Madison as "a half-finished committee room, meanly furnished and very inconvenient." In these barely adequate quarters, John Marshall took the oath of office as the fourth Chief Justice of the United States on February 4, 1801.

Building the Capitol's south wing for the House of Representatives demanded most of Latrobe's attention until 1807. When it was completed and the Representatives had moved into their elegant new chamber, Latrobe proposed extensive modifications for the original north wing, including construction of a chamber specifically designed for the Supreme Court. Besides extensive structural repairs necessitated by already serious deterioration resulting from unusually poor construction, Latrobe suggested moving the Senate Chamber from the ground floor to the first floor, thereby placing it on the same level as the House of Representatives' Chamber in the South wing. The Supreme Court would be located directly below, in the original Senate Chamber, the site of Congress' first joint session in Washington and of the Presidential inaugurations of Thomas Jefferson.

Certain factions in the capital city opposed Latrobe's plan. Although the initial decision of the Commissioners to accommodate the Court in the Capitol building was viewed as necessary and expedient under the circumstances, the idea of a permanent chamber in the Capitol rekindled regional jealousy that had developed between the northwest section of Washington and Capitol Hill. The northwest advocates argued that under L'Enfant's original plan for the city, the Executive Department of the government was to be located at the western end of Pennsylvania Avenue, the Legislative at the eastern end, and the Judicial somewhere in the middle. They insisted that the Court be relocated to permanent quarters at Judiciary Square. They accused Latrobe of misrepresenting President Jefferson's wishes by proposing to build a permanent courtroom in the Capitol. Despite considerable controversy, the new construction went ahead as planned.

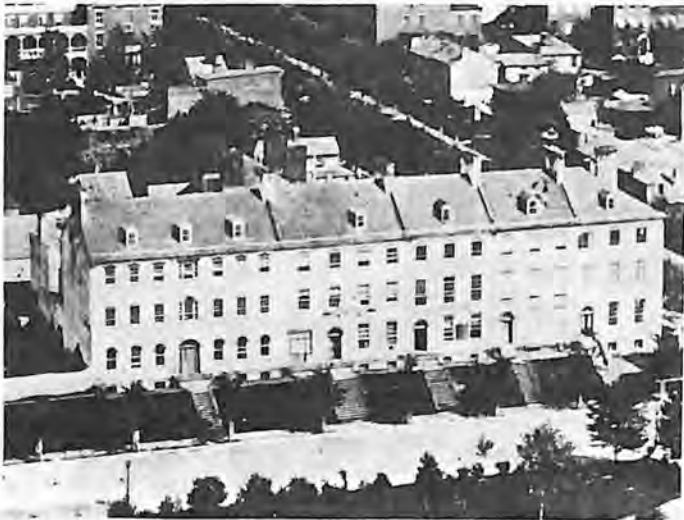
In 1808, the work of remodeling the west side of the Senate wing required the Court to vacate its ground floor chamber. Accordingly, the February Term, 1808 was held in the Capitol Library, formerly occupied by the House of Representatives. The work on the new chamber did not proceed without difficulties; John Lenthall, the construction superintendent, was killed when shoring supporting the new vaulted ceiling was prematurely removed, causing the floor of the Senate Chamber to collapse. Latrobe redesigned the ceiling and by August, 1809 the massive vault was rebuilt on

an even more ambitious scale, described by its architect as "one of the most extraordinary ever attempted as to span and altitude . . . supported by less strength of walling than any other arch in ancient or modern times." Cost overruns were also a constant problem and Congress was slow to appropriate sufficient funds to complete the project.

In a letter dated September 6, 1809, Latrobe informed President James Monroe that "during the Session of the Supreme Court last spring (1809) the Library became so inconvenient and cold that the Supreme Court preferred to sit at Long's Tavern." During the Court's February Term, which began February 6 and ended March 15, the justices sat in the cozy tavern located on First Street between Capitol and "A" Streets (where the Library of Congress now stands) just across from the cold and drafty Capitol. The northernmost in a row of five houses constructed by Daniel Carroll of Duddington, and known as "Carroll's Row," Long's Tavern was also the site of the inaugural ball given for President Madison on the night of March 4, 1809.

