4TH CONGRESS, } 1st Session. }
SENATE.
IN EXECUTIVE SESSION.
{ E... PT. No. 2, { ... RT 1.

NOMINATION OF LOUIS D. BRANDEIS.

JUNE 1, 1916.—Ordered to be printed and injunction of secrecy removed.

Ir. CHILTON, from the Committee on the Judiciary, submitted the following

REPORT.

[To accompany the nomination of Louis D. Brandeis.]

The Committee on the Judiciary, to whom was referred the nomi- ation of Louis D. Brandeis, of Massachusetts, to be associate justice f the Supreme Court of the United States, vice Joseph Rucker amar, deceased, beg leave to report it back with the recommenda- on that it be confirmed.

The nomination was referred to the Committee on the Judiciary n January 28, 1916. On January 31 the committee referred it to the ollowing as a subcommittee: Messrs. Chilton (chairman), Fletcher, Valsh, Clark of Wyoming, and Cummins.

The subcommittee held hearings, made necessary by a protest gainst confirmation of the nomination, which began on February 9, 916, and continued from time to time until March 15, 1916. On 'ebruary 16 Mr. Works was appointed on the subcommittee in the lace of Mr. Clark of Wyoming.

On April 3 the subcommittee made a favorable report to the entire ommittee, recommending confirmation of the nomination. There 'as a minority report, however, against confirmation, made by Iessrs. Cummins and Works. The majority views of the subcom- iittee are set out at length in the separate reports of the majority iembers of the subcommittee. Mr. Chilton's views were concurred 1 by Mr. Fletcher, and Mr. Walsh filed a separate report.

All of these views of the members of the subcommittee are printed 1 Senate Document No. 409, Sixty-fourth Congress, first session, and our committee herewith adopts the statements and views of Mr hilton and of Mr. Walsh and makes the same a part of this repo s follows:

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NOMINATION OF LOUIS D. BRANDEIS.

Mr. CHILTON, from the subcommittee of the Committee on the Judiciary, submitted the following

VIEWS.

[To accompany the nomination of Louis D. Brandeis.]

To the COMMITTEE ON THE JUDICIARY,
United States Senate:

As heretofore announced to the Committee on the Judiciary, your subcommittee decided to have open hearings, which were begun on February 9, 1916, and continued from time to time until March 15, 1916.

Very soon after your subcommittee was organized a protest against the confirmation was filed, signed by the following-named gentlemen:

Charles S. Rackemann.
Harrison M. Davis.
Joseph Sargent.
A. Lawrence Lowell.
John Noble.
Charles F. Adams.
I. Tucker Burr.
C. Minot Weld.
Nathaniel H. Stone.
Felix Rackemann.
Arthur Lyman.
Henry S. Grew.
George P. Gardner.
Roger Walcott.
Pierpont L. Stackpole.
Francis Peabody.
Edmund K. Arnold.
Willard B. Luther.
Charles A. Williams.
Moses Williams.
Reginald H. Johnson.
Henry Ware.
J. L. Thorndike.
Julian Codman.
Richard C. Storey.
Fred C. Bowditch.
W. L. Putnam.
Edward H. Warren (Prof.).
Roger S. Warner.
James M. Newell.
William S. Hall.
Clifton L. Bremer.
Lawrence Minot.
Henry E. Edes.
Hollis R. Bailey.
Edward S. Dodge.
F. Walker Johnson.
George B. Dabney.
Francis R. Boyd.
J. A. Lowell Blake.
Louis Bacon.
Lawrence P. Dodge.
George B. Harris.
Eugene J. Fabens.
Charles H. Fiske, jr.
Harold Jefferson Coolidge.
P. T. Jackson, jr.
Augustus P. Loring.
William W. Vaughn.
Samuel D. Parker.
Thomas N. Perkins.
R. W. Boyden.
Henry L. Shattuck.
A. R. Graustein.
James D. Colt.
Edmund A. Whitman.
William C. Indicott.
Albert E. Pillsbury.
William V. Kellen.
Frederic M. Stone.

