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OLIVER WENDELL HOLMES, JR.: THE JUDGE AS CELEBRITY

By David J. Seipp *

Note: In March 2006 the Supreme Court Fellows Program hosted a panel discussion at Boston University School of Law entitled The Path of the Law in 2006 - Reflections on Justice Oliver Wendell Holmes. The evening began with BU Law Professor Gerry Leonard reading aloud key excerpts from The Path of the Law. The venue was ideal; prior to its publication in the Harvard Law Review, The Path of the Law was first delivered as a speech at BU Law in 1897 to dedicate the law school's new building, Isaac Rich Hall.

Professor Leonard's reading was followed by prepared remarks on the relevance of Justice Holmes's seminal writing for lawyers, judges and scholars today. The judicial perspective was provided by Justice Gary Katzmann of the Massachusetts Appeals Court. Professor David Seipp, who has written extensively on Holmes, offered additional insights, which are reproduced below. The presentations led to a lively audience Q&A with the panelists.

The event was one of several in Boston in which the 2005-06 Supreme Court Fellows participated. Other highlights included a series of substantive meetings on judicial management and related issues with 11 members of the state and federal judiciary. The fellows also were provided with

guided tours of the John Joseph Moakley federal courthouse and the newly-restored John Adams state courthouse, courtesy of the Discovering Justice educational program.

Note written by Dr. David L. Nersessian, Fellow – Supreme Court of the United States (2005-06)



The original Oliver Wendell Holmes, father of the famous Supreme Court Justice.

Oliver Wendell Holmes, Jr., whom we remember at this event as the author of "The Path of the Law," was asked to give that speech here at Boston University in 1897 not because he was a state appellate judge of 14 years' standing, but because he was famous. Oliver Wendell Holmes, Jr., couldn't help it. He was born famous. He was the son and namesake of his famous father, and all through our Holmes's long and illustrious life he was not as well known as his father was. Holmes Senior was a medical doctor, public health reformer, and one-third of the Harvard Medical School faculty, and was much more widely known for his literary merits as a comic poet, droll essayist, and humorous columnist in the

pages of the *Atlantic Monthly*. Everybody knew "The Wonderful One-Hoss Shay," that savage parody on the collapse of Calvinism. Everybody read "The Autocrat of the Breakfast

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A Letter from the President



This past December marked not only the close of another calendar year but also the end of an "era" in Supreme Court research. I hasten to assure you that many scholars are still pursuing research on various topics relating to Supreme Court

history. What I allude to is the successful completion of the Society's Documentary History Project. The manuscript for the eighth and final volume of the series published as the *Documentary History of the Supreme Court: 1789-1800* was submitted to the printer in December 2006.

This landmark Project was undertaken by the Society – then a fledgling historical organization – in the third year of its existence and it became a principal area of focus and the premier research arm of the Society for 30 years. Dr. Maeva Marcus, who has been the project's director and principal editor during the entire period, commenced work in 1977 with the ambitious goal of documenting the history of the first decade of the Court's history. That period was deemed particularly worthy of study as many of the original records had been destroyed in fires during the course of the nineteenth century. In addition to those losses, there had been little formal documentation during the period. The Court had been organized without specific direction or instruction as to how it should accomplish its mandate and the development of operational procedures, effective means of record keeping and other matters of procedure, were not laid out. In many ways, the early Court spent those first years inventing itself from the brief outline provided by the Judiciary Act of 1789, and it did not create many official records of that process.

The development of the Documentary History Project followed a path of experimentation and growth similar to the beginnings of the Society and the Court itself. With lofty goals that were outlined without knowing precisely what would be encountered or required, the path was one of discovery and reevaluation. Research efforts during the first five years uncovered some 20,000 documents from private and public collections. Many of these were

reprinted in the volumes that comprise the series, while others were cited or referred to in the volumes. The quantity of research material uncovered helped define the number of books that would be produced in the series.

