2002 marks the one-hundredth anniversary of the appointment of Justice Oliver Wendell Holmes to the Supreme Court and of his taking up permanent residence in Washington. Holmes felt his life was at its most vivid in Washington and his speeches and correspondence give a flavor of his way of life in Washington.

When Holmes' appointment was confirmed by the Senate, he and his wife, the former Fanny Bowditch Dixwell, closed down the house in Boston which had been his father's house and their home for some 13 years. Wendell burnt piles of his personal papers while Fanny burned most of her critically acclaimed needlework, which had been exhibited in New York and Boston. Holmes-confided to Lewis Einstein: "It is the devil of a job to transport all one's belongings five hundred miles when one is over sixty, but it is vitalizing; you get

A bittersweet rivalry existed between the son and his famous progenitor, Dr. Oliver Wendell Holmes Jr. Indeed, it was not until his move to Washington that "Wendell" (shown above) came out of the shadow of the famous "Autocrat of the Breakfast Table."

In Boston Fanny Bowditch Dixwell Holmes had become known as eccentric and shy, but Dr. Holmes described her as a "...helpful, hopeful, powerful as well as brilliant woman. And, indeed, Fanny took care of all the minutiae of life for the Justice and his household.

Having broken with the past, Holmes had a favorable first impression of his new hometown. "The whole place is like a large country town from the absence of large business and manufactures. One sees and hears crows (which I adore) and wild birds light and sing." However, Washington was in the midst of transforming itself into a major city. It already had impressive buildings, statues of past statesmen and na-

Continued on page 8
A Letter from the President

Most members belong to the Society because they support and enjoy its many good works that promote improved public understanding and awareness of the Court's history. However, the mechanics behind the Society's development and its programs and publications that seek to fulfill its educational mission are not immediately apparent, and merit some periodic explanation.

Each quarter the Society's Executive Committee meets to hear reports from its various standing and ad hoc committees and to vote on such action as is required to introduce new initiatives or maintain existing ones. This meeting is usually held over a day or two and weeks before it by meetings of the various committees that desire to bring business before the Executive Committee.

In that we have recently completed the first two quarters of Fiscal Year 2002, which runs from July 1, 2001 to June 30, 2002, it seems to me a propitious time to provide members with a status report that summarizes the high points of those reports heard by the Executive Committee at its February meeting.

The first order of business at the Executive Committee meeting was a status report on Society Vice President Frank Jones, who has been hospitalized since December suffering from a disease that has left him in poor health. Mr. Jones, who has a long-standing affiliation with the Society, has been a long-time member of its Development Committee and has been a key figure in many of the Society's fundraising efforts.

The Executive Committee voted to prepare a motion commending Mr. Jones, who has been hospitalized since December suffering from a disease that has left him in poor health. This vote was in order to express our support for Mr. Jones and to wish him a speedy recovery.

The second factor aiding in the development of this surplus, the high rate of Board participation in the Annual Fund, is a result of the dedication of all of the Board members. As a result of this, and member contributions, the Society has been able to increase the amount of money it can contribute to the Annual Fund and these added gifts will far accumulate to nearly $12,000 in FY 2002. These gifts deserve the recognition of the Society and the community at large.

The third contributing factor to our cautiously optimistic financial outlook at this mid-year stage involves our special quarterly report that discusses the high points of those reports heard by the Executive Committee at its February meeting.

The following opening remarks, the Committee usually turns to financial reports — first in terms of fund raising and development and then to our performance against budget estimates. There is method in this, in that the Executive Committee finds it useful to hear from the Development and Fund and Finance Committees before being asked to consider potential budget requests from the various other committees.

Three factors contributed to this surplus, two of which I can report on directly, and the third, which I can allude to only in passing, as it involves a major donor whose generosity is eclipsed only by its humility.

The first of these factors, I am pleased to report, involves the Society's recovery from the effects of the September 11th terrorist attacks. This year's recovery distributing to the Annual Fund and these added gifts will far accumulate to nearly $12,000 in FY 2002. These gifts are above and beyond the call of duty and the Society is most grateful to these volunteer donors.

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The first published collection of in chambers opinions by the Supreme Court Justices took Cynthia Rapp, Staff Attorney in the Clerk's Office, over six years to complete. A three-volume work titled A Collection of In Chambers Opinions by the Justices of The Supreme Court of the United States, 1925-2000, represents an important new resource for Supreme Court practitioners and scholars. The first collection of its kind, it covers 4.8 opinions in this unique class.