Mr. Austen G. Fox, assisted by Mr. Kenneth M. Spence, appeared on behalf of those signing the petition, and the committee requested Mr. George W. Anderson to represent the committee in bringing out the facts. Quite a number of other protests and many letters of commendation of the nominee were filed before the committee in the shape of letters and telegrams, some to the committee and some to ferent members, all of which are made a part of the report.

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As to every charge made against the nominee, by the protesting committee or contained in rumor or which in any way came to the knowledge of your committee, we have sent for those alleged to have knowledge and have examined such witnesses. All the testimony of the 43 witnesses examined was taken down by a stenographer, was printed, and is contained in one volume of 1,316 pages, which is now before the Committee. The evidence relates to various charges reflecting upon the professional conduct of the nominee, as well as his standing and general reputation.

On pages 884 to 887, 933 and 934, and 1225 and 1226 may be found a summary of the matters as to which the proof, outside of opinion evidence, relates. These charges will now be taken up, one at a time, and the proof relating thereto analyzed.

WARREN CASE.

It is charged that Mr. Brandeis consciously advised and assisted Samuel D. Warren in a breach of trust in fraud of his brother, Edward P. Warren. This charge is wholly unfounded, and was recognized to be by the leading counsel for Edward P. Warren in the suit concerning this trust (284, 860, 1164). The propriety of Mr. Brandeis's conduct in this case was also recognized by one of his leading opponents who was counsel for other beneficiaries of the trust (278). In May, 1888, Samuel D. Warren and Mr. Barndeis were partners in the practice of law and had been for about 10 years. In May, 1888, Mr. Warren's father, Samuel D. Warren the elder, died, leaving a widow and five children, entitled under his will to his property in their own right without the intervention of any trustees—the widow to five-fifteenths and each child to two-fifteenths.

Mr. Warren the elder owned paper mills in Maine, valued at nearly $2,000,000. These paper mills were conducted by the firm S. D. Warren & Co., composed of himself and Mortimer B. Mason, who had been with him for 18 years and a partner for 6 years. One son, Fiske Warren, was employed in the business and had been for about five years. Warren & Brandeis had been attorneys for S. D. Warren & Co. before the elder Warren's death, and were counsel for the executors of his will. They had no other connection or relation with Edward P. Warren, a son then 29 years of age. The Warren family was believed to be entirely harmonious at this time, and to desire to keep the mills intact as a family property. There was no member of the family fitted by temperament or desire to take the active headship of the business except Samuel D. Warren. They all lived in or near Boston except Edward P. Warren, who was in England. Mr. Mason was regarded by all as essential to the business because of his experience and ability. He was receiving one-sixth of the profits of operation of the mills, and believed that he should receive under the changed condition one-fourth of the profit. He had earned in the last two years $76,000 and $68,000, respectively, as his share of the profits. This is a larger amount than he averaged during the ensuing 20 years under the plan that was adopted. This plan was to have the real estate vested in trustees who should lease to an operating concern which should pay a fixed rental of 6 per cent and an additional amount equal to one-half the profits of the operating concern. The

trustees selected were Samuel D. Warren and Mr. Mason and Mrs. Warren, the widow, The operating concern was a new partnership of Samuel D. Warren & Co., composed of Mr. Mason, with one-half interest; Samuel D. Warren, with one-third interest; and Fiske Warren, with one-sixth interest. The plan was elaborately discussed (842, 858) among the members of the family, all of whom were persons of intelligence, and was agreed to before the trust was created. The papers to give legal effect to the plan were drawn and executed the end of May, 1889, and sent to Edward P. Warren in a letter explaining these terms (844). He executed them, and the business was carried on in accordance with this arrangement for a period of over 20 years.

Full accounts were rendered annually, and they show the profits resulting to the partnership from operating the mills under this lease and the income resulting to the trust (858, 519–607).