Painstaking research notwithstanding, it was not possible to reconstruct every aspect of the nascent Court's work. For example, the earliest cases were argued without benefit of written briefs. In 1795, the Court adopted a requirement that lawyers submit the "material points" of their arguments in writing, but only a smattering of those documents were uncovered among the Justices' papers. Two further complications made the work more challenging: first, the Court initially issued opinions verbally, rather than in written format; and second, there was no official written record of the decisions as the Court had no mechanism to record its opinions. Alexander Dallas offered his services as a reporter of decisions on a freelance basis and began publishing volumes of the Court's decisions in a for-profit venture. No official of the Court reviewed or verified the transcripts of his reports, and scholars have long contested the accuracy of his accounts.

These factors combined to present a tantalizing challenge for Dr. Marcus and her colleagues. The fruits of their labors have been well received in the academic community, and indeed there are citations to the work in recent legal opinions.

The eighth volume is scheduled to be distributed by the printer, Columbia University Press, in early 2007. With its production comes the end of an era, as I stated above. In behalf of the Society, I express congratulations and appreciation to Dr. Marcus and her dedicated staff members. I look forward to reporting to you in a future letter about the function that will be held this spring to commemorate the successful conclusion of this project.

Frank Jones

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Oliver Wendell Holmes—continued from page 1

Table." I don't know what it would be like to grow up with a father who made money writing funny stories about his home life and his children, but I expect that it embarrassed the young Holmes Junior no end.¹

Between college and law school, Holmes Junior fought in the Civil War. Many lawyers still remember that in that war Holmes Junior was wounded three times and adopted his cynical skepticism toward any belief in any ultimate truths. What people at that time probably remembered was that, after his second wound at Antietam, his famous father wrote up his own melodramatic rush to the battlefield hospital as "My Hunt After 'the Captain.'" again in the pages of one of America's few mass circulation magazines.

Our Holmes had a remarkably complex relationship with his father and with his father's fame. He never forgave his father for failing to achieve true greatness and for squandering a remarkable talent in too many directions. He also never forgave anybody who criticized his father or his father's literary legacy. And he had no children of his own, no Oliver or Olivia Wendell Holmes III to live up to his example.

Holmes carried around his father's name with him, and during the years of his early legal practice he seemed to struggle or alternate between wanting to submerge his identity and wanting to achieve independent acclaim. He became one of the editors of the *American Law Review*, the leading professional journal of the day, and as such he published unsigned reviews and notes. One of his earliest and most famous one-liners, that the life of the law had not been logic, it had been experience, was first published in an anonymous book review of Langdell's Contracts casebook. Holmes Junior also edited Kent's *Commentaries on American Law*, the most comprehensive legal treatise of the day, again adding his notes to the layers of notes in eleven previous editions. But Holmes Junior also became obsessed with finishing by his 40th birthday the magnum opus that would make his name as a leading historian and scholar of the law in the English-

¹Details of Oliver Wendell Holmes, Jr.'s life can be learned from any of a variety of fine biographies. I happened to use Liva Baker, *The Justice from Beacon Hill: The Life and Times of Oliver Wendell Holmes* (New York: Harper Collins, 1991), for this talk.

speaking world -- that's his book, *The Common Law*. On the opening page of his great book, Holmes repeated his line about the logic of the law, this time emphatically associating it with his own name.

Consider his situation in 1882. The big book, *The Common Law*, has been out for a year. Harvard Law School had offered Holmes a professorship (just like dad's). Holmes accepted a life of classroom teaching and authorship of articles and treatises. Ask yourself how much impact Holmes would have had if he had kept his professorship, if his ideas had sparked from the academy rather than from the bench. (Christopher Tiedeman, the law teacher who put the finishing touches on the due process liberty of contract argument in 1886, shows just how much impact a young legal academic could have for good or ill.) But Holmes didn't complete even one semester before he accepted the governor's appointment as an associate justice of the Massachusetts Supreme Judicial Court. When the Boston Bar Association had a dinner to celebrate the appointment, Holmes Senior recited a long comic poem about Holmes Junior as an infant being spanked by his mother, now the son who could put his father in jail. The new judge must have felt the embarrassing curse of a famous comedian father.

Half a dozen articles have been written about Holmes as a state appellate judge, and I've written two of them.² When Holmes wrote "The Path of the Law" at age 56, after 14 years on the state bench, he was a profoundly frustrated man. He saw no hope of promotion. The Chief Justiceship of Massachusetts, and the "Massachusetts seat" on the U.S. Supreme Court were both held by men only a few years older than Holmes himself and in apparent good health. (Holmes eventually got both jobs, but as inevitable as both those promotions seem now, it is well to remember that both were very chancy affairs.)