The introduction to the volumes provides more information about these unique records of the Supreme Court: In chambers opinions offer a unique opportunity to study the reasoning of an individual Justice sans input from the rest of the Court. These opinions also offer the only insight into the criteria used by the Justices to decide when to grant an application, as such guidelines are not contained in the Court's Rules. This collection attempts to gather the in chambers opinions written from February 14, 1926, to November 18, 1998, in one publication. In addition, several indices to the opinions are provided, including chronological, alphabetical, and topical lists. Lists sorted by Justice, and by disposition, and a list of cases that were orally argued in front of a Circuit Justice. In the 418 indexed cases, 235 applications were denied and 177 were granted. Since 1926, only 26 of the 45 Justices that have served have written in chambers opinions. The current Chief Justice, William H. Rehnquist, has the distinction of having written more in chambers opinions than any other Justice, with a total of 108.

The Court assigns each Justice to a particular federal circuit. As Circuit Justice, the Justice is responsible for handling applications arising in cases from state and federal courts in his or her circuit. In most instances, within a few days after receiving the application the Circuit Justice will simply write “deemed” on the application. On occasion, however, a Circuit Justice will issue an opinion explaining the reasons for his or her action. These opinions are referred to as in chambers opinions. Neither the application nor the in chambers opinion is circulated to the full Court. Usually, the Justice is not available to the Justices to deliberate over what is written and time to have a draft revised several times, in chambers opinions are often written in a very short time frame often at odd hours. Justice Rapp has handled an in chambers opinion in Spalding v. Wainwright, a capital case at 12:15 a.m. 442 U.S. 1308 (1979). Hours before, at 7:35 p.m., then Justice Rehnquist had issued an in chambers opinion in the same case. The majority of the opinions are just a couple of pages, although some go on for several pages. The longest is 16 pages.

**SUPREME COURT OF THE UNITED STATES**

**No. 363, October Term, 1926**

Nicolás Sacco, et al. v. Hendry

*August 10, 1927*

Mr. Justice Holmes.

This petition was presented to me this tenth day of August, 1927, and was argued by counsel for the petitioner. I am unable to find in the record the evidence as I understand them any facts that would warrant my issuing the writ. I have no authority to issue it unless it appears that the court had not jurisdiction of the case in a real sense so that no more than the form of a court was there. But I cannot think that prejudice on the part of the presiding judge however strong would deprive the Court of jurisdiction, that is of legal power to decide the case, and in my opinion nothing short of a want of legal power to decide the case authorizes me to interfere in this summary way with the proceedings of the State Court.

Above is a copy of the in chambers opinion written by Justice Oliver Wendell Holmes, Jr. in the famous Sacco-Vanzetti case. Sacco and his co-defendant were convicted of the murder of an Italian-born American bank clerk. The conviction and sentence were reversed by the Supreme Court of the United States. The Court held that the evidence was insufficient to sustain a conviction, and the case was remanded for a new trial. The Court also held that the in chambers opinion was an improper method of deciding such cases.


Some of the interesting facts to be gleaned from reading the volumes are the fact that Chief Justice William H. Rehnquist holds the record for writing the most in chambers opinions, while Justice Hugo L. Black holds the record for brevity. Another interesting fact is that during the period 1926-1980, approximately one-third of all applications reviewed by a Justice resulted in in chambers opinions. In addition to the opinions themselves, the volumes also contain alphabetical, chronological, and subject matter indices as well as lists of opinions sorted by Justice and by case disposition. Rapp, who handles the emergency applications for the Clerk's Office, became interested in the project when she found there was no comprehensive source for the Court's in chambers opinions.

Returning to the material found in the introduction of the volumes, Rapp provides further historical insight about this important tradition.
John Archibald Campbell was described by the Governor of Alabama as: "...not only profoundly learned in the Common law; but his knowledge of civil law is as extensive and accurate as that of any lawyer outside of Louisiana."

Recently, Mr. Thaddeus Holt of Point Clear, Alabama contacted the offices of the Society to donate a box of materials he had acquired while doing research on Associate Justice John Archibald Campbell. Most of Mr. Holt's materials were acquired in the period from 1947-1958 when he was doing research for an article on the Justice. When he offered the materials he cautioned that they were not catalogued or indexed, but might be of interest.