On February 5, 1810, the Supreme Court met for the first time in a chamber specifically designed for its use. Although the Court was still obliged to share its quarters with the Circuit Court, conditions were con-

Courtesy of the Library of Congress



Fleeing the cold and damp of their improvised Capitol quarters, the Court sat across the street at Long's Tavern, the portion of "Carroll's Row" shown on the far right, above.

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Assistant Editor David T. Pride

siderably improved. An excellent description of the courtroom in 1810 was provided by Charles Jared Ingersoll:

"Under the Senate Chamber is the Hall of Justice, the ceiling of which is not unfaucifully formed by arches that support the former. The judges in their robes of solemn black are raised in seats of grave mahogany, and below them is the bar: and behind that an arcade still higher so contrived as to afford auditors double rows of terrace seats thrown in segments around the traverse arch under which the Judges sit."

The Court had barely settled into the new accommodations, when the War of 1812 broke out. Life in Washington went on peacefully for months; "Mrs. Madison and a train of ladies" visited the Supreme Court in early 1814. That summer, however, the British marched on Washington, and on August 24th set fire to the government buildings. Returning to Washington to supervise reconstruction of the Capitol which the British had left a "magnificent ruin," Latrobe wrote the following after surveying the damage:

"Great efforts were made to destroy the courtroom, which was built with uncommon solidarity, by collecting into it, and setting fire to, the furniture of the adjacent rooms. By this means the columns were cracked exceedingly, but it still stood and the vault was uninjured. It was, however, very slenderly supported, and its condition dangerous."

Once more, the Court was forced to find other quarters for the February Term, 1815. During the restoration, space was rented in a building owned by Daniel Carroll in which the February Term of 1815 was held. Later known as the Bell Tavern, the four-story brick dwelling was located on the west side of New Jersey Avenue (where the House Office Building Annex now stands). It was reported as poorly suited for a courtroom, "uncomfortable, and unfit for the purpose for which it was used." In 1817, the Court returned to a temporary chamber in the partially restored Capitol for its February Term. The space was

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Courtesy of the Library of Congress



In August, 1814, the British occupied Washington and set fire to its public buildings. The Capitol was left a "magnificent ruin."

Court Residences *(continued)*

heated by a "ten plate stove" costing twenty-eight dollars.

The Supreme Court Chamber was finally ready for the February session of the Court in 1819. The *National Intelligencer* reported on February 1, 1819 that it was "highly pleased to find that the Court Room in the Capitol is in a state fit for the reception of the Supreme Court." Latrobe's design for the rebuilt chamber was dominated by a handsomely detailed, lobed half-dome, variously described as an "umbrella vault" or "pumpkin shell." Architectural historians of the period found the vault "a bold conception...entirely unprecedented in shape and design"; however, one visitor was less impressed. After describing the vault, which "seemed ready to burst under the weight of the entire building," and the "low-brow roof and short columns," he stated that "the judgment hall" appeared modeled after "the Prison of Constance in Marmion." Chief Justice Marshall presided over the Court in this rather dark and damp chamber for sixteen years until his death in 1835, and many of the greatest cases to have come before the Court were argued under its massive vaulted ceiling. Roger Brooke Taney succeeded Marshall in the center chair under Labrobe's massive triple arch.

In 1860, the Court moved upstairs to the Senate Chamber vacated by the Senate in favor of an enlarged chamber in the new north wing. Located on the east side of the main corridor linking the Rotunda with the new Senate Chamber, the Old Senate Chamber had much better lighting and ventilation than the Supreme Court Chamber directly beneath it. With its columns of native Potomac marble, gray painted walls, and mahogany furnishings, the room provided an environment of simple dignity entirely appropriate for its new tenants. Refurbished with red draperies and carpeting for the Court, the chamber enhanced the Court's growing reputation as one of the three branches of the national government.

On November 6, 1898, the Court was once again forced to find temporary quarters when a gas explosion caused considerable damage to the original section of the Capitol. The reconstruction took over two years to be completed, with the Court holding several terms in the Senate Judiciary Committee Room before returning to its chambers in December, 1901. There the Court remained until June 3, 1935, the date of its final session in the Capitol.

Courtesy of the Curator for the Architect of the Capitol



The Court's restored ground floor chamber was dedicated in May, 1975, and serves as the site of the Society's annual lecture.

Courtesy of the Curator for the Architect of the Capitol



The Old Senate Chamber after it had been refurbished for use by the Court.