Mr. Warren retired from the practice of law and from the firm of Warren & Brandeis in 1889. Mr. Brandeis and his firm continued to be the legal adviser of the firm of Samuel D. Warren & Co. and of the trustees throughout the ensuing 20 years. They also advised and acted for the various members of the family from time to time, and it was well known to all that they were so acting. No dissension arose until after the death of Mrs. Warren in 1901. This left a vacancy in the board of trustees. Henry Warren, next in age to Samuel D. Warren, had died. The declaration of trust provided for the appointment of a trustee, preferably from among the children of the elder Warren, and not a member of the firm. This limited the preference to Edward P. Warren or his sister, Cornelia Warren. Mr. Mason and Mr. Samuel D. Warren believed that Edward P. Warren, on account of his temperament and the fact that he was living in England, was not a desirable trustee; and it was proposed immediately after the mother's death that Cornelia Warren be appointed a trustee, but Edward P. Warren opposed this. The next year it was proposed that Fiske Warren be appointed. This was also opposed by Edward P. Warren. Fiske Warren had retired to a considerable extent from active business, and his proportion of the profits had been reduced from 16⅔ per cent to 5 per cent, and soon thereafter to 2½ per cent.

In 1903 Edward P. Warren retained William S. Youngman, who has testified in the present hearing (461–518, 1286–1296, 1306–1307). He soon after began investigations and in 1906 rendered an elaborate report to Edward P. Warren thereon (861), approving the details of the accounts, but claiming that the plan had worked too much to the advantage of Samuel D. Warren & Co., that too much of the income of the trust had been devoted to the improvement of the properties instead of to the payment of the beneficiaries, and commenting on the division between the repair account, which was a charge of operations, and the improvement account, which was a capital charge against the trust.

The trust instrument originally provided that the trustees might retain one-third of the net income for improvements. This was found to be inadequate, and by informal agreement reached in 1890, the amount was increased to one-half. All the beneficiaries had agreed to this. The fact was recited in the reports from year to year.

The profits which the partners had received from the operation of the mill had not exceeded, on the average, those to be expected from the condition of the business as it had been estimated in 1889 in the estimates submitted to the beneficiaries before the plan was agreed to (842).

The division between repairs and improvements had been fairly and honestly made (862).

After 1906, negotiations continued relative to the appointment of a new trustee, but no satisfactory agreement could be reached. Edward P. Warren, after having urged his own appointment, urged the appointment of Mr. Youngman. Outsiders also were suggested.

At the end of 1909 suit was brought by Edward P. Warren against Samuel D. Warren, seeking an accounting and the removal of Samuel D. Warren as a trustee (894–933). Cornelia Warren, whose interests were the same as Edward P. Warren's, and Fiske Warren, whose interests were nearly the same, opposed the suit, as did their counsel (915). Brandeis, Dunbar & Nutter acted for Samuel D. Warren, and one of the members of the firm tried the case up to the death of Samuel D. Warren, who was the first witness. Nothing developed to the discredit of Mr. Warren or Mr. Brandeis in any way, and any lack of good faith on their part was disclaimed in the suit itself by counsel for Edward P. Warren (277, 284, 860, 1164). Some months after the death of Mr. Warren the others in interest bought out the share of Edward P. Warren in the estate at what was believed by them to be no more than the share was worth, making no allowance for any claims made in the suit (278, 867).

Samuel D. Warren was a man of high character and intelligence. The drafts of the original papers for the formation of the trust and the lease were in his handwriting (841). Mr. Brandeis advised about the matter and took part in the conveyances which were made. The negotiations between the different members of the family were conducted directly between them. Apparently all communications with Edward P. Warren were from Samuel D. Warren or other members of the family. No occasion arose for the intervention of counsel between the different members of the family at the time the trust was created or at any time up to the time that Mr. Youngman was employed by Edward P. Warren. The original agreement was a fair one (277, 278) and worked out fairly and was justly and honestly administered, and the share of Edward P. Warren increased enormously under the administration of his brother and the other trustees (867, 915).