In an initial review of the materials, the Editors have been struck by the volume of personal correspondence between Mr. Holt and individuals to whom he wrote seeking information about Justice Campbell. Mr. Holt was a practicing attorney in Birmingham, Alabama who pursued research on Justice Campbell as a personal effort. His correspondence includes letters to and from family members, as well as noted scholars and members of the public. The personal letters in the collection are of great interest, and shed light on many aspects of the Justice's life. Many of the responses to his queries reflect frankness and a keen desire to assist in the project.

Some of the earliest materials in the collection date from 1947 when Mr. Holt undertook the task of attempting to verify the precise dates on which Justice Campbell took the Judicial oath. Given under my hand and the seal of the Treasury, this twenty ninth day of August in the year one thousand eight hundred and fifty-three and of Independence the seventy eighth. The warrant was signed by the Secretary of the Treasury and reads in part:

"For the taking of the Judicial oath. If you can throw any light on the date of the taking of his oath, please contact the offices of the Society to donate a box of materials."

The photostatic copy of the Treasury Department Warrant which authorized the first pay voucher for Justice Campbell indicates that on 26 August 1853 the request for payment was recorded by the Register. The warrant was signed by the Secretary of the Treasury and reads in part:

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On June 3, 1947, Mr. Waggaman wrote to Judge Groner again:

ENCLOSED please find Photostats of Justice Campbell's first pay voucher for your files, as other documents in the files indicate the taking of the Judicial oath by several early members of our Court, informed me that you are a grandson of Justice Campbell. As such, may I trespass upon your time to inquire if you can throw any light on the date of the taking of his oath?

Judge Dobie, in reply to an inquiry regarding the dates of the taking of the Judicial oath by several early members of our Court, informed me that you are a grandson of Justice Campbell. As such, may I trespass upon your time to inquire if you can throw any light on the date of the taking of his oath?

As I am trying to correct our figures, any contributions to accuracy that you may be able to give, will be much appreciated.

In a letter of reply, Judge Groner wrote:

"I do not know the dates Justice Campbell took the oath of office, but I do know that his commission was dated March 26, 1853. He resigned in April 1861 and died in Baltimore March 12, 1889. Sorry I cannot help your records further.

On June 3, 1947, Mr. Waggaman wrote to Judge Groner again:

"In 16 L. Ed. 4, I find a table crediting the Justice with having been "sworn in December 6, 1853," which date I shall use for lack of a better subject to future correction. notwithstanding the fact that he was seated on December 5, according to our minutes.

The reader assumes that the phrase "other matters may be in reference to a comment made by Judge Groner in his letter of request.

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"For the taking of the Judicial oath. If you can throw any light on the date of the taking of his oath, please contact the offices of the Society to donate a box of materials."

The name of this distinguished gentleman is heard on every side, and appears to be in the mouths of every one. His wondrous argument in the Gaines case has all but immortalized him. His arguments on the rights of Myra Clark Gaines to title to her father's estate in the Circuit Court at New Orleans a local paper had said.

Mr. Justice Campbell has reaped the field clean and garnered up for himself a rich harvest.

"On that occasion the lawyer had won the case for his client on an argument which was to settle the claim finally forty years later. In 1889 Campbell made his last appearance in the case, as an attorney arguing before the Supreme Court of the United States, at which time the case was finally resolved. However, on the appeal to the Supreme Court in 1889 Mrs. Gaines' claim was denied. Campbell's argument was nevertheless impressive in defeat as it had been in the Circuit Court success. Its impression was so farreaching that it led the Justices of the Supreme Court to unanimously recommend Campbell's appointment to that bench. Justice McKinley's death in January of 1893 had left a vacancy on the Court which was only filled by the confirmation of Campbell's appointment in March of 1893.

The death of Judge McKinley made a vacancy and that vacancy was supplied by one recommended by the Justices—Judge Carnan and Curtis bearing their letters of recommendation to the President.