Courtesy of the Library of Congress



During the reconstruction of the Capitol, the original Senate and House wings were restored to their former grandeur.

Where the Judges Lived

In the early 1800's, the new capital city of Washington was little more than a town of muddy streets and "small miserable huts," located on the Potomac a mile or two north of Alexandria and south of Georgetown. Described by Jefferson as "hills, valleys, morasses and waters," the city's most prominent feature was the half-completed Capitol building on Jenkins Hill. At the other end of what would become in time Pennsylvania Avenue stood the President's Mansion, surrounded by trees. The land between was little more than a bog — low swampy land laced with canals and drainage ditches. Planned for the future rather than the present, L'Enfant's sweeping design for the city, patterned in part on the splendid expanses he had seen at Versailles, would take decades to complete.

The stark and primitive conditions of Washington in 1800 stood in sharp contrast to the sophisticated and cosmopolitan environment of New York and Philadelphia, both former capital cities of the new republic. There were few private residences of any size within a convenient distance of the new government buildings. Many Congressmen and Senators, among the country's most prominent citizens, travelled to Washington alone, unwilling to subject their families to the bleak circumstances of the new capital. Boarding houses and hotels were quickly thrown up to accommodate transient government officials during the legislative session, and many quickly acquired the characteristics of fraternity houses. A Washingtonian could, during those days, be identified politically by his lodgings.

Not surprisingly, the justices of the Supreme Court also followed this pattern of seeking communal accommodations. As early as 1801 when John Marshall of Richmond took the oath of office as Chief Justice, and continuing well into the 1840's, the justices boarded together under the same roof at one of the city's boarding houses. The boarding house business had become such a prominent feature of the city that it is understandable why the justices should have preferred such accommodations to the only other alternative, commuting a considerable distance from residences available outside the capital. What is somewhat surprising is that the justices would have chosen to live together as a group. Justice Story, shortly after his appointment to the Court, wrote the following in a letter to a friend dated February 24, 1812:

My brethren are very interesting men, with whom I live in the most frank and unaffected intimacy. Indeed, we are all united as one . . . We moot every question as we proceed, and by familiar conferences at our lodgings often come to a very quick, and I trust, a very accurate opinion, in a few hours.

In a letter to his wife dated March 5, 1812, Story added:

It is certainly true, that the judges here live with perfect harmony, and as agreeably as absence

from friends and families could make our residence.

Although the precise details of each term's accommodations remain in some doubt, it appears from records and correspondence that from 1804 until 1831 all the justices of the Court lived in Washington as a group while attending sessions of the Court.

The most famous boarding house in the city in the early 1800's was the "Indian Queen." Opened in 1804 by William Woodward and appropriately called "Woodward's Tavern," the establishment was located just west of the corner of Pennsylvania Avenue and Sixth Street, Northwest. The tavern was operated by a succession of proprietors, and was eventually renamed the "Indian Queen" by John Davis in 1810. Just prior to the inauguration of President James Monroe in March, 1812, the hotel was purchased by Jesse Brown, who remodelled and enlarged the building, and renamed it "Brown's Hotel." It remained known as "Brown's Indian Queen Hotel" for the next quarter century.

The "Indian Queen" was extremely well located for Congressmen, and at \$1.50 a day for room and board, it became very popular with the justices as well. Historians have concluded that the Marshall Court probably boarded at the "Indian Queen" during the early 1800's. A letter from Justice Story to his wife written in 1827 indicates that the Court had moved from Brown's and was boarding at "Mrs. Rapine's," located on the west side of New Jersey Avenue just south of the Capitol. How long the justices stayed at Mrs. Rapine's boarding house is not clear; however, correspondence between Chief Justice Marshall and Justice Story in the Spring of 1831 reveals that some time prior to 1831, the Court had returned to Brown's. In a letter to Story from Marshall dated May 3, 1831, the Chief Justice wrote:

I am apprehensive that the revolutionary spirit which displayed itself in our circle will, like most revolutions, work inconvenience and mischief in its progress. I believe Mr. Brown does not count on boarding the judges next winter; and if any other arrangement is made it is entirely unknown to me. We have, like most unquiet men, discontented with the things that are, discarded accommodations which are reasonably convenient without providing a substitute.