I think I can demonstrate that Holmes saw the role of a state appellate judge as that of a contributor to a collec-

² Seipp, *Holmes's Path*, 77 *B.U.L. Rev.* 515 (1997); Seipp, *Chief Justice Holmes on the Science and Art (and Politics) of Judging*, 5 *Massachusetts Legal History*, 19 (1999).

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WANTED

In the interest of preserving the valuable history of the highest court, The Supreme Court Historical Society would like to locate persons who might be able to assist the Society's Acquisitions Committee. The Society is endeavoring to acquire artifacts, memorabilia, literature and any other materials related to the history of the Court and its members. These items are often used in exhibits by the Court

Curator's Office. If any of our members, or others, have anything they would care to share with us, please contact the Acquisitions Committee at the Society's headquarters, 224 East Capitol Street, N.E., Washington, D.C. 20003 or call (202) 543-0400. Donations to the Acquisitions fund would be welcome. You may also reach the Society through its website at www.supremecourthistory.org.

tive enterprise, destined soon to be forgotten in name, and having useful effect only in the incremental improvement of judicial reasoning that he would add to what judges had done before.

Here are Holmes's words in speeches given to lawyers and about lawyers between 1884 and 1890. See if you don't think he's talking about himself:

"You argue a case in Essex. And what has the world outside to do with that, you say. Yet you have confirmed or modified or perhaps have suggested for the first time a principle which will find its way into the text-books and so into the thought of the common law, and so into its share in governing the conduct of civilized men. Our every act rings through the whole world of being. I think that we need to bear in mind this high, universal significance of our work . . . The thought of it is our highest inspiration. For it bids us count for as much as we can in shaping what is to come. It is also our severest critic." (Remarks to the Essex Bar, undated, perhaps December 1884 or later)³

"Of course, the law is not the place for the artist or the poet. The law is the calling of thinkers. . . . I say -- and I say no longer with any doubt -- that a man may live greatly in the law as well as elsewhere . . . that there as well as elsewhere he may wreak himself upon life, may drink the bitter cup of heroism, may wear his heart out after the unattainable. . . . Only when

you have worked alone -- when you have felt around you a black gulf of solitude more isolating than that which surrounds the dying man, and in hope and in despair have trusted to your unshaken will -- then only will you have achieved. Thus only can you gain the secret isolated joy of the thinker, who knows that, a hundred years after he is dead and forgotten, men who never heard of him will be moving to the measure of his thought -- the subtle rapture of a postponed power, which the world knows not because it has no external trappings, but which to his prophetic vision is more real than that which commands an army. . . . [I]t is only thus that you can know

that you have done what it lay in you to do -- can say that you have lived, and be ready for the end." (The Profession of Law, a speech to Harvard undergraduates, Feb. 17, 1886)⁴

"The glory of lawyers . . . is more corporate than individual. Our labor is an endless organic process. . . . When I hear that one of the builders has ceased his toil, I do not ask what statue he has placed upon some conspicuous pedestal, but I think of the mighty whole, and say to myself, He has done his part to help the mysterious growth of the world along its inevitable lines toward its unknown end." (Daniel S. Richardson, memorial address, Apr. 15, 1890)⁵

[Something that a lawyer has to remember is that t]he greater part of the work of the world is anonymous work . . .

. . . [W]e owe vastly more to the forgotten than to the remembered. . . . [O]n every side we live environed by the work of great minds, work a thousand-fold more important and better remembered as we take it for granted every day, than all the books that were ever written. Yet the names of those who did this work are forgotten. Who invented the wheel, or ships, or the city, or contracts? Who first used a future tense or spoke of conscience or the freedom of the will? . . . [T]he makers of the very framework and tissue of our life are unknown. . . . A great man like Descartes at the beginning of a century put his finger upon an electric button and at its end, a hundred years later, his thoughts become a force and men who never heard of him begin to move according

to his command. . . . [O]ur influence upon those who come after us is not measured by their familiarity with our names. We lawyers may take courage then. We are shaping the future . . ." (Anonymity and Achievement, a speech to the alumni of Boston University Law School, June 3, 1890)⁶

The writer of these passages was desperate to convince himself that it did not matter that his name was going to be forgotten. He was a state supreme court associate justice. Yes, his name would always be in the Massachusetts Reports for his years on the bench. "Holmes, J." sat at the beginning,

4 Id. at 28, 28-29, 30-31.

5 Id. at 56, 57-59.

6 Id. at 59, 60-61.



Oliver Wendell Holmes, Jr.