Mr. Brandeis exerted no improper influence in the matter (881).

When what was believed to be a wholly groundless and unwarranted attack was made upon Mr. Warren and his removal as trustee sought, it was certainly the province of counsel for the trustee, who had been such during the entire administration of the trust, to support him as counsel in defending the integrity of his administration of the trust (1259). Such knowledge as counsel for the trustee and his firm had, came to them from the trustee and his firm in that employment, and the trustee and his firm were entitled to the full benefit of that knowledge. If they had employed new counsel, they could rightly ask that everything known to their existing counsel should be communicated to the new counsel. It would have been virtually a

desertion if the counsel for the trustee and his firm had failed to act (1259).

Three out of the four beneficiaries opposed the litigation and desired the retention of Mr. Warren as a trustee.

No claim was ever made in the case but that the defense ought to be made by Brandeis, Dunbar & Nutter on Mr. Warren's behalf (1298).

As to the transactions which led up to the suit, the leading counsel for the plaintiff said that he did not claim that the arrangement was ever gotten up, either by Mr. Brandeis or Mr. Warren, for the purpose of violating a trust (1164).

In order to condemn Mr. Brandeis for anything done in this whole matter one must emphasize every suspicion and minimize the prominent facts shown by the weight of the evidence. I agree with Mr. Whipple, the leading trial lawyer for Edward P. Warren, the complaining heir, that if Mr. Brandeis thought that Edward had assented (and how could a reasonable man assume otherwise?), "there was no violation of trust; and there was no moral wrong" (284).

NEW YORK & NEW ENGLAND RAILROAD MATTER.

It is charged that Mr. Brandeis was engaged at the instance of the New York, New Haven & Hartford R. R. to wreck the New York & New England Railroad Co. The facts do not sustain this charge.

At about the beginning of 1892 Austin Corbin, of New York, was the president and director of the New York & New England Railroad (404). The railroad was in a very bad financial condition and already wrecked. Corbin took the presidency with a view to rehabilitating it. He also got friends to invest in stock of the company and he expected them to become directors (405). Several of the directors who he thought were acting improperly declined to resign. These directors were represented in the later ligitation by Mr. Storey (405). Accordingly, Mr. Corbin decided to resign himself, as he refused to stay on the board of directors with them. He believed they were using their position to benefit themselves at the expense of the road (405.) On resigning, Mr. Corbin consulted William J. Kelly, his attorney, who is now one of the judges of the Supreme Court of New York. Mr. Kelly employed Mr. Brandeis to institute suits to have the railroad put in the hands of a receiver in Massachusetts, Connecticut, and New York. These suits were never filed, because the action of the directors necessitated other proceedings. They declared they were about to pay unearned dividends, and the suits were immediately brought and injunctions were obtained to prevent this (405). They also attempted to issue bonds beyond the legal limit and suits were brought to prevent this. These also prevailed (405). Suits also were brought to prevent leases made to the company by these directors of railroads claimed to be owned by these directors and leased at an improper rental (409). These suits were brought on behalf of all stockholders, of whom Mr. Corbin was one, and particular stockholders were selected as plaintiffs in order to give the Federal courts jurisdiction (411). Mr. Corbin's connection with the suits was well known. The hostile directors knew it well (411). He indemnified the plaintiffs (411).

All the suits were brought between April and August, 1892 (422). It was alleged in the suits that they were brought at the expense of persons other than the plaintiffs and to depress the credit of the railroad, and this was held to be immaterial (427).

Subsequently, in an investigation before a committee of the Legislature of Massachusetts in May, 1893, it was claimed on behalf of the New York & New England Railroad Co., by Mr. Moorefield Storey, that these suits had been instigated by the New York, New Haven & Hartford Railroad Co. or in its interests. Mr. Brandeis then testified that he had no knowledge of any such connection. Mr. Josiah H. Benton, the attorney for the New York, New Haven & Hartford Railroad Co., stated that there was no such connection (439).