Justice Story replied on May 29, 1831:

I regret exceedingly, that the Court separated without agreement to go to Brown's, or to some other house together. For my part, I was entirely satisfied with Brown's. I suppose, that we shall be separate, as (I cannot but believe) has been the design of some of our Brethren. I beg you to do me a favor to engage me lodgings in the same house with yourself, if you can do it; & being so near in com-

munication with Washington, I hope this may not give your any great trouble. I think Judge Thompson would be glad to join us, if he goes to Washington alone.

After a period of some considerable consternation, accommodations were acquired at the home of Mr. Tench Ringgold, the United States Marshal. The four story brick residence was located some two miles west of the Capitol, on the corner of what are now "F" and 18th Streets, Northwest. The Congressional Directory for 1832 lists the Court in residence at "T. Ringgold's, west of the War Dept.", but it is unlikely that Justice McLean and Baldwin actually resided there during the term. Although Marshall, who had made the arrangements to move to Ringgold's, was concerned that Justice Story might object to moving such a considerable distance from Capitol Hill, Story wrote to his wife in February, 1832 that his health was quite good and his strength increasing daily, something he attributed to "my increase of exercise by walking to and from the Capitol, which gives me a fair daily journey of more than four miles."

When Ringgold moved his family out of the city in the Fall of 1833, the justices were obliged to find new quarters. With the exception of Justice McLean, they moved back to Capitol Hill, taking rooms together in "Mrs. Dunn's" boarding house, which was located on the north side of "A" Street between North Capitol and 1st Streets, Northwest, now part of the Capitol Park.

Even after the death of Chief Justice Marshall in 1835, the justices continued to live together, staying on for a period of years at Mrs. Dunn's. Some time after 1845, three of the justices broke away from the others to find separate accommodations, and by 1850, the communal mess style of living had disappeared com-

pletely. Although several of the justices continued to take rooms on Capitol Hill, their lodgings after 1850 were always separate from those of other justices.

By the close of the Civil War, Washington was a vastly different city than it had been in 1801. Rows of well-built brick townhouses lined the streets of Capitol Hill as well as other sections of the city, which together with longer sessions of Court encouraged justices to relocate their families and make Washington their permanent home. It would not be many years until the justices and their families would be counted among the most prominent residents of the nation's capital.



Built in 1825 by Tench Ringgold, the four story red brick building now standing at the corner of "F" and 18th Street, Northwest, did not acquire its present appearance until completed by William Thomas Carroll, a grandson of Charles Carroll of "Carrollton." Chief Justice Roger Brooke Taney was a frequent guest of Carroll, who was Clerk of the Supreme Court for many years. From 1896 to 1910, the residence was the home of Chief Justice Melville W. Fuller. Built on land originally owned by Samuel Sprigg, a Governor of Maryland, the house was until quite recently the home of Mrs. Robert Low Bacon.

Courtesy of the Library of Congress



The most famous of the early Nineteenth Century Washington boarding houses was Jesse Brown's Indian Queen Hotel.

Oliver Wendell Holmes, Jr.: A Commemorative Tribute

EDITOR'S NOTE: March 8, 1981 marks the 140th anniversary of the birth of Oliver Wendell Holmes, Jr., an Associate Justice of the Supreme Court of the United States from 1902 until 1932, and the author of The Common Law, published one hundred years ago this month and universally regarded as a classic in the literature of American jurisprudence. The first appointee of the Twentieth Century and the first with a "modern" law degree, Holmes ranks among the greatest jurists to have sat upon the high court. (The Editor acknowledges with gratitude Erika S. Chadbourne, Curator of the Harvard Law School Library, and John Knox, an attorney from Oak Park, Illinois and member of the Society, for their assistance in the preparation of this article.)

Oliver Wendell Holmes, Jr. was born in Boston, Massachusetts on March 8, 1841, the first child of Dr. and Mrs. Oliver Wendell Holmes. A prominent physician, Dr. Holmes was perhaps better known for his literary contributions to the monthly journals of the period, and for his publication of *The Autocrat of the Breakfast Table*. Holmes' maternal grandfather, Charles Jackson, was a distinguished Boston attorney, and Associate Justice of the Supreme Judicial Court of Massachusetts. Related to many of the city's first families, Holmes grew up in an unusually secure and sophisticated environment, enjoying all of the benefits his family's comfortable financial circumstances and social position could bestow.