Through Campbell's appointment was not a result of the "spoils system" of political favors, it was due in large measure to his known views on slavery and state's rights as well as to his brilliant legal record. In 1852 President Fillmore had nominated Senator George E. Badger of North Carolina to fill McKinley's seat, but Badger's views on the slavery issue prevented his obtaining the necessary confirmation from the Senate. However, the States Rights forces in the Senate were wholehearted in favor of Campbell's appointment to the seat held sufficient political strength to control its future... Thus, when President Pierce forwarded Campbell's nomination to the Senate in March, its confirmation was immediate, and
The new Justice and his wife, Fanny, lived initially in the New Willard Hotel built on the site of the previous hotel. Capt. Holmes had once been refused accommodation in the "original" Willard. The building still stands in recognizable form on Pennsylvania Avenue. The national heroes as well as broad tree line avenues. The Park Commission had published a plan calling for a series of museums and galleries lining the Mall, a reflecting pool near the Washington Monument, a memorial to Abraham Lincoln at the opposite end of the Mall from the Capitol, and a bridge across the Potomac to connect the Mall area to Arlington National Cemetery.

At first, the Holmeses stayed at the New Willard Hotel not far from the White House. It had opened a year before and was called the New Willard because it had been built on the site of the original Willard, a landmark-estab

ished by the House of Representatives and the world leaders. But what had refused accommodation to Holmes when he was a young Army officer in the Civil War. The new version was twelve stories high with a decoration that included large windows, heavy gilded trim, and detailed mosaic floors. The Holmeses must have enjoyed their stay because they returned again as guests before moving into their second house in Washington, and to dine on numerous occasions as well as "to watch in the New Year and to watch the crowd" in 1916. The New Willard Hotel, refurbished in 1986, is one of the few houses that Holmes, who still performs much the same function that it did in Holmes' day.

From the Willard, the Holmeses moved into a rented house that Fanny had found at 10 Lafayette Place, near the Old Willard. Holmes was small and there was not enough room for all of the furniture and books which they had brought from Boston for formal entertaining. In addition, the owner was returning to reclaim his residence. As a result, within a year, Fanny, who appears

to have shouldered all such tasks, was once again looking for a new house.

In November 1903, the Holmeses moved into 1720 1 Street, NW, a four-story red brick house of eighteen rooms in a row of such houses a few blocks from the White House. "I really think you could say it was a pleasant place in a modest way, and the sun streams in at the back, and I feel settled for good in a place which is mine. The Boston house never ceased to be my father's." It had a "deep backyard with room for shrubs and small trees . . . and no danger the sunlight will be cut off by a big apartment house." "We had a sort of house-warming tea . . . which pleased me as I thought the house seemed to hold the guests with a kind of spacious air that was not devoid of elegance. In fact, I love it and am happy to wake in it every day."

1720 1 Street provided the setting for much of Holmes' life. In those days, the justices did not have chambers. As a result, Holmes, clad in a mahogany jacket and slippers, would write his opinions and do his reading in his library. On Monday afternoons, the Holmeses would hold "at home" at which they would entertain visitors and the various "young sportsmen who hunt the law with me" would come "to play with us." The new house afforded the couple sufficient room that the childless couple were able to take in and raise their niece Dorothy who was now alone in the world. It was here that Fanny died in 1929. It was here that Holmes spoke to a nationwide radio audience in a program honoring him on his ninetieth birthday, and here, two years later, that Chief Justice Hughes broke the news to him that it was time to resign.

It was here that Holmes died two days short of his ninety-fourth birthday in 1935. Unfortunately, nothing remains of the house which was such a large part of Holmes' life in Washington. 1720 1 Street is now a steel and glass office building on a block which is populated entirely by similar commercial structures.

Dressing a cutaway coat, a stiff shirt, and highly polished shoes, Holmes generally walked to court following a route which took him to Lafayette Square, past the White House and along Pennsylvania Avenue to the Capitol. In the early years, he would often be accompanied on the return route by Justice Edward Douglass White. Holmes liked to take long strides but his more portly companion preferred a more leisurely pace. In the cold winter air, Holmes would suggest that they move quickly so as to avoid a chill. White would agree and for a minute the pace would quicken but soon they returned to a gentle stroll. Holmes continued walking all or part of the way to and from the Capitol well into his tenure on the Court, often accompanied by Justice Louis Brandeis in later years.

Sometimes the scenery on his walks would inspire Holmes. On one winter's evening when World War I was raging in Europe, "I was walking homeward on Pennsylvania Avenue near the Treasury, and as I looked beyond Sherman's statue to the west the sky was aflame with scarlet and crimson from the setting sun. But, like the note of downfall in Wagner's opera, below the skyline there came from little globes the pallid discord of the electric lights. And I thought to myself the Gotterdammerung will end, and for those globs clustered like evil eggs will come the new masters of the sky. It is like the time in which we live. But then I remembered the faith that I partly have expressed, faith in a universe not measured by our fears, a universe that has thought and more than thought inside it, and as I gazed, after the sunset and above the electric lights there shone the stars."