Judge Kelly now says that in the latter part of 1893 he learned from Mr. Corbin that he had concluded that the chance of reorganizing the road was gone, and that the first mortgage was inevitably going to be foreclosed, and that he was disposed to give up the litigation; and later he learned from Mr. Corbin that certain men interested in the New York, New Haven & Hartford Railroad Co., which was interested in the first-mortgage bonds, had expressed a desire that litigation should not be given up and that they would reimburse Mr. Corbin for expenses thereafter (412).

Mr. Brandeis was not employed to wreck the New York & New England Railroad (406), and had no knowledge that the New York, New Haven & Hartford Railroad Co. was interested in the litigation when he testified in May, 1893. His last substantial work in the cases was done in June, 1893 (700). He was paid by Judge Kelly, who received the money therefor from Mr. Corbin (408).

It was said in the present hearing that the suits were begun at the instance of the New York, New Haven & Hartford Railroad Co. (267, 415), and that the United States, in the recent suit against the directors of the New York, New Haven & Hartford Railroad Co., had so contended. The fact is to the contrary. The Government's contention was in accordance with the foregoing statement from Judge Kelly, namely, that they were started by Mr. Corbin and that subsequently the directors of the New York, New Haven & Hartford Railroad Co. took them over (419, 700).

There was nothing to indicate that the suits were not meritorious or brought for the purpose for which they purported to be brought. They were found to be well grounded as far as they progressed. Since it appears that the Massachusetts Legislature investigated this matter 23 years ago, and that now Judge Kelly, chief counsel, acquits him of any purpose to wreck the railroad, and that Josiah H. Benton, chief counsel of the New Haven & Hartford Railroad, testifies that that railroad had no connection with the suits brought by Mr. Brandeis, I can find neither reason nor excuse to justify anything but an unequivocal vindication of the nominee from this charge.

DINGLEY BILL WOOL DUTY.

No charge touching Mr. Brandeis appears to have been suggested in this matter.

In 1908 charges were made that William Whitman had, in 1897, secured an exorbitant duty on wool tops, to the detriment of other woolen manufacturers in the association which Mr. Whitman represented (962).

Mr. Whitman did not know Mr. Brandeis in 1897, or have anything to do with him prior to 1905 (690), and Mr. Brandeis has never acted for Mr. Whitman in any tariff matters (973).

When the charges above stated were made against Mr. Whitman in 1908, he consulted with Mr. Brandeis with reference to making an answer to these charges. Mr. Whitman stated his case to Mr. Brandeis and Mr. Brandeis assisted him in preparing a reply (961). In view of the testimony of Mr. Whitman in the lobby investigation (of 1913), the committee, on its own motion, subpœnaed Mr. Whitman and Mr. Ingersoll in order to find out all the facts concerning Mr. Brandeis's appearance before the congressional committee having in charge the Stevens bill, and the true history of Mr. Whitman's defense to what are known as the "North charges."

I fail to find anything in either which reflects upon the nominee.

LEGISLATION CONCERNING INTOXICATING LIQUORS.

No charge has been made against Mr. Brandeis with respect to this matter. It appears that 25 years ago he appeared in opposition to certain legislation relative to the sale of intoxicating liquors, and in support of certain other legislation then under consideration before the Massachusetts Legislature, and that this appearance was in behalf of associations engaged in the sale of liquor (1055).

This was in a State that never has had a prohibitory law, but has long had laws regulating the liquor traffic. There is nothing to indicate that Mr. Brandeis's attitude was or is favorable or adverse to a prohibitory law in a community where public sentiment wants it.

There is nothing to indicate that his attitude 25 years ago was in any way favorable to the intemperate use of liquor (1057), or that the legislation which he sought was morally wrong from the viewpoints of that period.