Upon completion of his preparatory studies at Dixwell's Private Latin School, Holmes followed the family tradition, and enrolled at Harvard College, taking his degree in June, 1861. An unusually serious young man, Holmes studied hard and allowed himself few distractions. In a revealing observation, Dr. Holmes wrote to a friend that his son looked on life "as a solemn show where he is the only spectator." Already a stern critic of his own accomplishments as well as those of others, Holmes supposedly commented to one of his father's admirers that his father might have accomplished something truly first-rate had he not been so popular.

A staunch abolitionist, Holmes was among the first in his class to enlist in the Union Army, joining the 20th Regiment, Massachusetts Volunteers in July, 1861. Though his family was not fully in favor of his enlistment, Holmes went south to join the fighting. Both Holmes and the Regiment served with distinction. Holmes was seriously wounded three times, and by the end of the War, the 20th Regiment Massachusetts Volunteers would be listed among the first half-dozen infantry regiments of the Union Army in the number of men killed or wounded. On October 21, 1861, Holmes was shot in the chest during the battle of Balls Bluff. Returning to his Regiment after a period of several

Courtesy of the Harvard Law School Library



Holmes in 1861 — a Harvard College senior

months, he was shot through the neck on September 16, 1862 at the bloody battle of Antietam. On May 2, 1863, Holmes received a shrapnel wound which almost cost him his leg. Given the state of battlefield medicine during the Civil War, any of these wounds could have been fatal, and Holmes' first-hand experience with sacrifice and survival formed the foundation upon which his mature philosophical position was built.

Returning to active duty in January, 1864, Holmes was assigned as aide-de-camp to Gen. H. G. Wright,

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Courtesy of the Library of Congress

Courtesy of John Knox



Holmes photographed in uniform by his father in 1862 (left) and shortly before his three-year enlistment ended in 1864, wearing the uniform of a Brevet Colonel.

Holmes (continued)

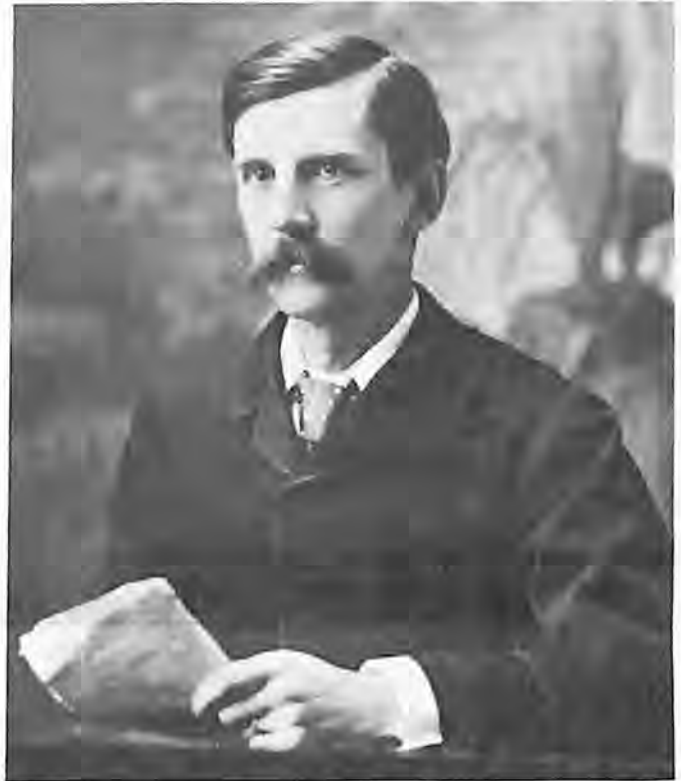
Division Commander, Army of the Potomac. While serving in this position, Holmes was stationed outside the Union capital. One afternoon in the spring of 1864, Holmes reportedly ordered a civilian off an artillery platform, only to discover after barking the blunt command that he was addressing his Commander-in-Chief, President Abraham Lincoln. Lincoln interrupted Holmes' apology, remarking that it was reassuring to find at least one Union officer who knew how to speak to civilians. Holding briefly the rank of Brevet Colonel, Holmes mustered out of the Army on July 17, 1864, ending his three-year enlistment with the permanent rank of Major.