Holmes usually found both oral argument and the court's conferences boring. "We waste two thirds of the day in solen

mly stealing our views and our opinions."

Moreover, the places where such activities took place did nothing to make the experience more pleasant. During Holmes' entire tenure, the Court occupied hand-me-down facilities in the Capitol. It heard arguments in the Old Senate Chamber which, as the name indicates, was the home of the Senate until it moved to more spacious quarters in 1860. The new courtroom boasted a vaulted ceiling, a row of marble pillars behind the bench, and busts of former justices. Still, it was a less than ideal courtroom, close and overheated with the only windows hidden by the large draperies. The Court's confer
nen room and library was a floor below in the Old Supreme Court Chamber. It too was practically windowless and over
teated. Today neither the Old Senate Chamber nor the Old

Appointed to the Court at the age of sixty-one, Holmes was a vigorous and handsome man, known for his sartorial correct
ness. He usually walked from his home near the White House to the Capitol Building for sessions of Court.

In the first years of his service on the Bench, Holmes frequently walked home from Court with Chief Justice Edward Douglass White whose home on Rhode Island Avenue still stands.

Continued on page 10
Holmeses were known as intimates of the Roosevelts. The distinguished architectural firm, McKim, Mead, and White, were working with First Lady Edith Roosevelt to restore the house to its original Palladian lines and décor. In addition to the physical refurbishment, the Roosevelts were also breathing life into the social affairs that took place at the White House by inviting writers, historians, artists, and philosophers, as well as the occasional Rough Rider to dinners and social affairs. As a result, the Holmeses found themselves in what author Owen Wister described as "an American salon".

Holmes was "amused with the dining out." However, the conventions of Washington society dictated that a man of Holmes' position be seated with the wives of senior politicians at such affairs. As Fanny observed, "Washington is full of famous men and the women they married when they were young." As a result, Holmes was deprived of the flirtatious conversations with bright young women that he had enjoyed in Boston. Still, Washington had drawn Fanny out of the reclusive shell which she had built for herself in Boston and "as my wife goes with me everywhere I have all the companionship I need."

For culture, Holmes enjoyed visiting the Library of Congress where he would buy surplus etchings or exchange pieces from his collection for pieces that the Library no longer desired. In fact, he confessed to his friend Sir Frederick Pollock, he had "profited from my position" because he was allowed to visit the print collection and "wallow in potentialities" when the Library of Congress was closed due to the influenza epidemic of 1918. Holmes was upset, however, when the book sellers in "this one horse place" could not furnish him with a copy of a volume recommended to him by Pollock. Still, when he contributed some of his father's manuscripts to the Library of Congress — "my mite toward making Washington a center of cultivation" — he admitted, "with all its shortcomings it has some great advantages."

In the summers, the Holmeses would escape the Washington heat by retreating to their house, Beverly Farms, on the Massachusetts coast. However, even in this picturesque rural setting "Washington looms a cloud on the horizon. Happy though I am here, there is my most vivid life." Accordingly, "I play solitaire and get 8 hours sleep, drink little or nothing and try to accumulate strength for the 8 months high pressure of my Washington work."

The Holmeses remain as the Pottomac in Arlington National Cemetery. Chief Justice William Howard Taft was instrumental in arranging for the site when Fanny died. "I have a lovely spot in Arlington toward the bottom of the hill where the house is, with pine trees, oak, and talip all about, and where one looks to see a deer trot out (although of course there are no deer). I have ordered a stone of the form conventional for officers which will bear my name, Bvt. Col. and Capt. 20th Mass. Vol. Inf. Civil War- Justice Supreme Court, U.S.-March 1841. His wife Fanny Holmes and the dates. It seemed queer putting up my own tombstone—but these things are under military direction and I suppose it was necessary to show a soldiers’ name in account for my wife."