Public sentiment upon the question of prohibition has undergone radical change in the last 10 years, not to say 25 years. The argument of an attorney 25 years ago is not even persuasive of his views now. Generally speaking, it is unfair to make one's views, within legitimate limits, the test of a vote on his confirmation as judge. The honest, capable judge only construes the law, and it should be assumed that the good lawyer, "wet" or "dry," when elevated to the bench, will not presume to legislate. Only a dishonest judge would distort a record or evade a reasonable conclusion, whether it suited him or not.

UNITED SHOE MACHINERY CO.

The United Shoe Machinery Co. has charged that Mr. Brandeis has been guilty of unprofessional conduct in acquiring information while connected with that company and using it at a later date in the interest of other clients. This charge involves a history of the company as well as the evolution of trusts and the laws applicable to them.

The tying-clause system, so called, of the United Shoe Machinery Co. was not created by Mr. Brandeis. He severed his relations with the company because of his disapproval of this system. *Three and one-half years elapsed after his resignation from the company before he*

advised any other client on the subject. In this advice and in all subsequent action which he took he made no use of any confidential information; but, on the contrary, the facts seem to have been public property well known to the shoe manufacturers (703, 747).

The United Shoe Machinery Co. was organized early in 1899 and acquired the business and assets or a majority of the stock of Goodyear Shoe Machinery Co. (and other Goodyear companies), McKay Shoe Machinery Co., Eppler Welt Machine Co. (and another Eppler company), Consolidated & McKay Lasting Machine Co., and Davey Pegging Machine Co. (703).

About a year before the organization of the United Co. negotiations had been undertaken to bring these companies together, and Mr. Brandeis had opposed this in the belief that on the terms then proposed it was better for the McKay Co. to remain as it was (703).

The negotiations for the consolidation, which went through in 1899, were conducted principally by Mr. Elmer Howe, Mr. James J. Storrow, and Mr. Winslow (703). Mr. Howe was an experienced lawyer and for all practical purposes in charge of the Goodyear Co. Mr. Storrow was of the firm of Fish, Richardson & Storrow, one of the leading firms of patent lawyers of the country. They were counsel for the Eppler Co., the Consolidated & McKay Co., and the McKay Co. Mr. Storrow had or represented a large interest in the McKay Co. (703).

The companies had for a long time put their machines out on leases containing restrictive conditions as to their uses, tying clauses, so called (174, 704, 734), similar in form to those afterwards continued by the new company.

A complete investigation indicates that Mr. Brandeis was not asked nor did he render an opinion as to the legality under the Sherman antitrust law of these clauses of the leases or of the consolidation itself at any time prior to 1906 or 1910 (704, 733, 745, 744).

Before the consolidation the matter of working agreement between the companies was considered, but Mr. Howe thought that this might be contrary to the Sherman law and that there should be a new company which should acquire a full title to the property or stock of the old companies (704).

It should be noted that after the decision in the Knight case (156 U. S., 1) in 1895 and at least until the decision of the Northern Securities case (193 U. S., 197) in 1904, and of the Wall Paper case (212 U. S., 227) in 1909, many lawyers believed that the Sherman antitrust law did not prohibit the acquisition by one company within a single State of the assets of a competitor even if the manufactures of both were going into interstate commerce.

Mr. Brandeis joined with the eight other directors of the McKay Co. in signing the circular to the McKay stockholders recommending that they exchange their stock (255, 704).

Mr. Howe at once became the leading counsel (182, 178, 704, 733) for the United Co., and he became also a member of the executive committee. Mr. Brandeis became a director. He never became general counsel for the company or legal or business advisor on the general policies of the company (704). He was concerned with the general policies of the company only to such extent, if any, as Mr. Winslow or others talked with him about them as a director (184).

Mr. Brandeis and his firm were employed from time to time in specific matters for which specific charges were made (705). The last employment was in a matter begun in 1906, and the only matters which lasted after January 7, 1907, were two begun in 1904 or earlier.