Returning to Boston, Holmes entered the Harvard Law School in September, 1864. Although dissatisfied with his courses, Holmes saw the law as a potentially active outlet for his markedly scholastic and aristocratic tendencies. After taking his degree in June, 1866, he traveled to England and the Continent. The "grand tour" was considered by many to be an essential part of the proper education of a gentleman and Holmes returned from his travels refreshed and invigorated. Summer trips abroad — especially to England, Scotland, and Ireland — would become in later years an important counterpart to Holmes' relentless commitment to his work.

Upon his return to Boston in 1867, Holmes was admitted to practice before the Massachusetts bar on March 4th, only a few days before his twenty-sixth birthday. For the next several years, Holmes practiced law in Boston with his brother, but he grew increasingly dissatisfied with the business of his fledgling practice. In 1870, he became co-editor of the *American Law Review*, writing articles on legal history and helping to supervise the publication of the journal. He also lectured on legal history, constitutional law, and jurisprudence at Harvard College. The income from these activities undoubtedly helped supplement his modest income from legal fees; and, more important, they provided Holmes an opportunity to continue his research and writing in legal history and established his reputation as a promising young scholar.

In June, 1872, Holmes married Fanny Dixwell, the daughter of his childhood schoolmaster. Holmes was thirty-one and Fanny thirty-two. The childless marriage lasted almost fifty years, until Fanny's death in 1929. Perhaps as a result of an increased sense of responsibility, Holmes commenced to practice law more seriously, forming a new partnership with two Boston attorneys, George Otis Shattuck and William A. Munroe. For several years the firm enjoyed a growing reputation, but it is unlikely that Holmes derived much genuine satisfaction from his law practice or ever viewed it as anything but a means of meeting expenses.

More the result of the success of his writing and editing than his practice, Holmes was invited by Bos-



Holmes photographed off the bench not long after his appointment to the Supreme Judicial Court of Massachusetts in 1882.

ton's prestigious Lowell Institute to present the Lowell Lectures on law in 1880. Choosing as his topic the growth and development of the common law, and incorporating and refining ideas from articles he had written for the *American Law Review*, Holmes presented the lectures in November and December. Holmes was so encouraged by the extremely favorable reception to his lectures that he had them published almost immediately as *The Common Law*. Now regarded as a classic in the literature of jurisprudence, the work won for Holmes an immediate and enduring reputation as a serious and gifted scholar. Perhaps more significantly, it gained for "Dr. Holmes' son" a new and independent prominence.

Such recognition was important to Holmes' career, which had been overshadowed until then by his family's name. Publication of *The Common Law* transformed Holmes from a struggling Boston attorney into a nationally recognized legal scholar. Breaking with the static formalism of traditional American jurisprudence, Holmes asserted that "the life of the law has not been logic; it has been experience," and suggested that "the felt necessities of the time has perhaps more to do with the development of the law than syllogistic reasoning. His underlying premise that the law embodied the story of a nation's development through many centuries" focused new attention on the significance of legal history, and introduced an entirely new way of thinking about constitutional law and the role of the courts in shaping it. As a result of the critical success of the work, Holmes received an appointment as a Professor of Law at the Harvard Law School in January, 1882, and an appointment as an Associate Justice

of the Supreme Judicial Court of Massachusetts in December of the same year. He became Chief Justice of that Court on August 2, 1899.

In September, 1902, a vacancy was created on the Supreme Court of the United States upon the death of Associate Justice Horace Gray. Gray was Chief Justice of the Supreme Judicial Court of Massachusetts in 1880 when President Arthur appointed him to the high court. Perhaps for this reason, Holmes' name was on a list of potential candidates considered by President Theodore Roosevelt to replace Gray. Despite Holmes' well established and entirely deserved reputation as a legal scholar and outstanding jurist, Roosevelt was concerned about his politics. The President was adamant that what he wanted was a solid Republican and a loyal and ardent supporter of his progressive politics. Holmes' supporters relied upon Holmes' "Brahmin" status as evidence of his political philosophy, and convinced Roosevelt that any man thrice wounded in the service of his country could be trusted on the Court. Holmes' nomination was confirmed by the Senate on December 4, 1902, and Holmes took his oath of office on December 8, 1902.

Within two years, President Roosevelt came to regret Holmes' appointment. In March, 1904, Justice Harlan delivered the Court's opinion in the *Northern Securities Case*, which had been brought by the government under the Sherman antitrust law against the powerful Hill-Harriman-Morgan railroad monop-

Courtesy of the Harvard Law School Library



Holmes in casual attire during one of his summer trips abroad in the early 1900's.