*Richard Winger is an attorney in the litigation department of Verizon in New York. His article on Justice Holmes and the Titanic appeared in an earlier issue of the Quarterly.*

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*THE PLAYBILL FOR THE ROYALE THEATRE*

The courtly Oliver Wendell Holmes and his out-of-fashion Fanny were celebrated in a play, "The Magnificent Yankee". The couple's relationship thrived during their Washington years.
WARNER W. GARDNER
An appreciation by his Friends and Colleagues

Benjamin Boskey recently provided a copy of a tribute written to Warner W. Gardner. Like Mr. Boskey, Mr. Gardner has been a contributor to the Quarterly and the Journal of Supreme Court History, writing about his experiences as a clerk at the Supreme Court of the United States. In recognition of his many contributions to the legal profession, it seems appropriate to excerpt some of the material and offer our congratulations to Mr. Gardner on his many accomplishments. Warner Gardner is a member of the Columbia Law School class of 1934. At this writing [September, 2001], he is in his 92nd year. His capacity to think clearly and to express himself precisely remains undiminished. A few of his many friends and admirers, some of them colleagues who are grateful for the significant contribution he made to their success at the bar, have concluded that tangible recognition should now be made, both of his remarkable abilities and of his contributions to the nation and the legal profession. Accordingly, we have joined to establish the Columbia Law School Warner W. Gardner Summer Research Fellowship.

In reviewing his career, one conclusion emerges: Although he spent most of his life working with persons of high competence and talent, he never took long for all to recognize that he was smarter and better at what he did than almost everyone else.

To begin, he is probably the only graduate of a major law school who, after failing to be elected to the law review (he was teaching at another university during his first year), was recommended by the faculty to serve as law clerk to a Justice of the Supreme Court of the United States. He clerked for Harlan Fiske Stone, later Chief Justice, and has ever since been widely respected as at least one of Stone’s best. He then joined the Office of the Solicitor General under Stanley Reed and later, in what seemed to some a few months, he became First Assistant, a position he served Robert Jackson and Francis Biddle. He argued over a score of cases before the U.S. Supreme Court. He may be the only person who argued three dissimilar cases consecutively. This was at a time when, even when his leisurely time was when each party was allowed one full hour of argument.

Gardner moved on to become Solicitor to Secretary of Labor Frances Perkins, and then Solicitor to Secretary of the Interior Fred C. Ickes. He served as Assistant Solicitor General and then a Major in the top-secret Ultra branch of Army Intelligence. (The project on which future Justice Lewis F. Powell also served.) He worked with the British Bletchley and had occasion to engage in a lengthy debate before generals Eisenhower and Devers. After the war he returned to the Department of the Interior, leaving to start a private practice with Francis M. Gara with whom he had served at the Department of Justice.

Shea & Gardner, starting with but two lawyers, grew slowly to one of Washington, D.C.’s premier firms. It quickly became well known... for the high quality and excellence of its work. That was substantially attributable to Warner Gardner.

Warner Gardner wrote quickly and effortlessly, with a gentle wit. He rarely used little-known words to display his erudition. His special gift was that the word that meant precisely rather than approximately, what was in his mind was immediately at the tip of his pen. At the same time the inevitably interesting turn of phrase, or an unusual analog, made even his routine correspondence fun to read.

We add... a few samples from the many hundreds of documents he wrote that give pleasure to those who were fortunate enough to be in the vicinity at the time.

He asked to review a draft amicus brief in the U.S. Supreme Court involving the esoteric issue of quasi-in-rex jurisdiction. The opening sentence read: "It is hard to explain why the principle that controlled the decision below has come to be known as the Doctrine of Princess Lida of Thurn, since it was laid down a few years earlier with greater clarity in Williams v. Pennsylvania Railroad.” The draft returned with a phrase added after the fifth word, in Gardner’s hurried script, “save for...” The disclaimer is sometimes professional as well as popular. Ken Davis recently told me with pride that his latest treatise on administrative law had no footnotes. Sure enough, it didn’t, with the result that useful elaborations of authorities were often hard to find. A footnote could be skipped was forced on the reader’s attention.

He filed a claim with the Army Board of Contract Appeals. After three years of postponements, changes in the composition of the Board, restructuring and change of name of the Board, lost documents, and refinings, the only tangible thing that had happened was a briefing schedule that had been ignored. Gardner then filed an action in what was then known as the U.S. Court of Claims. The central section of his brief bore the title, “The PlainOff Has Been Sufficienly Exhausted By Its Administrative Remedies.” Oddly enough, it was later learned that some of the judges were offended by levity in a serious matter. Even so, the claim was upheld.