In the winter and spring of 1906 legislation was proposed in Massachusetts to prohibit anyone from imposing in the lease or sale of a patented machine a condition that the lessee shall not use the machines of another, and from offering unreasonable discounts which would prohibit such use (218, 705, 713). This proposed legislation was believed to be aimed at the United Co., and to emanate from one or more machinery manufacturers (1153) and not from shoe manufacturers.

Mr. Brandeis believed on the information which he then had, or which he was given by Mr. Winslow, that the methods of the United Co. were beneficial particularly in that their leasing system and uniform terms to all worked to the advantage of the small shoe manufacturers (217, 705), and that the shoe manufacturers were content with the terms of the leases. At this time Mr. Coolidge, one of the counsel for the United Co., and who was experienced in legislative matters, was ill, and Mr. Winslow requested Mr. Brandeis to act (221, 705). He did so, and in April, 1906, he appeared before a committee and argued (232) against the proposed legislation, adopting the facts furnished him by Mr. Winslow (187). He stated that he was counsel for a large number of shoe manufacturers (228) and Mr. Winslow then knew of this fact (228, 179).

He, Mr. Winslow, denied it emphatically (181) on February 16, 1916, until confronted with the statement (228).

In May, 1906, Mr. Brandeis undertook to secure the assistance of some of these shoe manufacturers, Mr. McElwain, Mr. Jones, and Mr. Bliss, to support the opposition to the proposed legislation (218, 714). He then learned that they objected to the tying clauses in the leases (218, 715). Nevertheless, it was arranged that they would join in the opposition, but upon the understanding that Mr. Winslow would take up the adjustment of the differences, by conference with them, without legislation (176, 717). Mr. McElwain asked Mr. Winslow to appoint a time for the conferences, and Mr. Winslow expressed the desire to postpone them until fall, as he was about starting for Europe, and this was satisfactory to Mr. McElwain (218, 722). The bill in the legislature failed to pass.

In September, 1906, Mr. Brandeis wrote to Mr. Howe, counsel and member of the executive committee, calling to his attention the great significance of the decision rendered August 22, 1906, by Judge Seamans in Indiana Manufacturing Co. *v.* J. T. Case Thrashing Machine Co. (148 Fed., 21), holding that there might be a monopolistic combination of patents contrary to the Sherman antitrust law (723).

Mr. Winslow says that Mr. Brandeis before his resignation and acceptance of other employment never gave any "intimation" that there was "any legal or moral" wrong in the company's organization or methods (240).

On October 5, 1906, Mr. Brandeis, in response to a letter of criticism from Mr. Erving Winslow, a stranger to the company, wrote him reciting what he had ascertained the preceding spring and defending the company's methods (162).

On October 6, 1906, Mr. Erving Winslow replied, saying that even on the facts stated he thought that the company was open to criticism (724).

After Mr. Winslow's return from Europe about October (181) some conferences (228) took place between Mr. Winslow and Mr. Jones and Mr. McElwain, in which they disclosed more fully the objections to the exclusive use, full capacity, and tying clauses, but nothing was accomplished toward the removal of any of these clauses (221), and Mr. Winslow did not discuss the matter much (227, 725, 727).

Mr. Brandeis became convinced by these new disclosures that the company's policy was questionable and also that nothing was going to be accomplished (221) and that he must either take the matter up in the board of directors and fight, probably unsuccessfully, with Mr. Winslow and his associates or retire from the company (221). On December 6, 1906, Mr. Brandeis resigned from the board of directors without assigning this difference of opinion as a reason in his letter of resignation (163), but Mr. Winslow understood perfectly that Mr. Brandeis's desire not to be a party to the existing policy of the company was the reason. Mr. Winslow telephoned him on December 11, before his resignation had been accepted, and said, "I am very sorry to have you go, and don't want you to feel that there need be any embarrassment on your part; but of course if you think, in view of what may be called up this winter, you would rather not be there, we do not want to insist upon it" (726). Mr. Brandeis replied that it might be embarrassing both to Mr. Winslow and to him, and that if they did not agree as to the course to be pursued he might, if he were a director, feel called upon to bring the matter up before the board (726). It had been announced already (179) that there would be an effort in the coming winter to get legislation against the practices of the company (726).