3 In Mark DeWolfe Howe, comp., *The Occasional Speeches of Justice Oliver Wendell Holmes* 48, 49 (Cambridge: Harvard University Press, 1962).

of one thousand thirty state judicial opinions. But he knew that his opinions would be replaced by a new generation of state cases on every branch of law in 20 or 30 years, and just like every one of his colleagues on the state bench his would just be a quaint old half-remembered or unremembered name. So Holmes set out to be famous in his spare time, outside of court. He was the sort of state court judge who kept a stock of studio photographs of himself to present to callers, and had Little Brown & Co. publish a slim volume of his selected speeches, and accepted invitations to speak at dedications of new law school buildings. Today, he would have had a personal publicist and would charge a speaker's fee.

I wrote in 1997, for the centenary of Holmes's speech, that Holmes was in the throes of what we would now call a classic "mid-life crisis" when he wrote "The Path of the Law." (1) His stagnation on the state court bench and vanishing hope of promotion, (2) his father's death in 1894, (3) his war-mongering civil war nostalgia speech in May 1895, (4) his learning to ride a bicycle at age 54 that August, (5) his failure in early 1896 to get a young B.U. graduate to adopt his view of contracts for a treatise, (6) his unpopular dissent on the labor union side of a picketing case, (7) his rapturous romantic infatuation with a married Irish lady begun in the summer of 1896, even (8) an 1896 short story he might have read about an evil genius lawyer who counseled clients how to commit the perfect crime -- all these factors, I wrote, led Holmes to make his "Path of the Law" speech as showy and shocking as he could. My conclusion then was that Holmes did not intend his "bad man view of the law," his rejection of morality and logic as bases for law, his rejection of a duty to perform contracts, his strange fondness for economics. He was just acting out, making a splash, startling the stuffed shirts of the Boston legal and academic establishment -- and entertaining the students -- by saying the most outrageous things he could think of.

Now I am saying something else. The speeches that Holmes gave in the dozen years before 1897 suggest that he wanted and needed to write something so original that his name would long be remembered for it. But remembered for what? Holmes needed to be famous, but I don't think he needed to be famous for anything in particular. The sense of Holmes's title, "The Path of the Law," seemed to come from a letter he wrote to his Irish ladyfriend:

One cannot cut a new path as I have tried to do without isolation. I have felt horribly alone. . . . [T]he real danger perhaps is that when one has been for a moment in the lead, he should wrap himself in his solitude and sit down, and before he knows it instead of being in advance the procession has

passed him and his solitude is in the rear. (to Clare Castletown, Oct. 7, 1896).

Holmes saw himself in the lead, in the vanguard of the path the law was taking into the 20th century. In other words, he tried to figure out the way the law was heading in 1897, push it a little bit in that direction, and then scramble out in front of it. Rather than choosing a direction he wanted to law to go, Holmes just wanted to be in front of the parade wherever it was going. You can see how his prediction theory of law fit in with this. All any lawyer should do is predict how the next case was going to come out. Forget how it should come out. You're a good lawyer not if you push the law in a good direction, toward good results—you're a good lawyer, if you predict better than anybody else what the law is going to do anyway. Holmes was not a reformer, not an ideologue of any kind, he was a trend-spotter.

Some of his own predictions about the path of the law were easy. History and old English Year Book cases were falling



Holmes developed a deep attachment to Lady Clare Castletown.