(Gardner set forth in a document to members of his firm, certain rules of conduct expected of an attorney at Shea & Gardner.) It has been suggested that... it might be appropri- ate to remind everyone of a practice which we have always considered valuable. That practice is one which calls for com- plete candor with the court or agency before which we appear, whether it helps or hinders the argument which we are developing. By way of example: Cases adverse to our position are cited, whether or not known to our opponents. How- ever strained our distinction of adverse cases may be, we try to avoid misstatement of what they say. We doubt that a case is ever lost by this sort of candor. We believe that we are helped, and some cases even won, when we are before a court which knows this to be our practice... We note, too, that excessive this practice produces, probably without cost, a warm glow of virtue spiced by a malicious sense of superiority to one’s opponent.

The Society joins with Mr. Gardner’s other colleagues in applauding his long and distinguished career in the law.

HIGHLIGHT FROM THE ACQUISITIONS COLLECTION

One of the earliest goals set by the Board of Trustees of the Society was the acquisition of important and meaningful artifacts and memorabilia relating to the history of the Supreme Court. The Acquisitions Committee has endeavored to obtain gift, and occasionally by purchase, items that will be of significance to the history of the Court. In the first decade of the Society’s operation, efforts were directed to obtaining furnishings, portraits and busts for use in the Supreme Court Building. Many of the portraits are currently displayed in public areas of the building, and many of the best pieces of furniture have been used to furnish the Justices’ Dining Room.

In late 1999, Society Vice President, Dorothy Tapper Goldman, made a significant contribution to the collection when she donated an extensive collection of autograph mat- terials and visual images. The text of one of the documents in her collection appears below. Written by Justice Samuel Nelson to E.W. Stoughton, he discusses his concerns about the possible dissolution of the Union over the issue of slavery. Recent efforts have focused upon the acquisition of documents and memorabilia of significance to the Court and its members.

Readers with items of historical significance, or who are aware of the existence and availability of such items, are en- couraged to contact Acquisitions Committee Chair, Patricia Butler at the Society’s office, to make known this informa- tion. A fund has been established to enable the purchase of items, and donations to this fund are greatly appreciated. Donations of items to the collection, however, are extremely welcome, as the funds available for such purchases are lim- ited.

My dear Sir,

You need not trouble yourself about your case on the calendar. It will not be reached, the - we should be glad to have had it otherwise as we should have had the pleasure to have seen both you and Mrs. S. We shall, probably, adjourn soon after inauguration.

As to prospects of peace I saw some of the Commissioners last evening. There is still great obstinacy on part of most of the republicans of the north and especially from New England and New York. The impression is that unless Mr. Lincoln takes the adjustment in his own hands and co-operates with Gov. Seymour, there will be no peaceful settlement. There is obviously a part hostile to Seward in his own ranks and perhaps the fate of the country may turn upon this question which side triumphs.

The side of Greeley & co. prevails and gets Lincoln in their keeping the Union will be dissolved [and we will have] the free and slave states before the expiration of the month of March.

I am hopeful, however, that Lincoln’s policy will prev- al—and that the patriotic and peaceful will in extremis triump; and consolidate the present states yet together. I cannot think when the question is presented to Lincoln whether he will administer the Cons. over the present Union or over a fragment of the north, that he will see the necessity of conciliation and peace. He may halt at the yawning gulf[s] and survey the perils that encompass him.

Mrs. N. & Anna wish to be remembered to Mrs. S. and Miss Susan—as well as Your friend S. Nelson

Written to: E.H. Stoughton Esq.
popular sentiment was virtually unanimous. Commending his appointment the New York Times said: "His mind is singularly analytical. Added to all, and crowning all, his perfect character is of the best stamp, modest, amiable, gentle, strictly temperate, and infallibly just."

While many of the items donated by Mr. Holt have not yet been catalogued, his contribution provides a source of information on an important Justice. Although his arrival on the Bench was greeted with enthusiasm from all around the country, Campbell served in difficult times, when Congress and the country were deeply divided. The Court was a reflection of this division as well. An astute man, Campbell foresaw the time when the slavery issue would overwhelm the temporary dam that had prevented it drowning the Union. Indeed, he advocated an amendment to the Constitution that would protect permanently the rights of slave states. In his opinion, the Constitution provided no legal basis for the continuance of slave-holding, so he advocated providing a legal justification through such an amendment.