The study in Holmes' Northwest Washington home.

oly. Although a majority of the justices supported the government's position, Holmes dissented. Roosevelt was incensed, denouncing Holmes as a coward, and concluding in disgust that he "could carve out of a banana a judge with more backbone!"

During his nearly thirty years on the Court, Holmes would prove Roosevelt's conclusion false, demonstrating his courageous independence in case after case. Writing some of his greatest opinions in dissent, Holmes' sophisticated approach to the law and unusual eloquence distinguished him as a master of his craft. Among his most memorable opinions are *Lochner v. New York* (1904): "... the law does not enact Mr. Herbert Spencer's *Social Statics* ... a constitution is not intended to embody a particular economic theory ... It is made for people of fundamentally different views ...;" *Abrams v. U.S.* (1919): "... that at any rate is the theory of our Constitution. It is an experiment as all life is an experiment ...;" and *Gitlow v. New York* (1925): "... every idea is an excitement ... The only difference between the expression of opinion and an incitement is the speaker's enthusiasm for the result. Eloquence may set fire to reason ..."

The hallmark of Holmes' jurisprudence was a fundamental unwillingness to substitute in the guise of constitutional adjudication the wisdom of judges for the wisdom of legislatures. His view was well expressed in a comment he is reputed to have made to an attorney following oral argument in an antitrust case: "Of course I know, and every other sensible man knows, that the Sherman law is damned nonsense, but

—continued, page 10

Holmes (continued)

if my country wants to go to hell, I am here to help it!"

From time to time, Holmes was accused of being a cynic or an atheist. He did not believe in organized religion, and was convinced that if people concentrated less on helping their neighbors and more on improving themselves everyone would benefit. He also believed that in the absence of personal revelation, there was no way for a rational individual to prove the superiority of one moral absolute over that of another. As he stated in one of his opinions, "every year if not every day we wager our salvation upon some prophecy based on imperfect knowledge." An aristocrat "who did not prefer a world with ten million bores to one with ten," Holmes was unusually humble about his own place in the cosmos. Though capable of expressing in unforgettable language the most fundamental tenets of democratic political thought, Holmes was not particularly democratic, having little time for those less gifted or accomplished than himself. Perhaps rightly called "the last Puritan," Holmes exalted the virtue of work, and extolled the importance of a job well done. Remembered by millions as a kindly-looking old man with an enormous mustache, Holmes was a man who took pleasure "just in trying to exhibit some hint of the horizon," and a man for whom the "fighting faith" was sufficient guarantee against "the peril of being judged not to have lived."

Holmes retired from the Court on January 15, 1932 at the age of ninety, his place among the Court's greatest jurists unquestionably secure. He died at his home in Washington, D.C. three years later, only two days before his ninety-fourth birthday. He was buried next to his beloved wife Fanny in Arlington National Ceme-

Courtesy of John Knor



Justice Holmes during the 1920's (left) and in 1930 in front of his summer home in Beverly Farms, Massachusetts.

tary on March 8, 1935, the ninety-fourth anniversary of his birth.

As the final act of a life of dedicated service and devotion to his country, Holmes willed his estate to the United States of America.

Courtesy of the Curator, Supreme Court of the United States



Mr. Justice Holmes — "the mature jurist."

1981 Yearbook Nears Completion

Edited by Professor William Swindler and Dr. Jeffrey Morris, the 1981 *Yearbook* is currently in the final stages of completion, and is scheduled for publication and distribution later this month. In addition to memorial tributes to Mr. Justice William O. Douglas and Mr. Justice Stanley F. Reed, this year's edition includes a special anniversary section dedicated to Charles Evans Hughes, commemorating his appointment as an Associate Justice in 1910 and as Chief Justice in 1930. Also included are articles on the Fuller Court, Judge Florence Allen (the first woman ever seriously considered for appointment to the Court) and General Tomoyuki Yamashita, a Japanese officer in the Second World War who was convicted and executed because he failed to prevent his troops from committing atrocities.

All current members of the Society will receive a copy of the 1981 edition, the sixth in the Society's series of annual journals, as part of their membership benefits. The *Yearbook 1981* and a limited supply of all prior editions may also be purchased at the kiosk or ordered through the Executive Office.