Harvard Law Art Collection

out of fashion, so Holmes said it was revolting to have no better reason for a rule than that thus it was said in the reign of Henry the Fourth. Formalist logic was beginning to show signs of weakness, and Holmes could see that judges would eventually have to advert to modern social forces and policies. His strict separation of law from morality can't be too popular with the religious fundamentalists who seem so prominent in politics today. His "option theory of contracts," what's now called efficient breach, seems to have had its heyday and is now on its way out, at least according to my students. Holmes didn't say, in anything he wrote as a state appellate judge, what seems so clear to us today, that politics might have a little bit to do with how judges decide cases. Holmes didn't say how to choose which of two conflicting social forces should win the next case. But that's an argument I made in another article, on Chief Justice Holmes and the Science and Art (and Politics) of Judging.

A bit more can be said about the judge as celebrity. Every justice of the U.S. Supreme Court seems condemned to be biographed, categorized, analyzed, and caricatured. Aside from everybody who has ever been on that Court, the only appellate judge I would name who seems to be aiming for and achieving the same kind of national fame as a celebrity or public intellectual is Richard Posner -- again, curiously, he was always insisted that he's not being normative, just descriptive and predictive. Two former judges, Roy Moore and Robert Bork, seem to be determined to perpetuate their names for the broader public, but both seem to have passed across a line into politics.

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President Theodore Roosevelt was reluctant to appoint Holmes because of Holmes' critical assessment of Chief Justice John Marshall.

Holmes was nearly done in by his need to be famous. His next big speech after "The Path of the Law," one for the

centenary of John Marshall's appointment as Chief Justice of the United States, was as irreverent and shocking in its own way as "The Path." Holmes suggested that Marshall was no genius, just an ordinary man who was at the right place at the right time. Theodore Roosevelt was so shocked by Holmes' irreverence that he was disposed to ignore his friend Henry Cabot Lodge's determined insistence to get Holmes onto the U.S. Supreme Court. The chair of the Senate Judiciary Committee, who was also the senior senator from Massachusetts, wanted his own nephew for the seat. Senator Hoar agreed with what some of the newspapers were saying, that Holmes was more literary than legal, more ornamental than solid. But Holmes made it to Washington. Maybe there on the U.S. Supreme Court Holmes's need to be famous, to live up to his father's name, provoked him to dissent a bit more frequently and a lot more brilliantly than he otherwise would have done. It is odd to say that Holmes could be wrong about something, but I think that his name will be remembered long after we stop marching to the measure of his thought.

**David Seipp is a Professor of Law at Boston University School of Law, where he has taught American and English legal history, property, copyright, intellectual property and other courses. He is currently compiling an extensive computer database indexing more than 20,00 records and paraphrases of English law from 1268-1535.*

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BELLE MEADE PLANTATION AND HOWELL JACKSON

By Kathleen Shurtleff*



The mansion of Belle Meade Plantation is a classic example of Southern Greek Revival Ante-Bellum architecture.

Its columned façade and beautiful grounds evoking scenes from "Gone with the Wind", Belle Meade Plantation, sometimes called the "Queen of Tennessee Plantations" had a modest enough beginning. In 1807, one John Harding, a Virginian, bought Dunham's Station log cabin with an adjoining parcel of 250 acres of land on the Natchez Trace. As the Harding family grew and prospered, that relatively small holding increased to a plantation comprising 5,400 acres. It also became a world-renowned thoroughbred horse farm. In 1873, Associate Justice Howell Edmunds Jackson became an integral part of the history of this unique estate and its history.



By the end of the 19th century, the 600-acre deer park at Belle Meade was a favorite destination for Society hunting parties and excursions.

The estate grew from the modest tract purchased by John Harding. Initially, Harding farmed the property and boarded horses for his neighbors, including Colonel Andrew Jackson, who later attained fame as the successful General of the Battle of New Orleans and President of the United States. By 1816, Harding was successful enough to venture into the profitable, but sometimes risky, occupation of breeding thoroughbreds. A good businessman, Harding's expanded his property holdings to include large tracts of land in Arkansas and Louisiana. His son, William Giles Harding, inherited the property. Reflecting the affluence of the vastly expanded estate and dramatically improved financial situation, he designed and built a grand and stately house. Completed in 1853, the mansion is a classic example of Southern Greek Revival Ante-Bellum architecture. The new house was twice the size of the previous residence and included a front porch with columns of limestone. The property contained a number of dependencies, including the original log cabin built in 1790 as well as stables, a carriage house and housing for the slaves.