Dedicated to seeking a peaceful solution to the escalating hostilities, Campbell was eventually overtaken by events. He remained in Washington even after the secession of Alabama, carrying out his normal judicial role and attempting reconciliation. However, as he expressed in a letter written to his friend David Chandler in November 1860, he was committed to the people of Alabama and the South and had determined years ago it was his "obligation to follow the fortunes of her people." As Mr. Alston observed in his thesis:

"When the Confederate government was established creating a separate and opposing government on the soil of his home state, Justice Campbell was placed in a uniquely embarrassing position." Even so, he remained in Washington several months longer hoping to negotiate a peaceful resolution to the demands of the Confederacy. He attempted to get Seward to meet with a commission from the Confederate Government hoping to create a compromise and prevent outright warfare. Ultimately, his attempts failed and the nation was catapulted into civil war. But as Mr. Alston observed: "...no man put forth greater efforts to prevent it than John A. Campbell... Campbell had remained in Washington several months at a considerable cost to his personal integrity in the hope that he might aid in the peaceful restoration of the Union." In fact, it appeared that Campbell's actions only delayed the inevitable for a few weeks. "For so slight a regard toward Campbell had sacrificed much to personal honor in the eyes of his fellow southerners..."

Years later Campbell wrote to Benjamin Curtis, a former colleague on the Supreme Court.

You are aware that I was not a patron or a friend of the secession movement. My condemnation of it and my continuance in the supreme court were regarded as acts for which there could be no tolerance. When I returned to Alabama in May 1861, it was to receive coldness, avaricious, or contumely from the secession population. I did not agree to recant what I had said, or to explain what I had done; and thus, instead of appeasing my opponents, I aggravated my offense."

Spared by most of his countrymen in the South,

Southern Chivalry — Argument versus Club's.

Campbell's service on the bench saw rising contention between the South and the North. This cartoon illustrates an incident that took place on the floor of Congress in 1866 when Representative Preston S. Brooks of South Carolina severely beat Massachusetts Senator Charles Sumner. Brooks was enraged by remarks Sumner made against his cousin Senator Andrew Pickens Butler and against Senator Stephen A. Douglas.

President Lincoln and his cabinet were faced with the daunting task of trying to hold the Union together. In 1861, Edward Seward, Secretary of State, proposed waging war against most of Europe in an attempt to unite the nation. Many believe his meddling in the Fort Sumter crisis brought on war. Back row, left to right: Gideon Welles, Secretary of the Navy; Montgomery Blair, Postmaster General; and Caleb B. Smith, Secretary of the Interior. Middle row, left to right: Abraham Lincoln; Salmon P. Chase, Secretary of the Treasury; and Edward Bates, Attorney General. Front row, left to right: William H. Seward, Secretary of State; and Edwin M. Stanton, Secretary of War.

Campbell was sucked reluctantly into the machinery of the Confederate government. He spent the first months after his return to the South funding charitable good works he personally organized, all aimed at relieving suffering occasioned by the war. Turning down all offers of offices of political significance initially, he consented eventually to serve as the Assistant Secretary of War with oversight of the conscription laws. This role he performed with humanity, justice and compassion. One of the first members of the Confederate government to recognize the cause of the South was doomed, Campbell advocated an early termination to hostilities to prevent further bloodshed. He met with Lincoln at Hampton Roads in 1864, and by April 1865, he was the only high ranking member of the Confederate government still resident in Richmond. Had Lincoln lived, it is probable Campbell would have played a large part in the repatriation of the South. Instead, he was imprisoned for a time, and released months later to find his property in Mobile, from which he hoped to make a living. His personal fortune had been depleted sustaining his family and in funding charitable deeds.

Phoenix-like, Campbell rose from the destruction of his life, and returned to the practice of law in New Orleans. By 1873 he was the undisputed leader of the Southern Bar. He returned that year to the Supreme Court of the United States, this time to argue in the famous case styled the Slaughterhouse Cases. In 1883 he came before the Supreme Court in New Hampshire and New York v. Louisiana, in which "he won for the state of Louisiana the right of freedom from suit by another state on behalf of the claims of their citizens." In this judgment he achieved a victory for the rights of states, a cause he had espoused for many years.

Mr. Holt's collection is a welcome addition to the Society's collection, and it has been received with gratitude. The papers and materials will be catalogued and become part of the library collection. Donations from other members would also be welcomed. If you are interested in donating something to the collection, please contact the staff at 224 East Capital Street, NE address.
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