The younger Harding was extremely successful. He was a champion of Southern secession to which he contributed \$500,000. In terms of the relative value of money in 1860, that \$500,000 was an enormous sum. After the war broke out, Union troops occupied Nashville in February 1862. In retaliation for his support of the Confederacy, Harding was arrested and imprisoned at Fort Mackinac, Michigan, where he remained until his wife Elizabeth could win his release in September of that year. Belle Meade became the headquarters of Confederate General James R. Chalmers. In 1864, Union forces attacked Belle Meade and a skirmish ensued.

Harding had two daughters who married the two Jackson brothers, Howell, and William Hicks. After the War, William

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Jackson married Mary Elizabeth Harding of Belle Meade a year after the death of his first wife.

Harding turned control of the estate over to his son-in-law, William Hicks Jackson. William Jackson, like Robert E. Lee, was a West Point graduate who forfeited his commission in the United States Army to serve the Confederacy. During the war he commanded a cavalry division under General S. D. Lee in Mississippi and Louisiana.

Turning to the occupation of gentleman farmer with the vigor that had characterized his previous occupations, William Harding expanded the cash products of the estate to include the breeding and sale of ponies, cattle, sheep, and cashmere goats. Eventually he developed a 600-acre deer park that became the favored destination of many of the rich and influential of the period. By 1904, Belle Meade was the oldest and largest thoroughbred farm in the United States, and was associated with many famous racehorses. Perhaps the most noteworthy of the horses associated with the farm, was Bonnie Scotland. Bred in England, Bonnie Scotland's promising career as a racehorse ended in accident when he was two years old. He was imported to the United States where he became the sire of many famous racehorses. Indeed, according to the *Tennessee Encyclopedia*: "[i]n the last quarter of the nineteenth century, Harding's Belle Meade Stud would become one of the great thoroughbred horse breeding nurseries in the country. Imported Bonnie Scotland, Enquirer and Iroquois were among the distinguished sires at Belle Meade. Most of the Kentucky Derby winners of the twentieth century can trace their lineage to Bonnie Scotland through his famous get, Bramble."

Howell Jackson was born in Paris, Tennessee in 1832. He attended West Tennessee College and the University of Virginia and graduated from Cumberland University, Lebanon, Tennessee, with a law degree in 1856. He commenced practice in Jackson, but later moved to Memphis where there was greater opportunity. He married Sophia Mallory of Memphis

in 1859. An ardent supporter of the Confederacy, he served the Confederate government as receiver of sequestered property until the fall of Memphis in 1862 caused him to flee to Georgia with his family. He remained there for the duration of war, returning to Tennessee after securing a pardon from President Andrew Johnson in 1866. Howell and Sophia were the parents of six children, two of whom died in infancy.

Sophia died in 1873 during an epidemic of yellow fever. Thirteen months later, Howell Jackson married Mary Elizabeth Harding of Belle Meade. Jackson's fortunes changed forever because of his association with the Harding family, not only monetarily, but also politically, and Jackson's subsequent career became politically oriented. He was appointed to the court of arbitration for west Tennessee on two occasions. He was elected to the state legislature and was serving there in 1881 when he was elected to serve in the U. S. Senate. Jackson served in the Senate from 1881 to 1886, focusing on measures to restrict Chinese immigration, civil service reforms, and the creation of the Interstate Commerce Commission. He served on several Senate Committees, including Pensions and the Judiciary. While a Senator, he introduced a bill to amend the federal judiciary. His bill outlined "the appointment of two additional circuit judges in each circuit, established a Court of appeals, to consist of three circuit judges, and abolished the Circuit Courts, transferring all their jurisdiction and pending business to the existing District Courts."

In April 1886, before his proposed judicial reform bill could be passed, he resigned his appointment to the Senate to accept an appointment from President Grover Cleveland to serve as a judge on the 6th federal Circuit Court. The appointment to the Circuit Court coincided with the completion of a mansion designed for Howell and Mary built on the grounds of the Belle Meade estate. The new home,



Howell Edmunds Jackson practiced law and served in the U. S. Senate for five years.



Howell and Mary Jackson built a Victorian mansion on their portion of the estate, naming it West Meade.

also an imposing mansion, featured handmade interior brick walls 12 to 14 inches thick and was built in the more current Victorian style. It was named West Meade.

Jackson served on the Circuit Court from 1886-1893 at which time he was appointed to the Supreme Court of the United States to fill the vacancy created by the death of Lucius Q. C. Lamar, another former Confederate. He took his seat on March 4, 1893. At the time of his appointment to the Supreme Court, a biography of his life was published. In it, his father, Dr. Alexander Jackson, who had died in 1879 was quoted as saying "I will die happy if I could see Howell upon the Supreme Bench. He was born for it. He will get on and do well anywhere, but that is the place he was born for." So while Dr. Jackson did not live to see it, his fondest wish did come true.

However much Howell Jackson might have been suited to the Supreme Court, his active service lasted little more than fifteen months, cut short by his ill health and subsequent death in 1895. During that time, however, he wrote forty-six majority opinions, many dealing with patent problems. He also authored four dissents.

Despite the brevity of his service, he participated in three of the most important cases of the late 19th century Court. In two, *United States v. E. C. Knight* and *In Re Debs*, Jackson voted with the majority. The *Knight* case involved the first attempt by the federal government to enforce the Sherman Anti-Trust Act. The Court's decision read the act narrowly and prohibited the prosecution of the Knight Company, a major sugar producer. The *Debs* case involved the contempt of Court jail term of labor leader Eugene Debs who had raised *habeas corpus* issues about the legitimacy of his sentence. The Court's action permitted the six-month sentence to stand.

The third major case *Pollock v. Farmers' Loan & Trust Co.* was one of the most controversial cases of the late 19th century. Because the case was heard twice, it is generally

referred to as the *Income Tax Cases*.

Jackson had contracted tuberculosis shortly after he was appointed to the Court. This prevented his participation in the first hearing of the *Pollock* case. The issues presented in *Pollock* were legally complex, and the Court divided them into three parts. On part three—whether an income tax was an unconstitutional general tax—the Court deadlocked 4-4. It was this tie vote that necessitated a rehearing. Jackson, though severely ill, traveled to Washington in May, 1895, to participate in the case. Great attention was focused on him and his probable inclinations in the case.

On the day the opinion was handed down, the Court ruled in a 5-4 decision against the constitutionality of the tax. A contemporary observed that Jackson "... with hollowed cheeks and sunken eyes, the top of his shoulders barely visible above the massive bench behind which he sat..." delivered his dissenting opinion over a forty-five minute period, punctuated by bouts of coughing. Jackson's comments were very pointed, characterizing the Court's judgment as "the most disastrous blow ever struck at the constitutional powers of Congress." Henry Billings Brown, John Marshall Harlan and Edward Douglass White also dissented in the case. Since Jackson who had not participated in the earlier hearing, was a dissenter in the second, it is clear that one of the earlier dissenting Justices had changed his vote. The record does not delineate whose vote was changed and scholars have speculated about this ever since.

Less than three months after the opinion was handed down, Jackson died at West Meade, leaving his widow and children to probate the will he had written only that year. Shortly before he joined the Supreme Court, Jackson sold his share of the thoroughbred enterprise to his brother. But Howell Jackson died possessed of extensive assets extending beyond the 3,000 acre West Meade estate (Howell had received 2600 of those acres from his father-in-law at the time of his marriage). At the time of his death, he owned a residence in Washington, DC at 1311 K Street, NW, just a few blocks from the White House, valued at \$50,000. Further real property included a farm in Jackson, Tennessee where he also had an interest in a wool mill. In addition, he owned a residence in Memphis. Other assets included stock in Nashville's Richland Turnpike Co., and enough cash to leave each of his three children by his second marriage \$5,000 in cash.

Howell's widow Mary remained at West Meade until her death in 1913. She bequeathed the estate to their three children and it remained in the hands of descendants until its sale along with 1,750 acres.

Famous guests entertained in the West Belle Meade included presidents Grover Cleveland in 1887, Theodore Roosevelt and William Howard Taft.

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Note: The Society would like to thank John Lamb, Curator of Belle Meade Plantation, for providing the photo images used in this article.

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