Efforts to get the company to make some changes continued and Mr. Winslow had long conferences with Mr. Brandeis on January 2 and January 7, 1907 (726), at which Mr. Brandeis urged his objections at length to the tying and other clauses, but Mr. Winslow was unwilling to make any change (177, 178, 179, 180, 730). Mr. Brandeis told him that by making the changes, they could avoid trouble (182). Later (735), in a letter to Mr. Winslow referring to this interview, Mr. Brandeis speaks of the "radical differences between your opinion and mine when we last met" (237). Mr. Winslow replied the next day, saying, "We value your opinion in these matters very highly, even if we do not decide that we can follow same at this time" (735). Mr. Brandeis had become convinced by this time that while the policy and methods of the company had on the whole operated beneficially up to that time, they must, if pursued, eventually prove injurious, both to the community and the company's interest; and he urged most strenuously upon Mr. Winslow and the officials who participated in the conference with him that these methods be changed, that the policy of monopoly be abandoned, and particularly that the tying clauses be eliminated from the leases (219).

Mr. Winslow testified on direct examination that he knew of no reason for Mr. Brandeis's resignation except that expressed in the letter (175), and that at the later conference of January 7, 1907, "he

expressed a desire that the United Co. make changes in its leases, but he made no concrete suggestion, though asked to do so," and left the inference clear that his severance of relations with the company had nothing to do with this (163). In his widely published attack on Mr. Brandeis in the spring of 1912, he said that during the time that Mr. Brandeis was director and counsel "there entered his mind no doubt whatever of the propriety and legality" of the company's policies and methods. In his published letter of January 19, 1912, attacking Mr. Brandeis, to Senator Clapp as chairman of the Committee on Interstate Commerce, he says that up to the day that Mr. Brandeis accepted employment by clients having hostile interests, he never gave any "intimation" of any legal or moral wrong in the company's organization or methods, and nowhere in the letter does he refer to the fact that Mr. Brandeis had suggested any changes of policy. In his published letter of February 29, 1912, to Senator Clapp, he refers to the fact that Mr Brandeis's letter of resignation. shows "no uneasiness in Mr. Brandeis's mind as to the soundness of the company's policy or the propriety of its methods."

At the time of testifying on direct examination and at the time of these publications, Mr. Winslow had in his possession the letters of September 12 and 13, 1907, and Mr. Brandeis's narrative of the facts (221, 227). His answers on cross-examination showed his full consciousness of the stand which Mr. Brandeis had taken (177, 178, 179, 180, 182, 237).

After January 7, 1907, Mr. Brandeis never acted as counsel for the company and no new matters were taken to his firm. One of the members of the firm continued to act in one litigation which involved no question of tying clauses or monopoly (731). This litigation was begun to secure the return of certain machines claimed to be the property of the company. This was tried in December, 1906, was argued on exceptions in November, 1907, and decided in January, 1908 (734). Other suits followed as a result of this decision, and the company retained other counsel for them. Incidental services were rendered in this connection until 1909.

In the legislative proceedings in 1907, and in all new matters, the company employed other counsel (183, 734).

Mr. Brandeis's termination of relations with the United Shoe Machinery Co. was due to his unwillingness to be identified longer with their policies, which he then expressly disapproved, because of the objections pointed out by the shoe manufacturers and others in the fall of 1906 (219) which came to him after he had expressed to Mr. Howe the possible significance of the decision of Judge Seamans in the legal situation (723). His severance of relations meant the loss of a client (727) and was without expectation of advantage to himself, financial or otherwise.

During the following three and one-half years he had nothing to do with shoe machinery matters (219), and in 1907 declined to act for Mr. Plant (735), a potential rival of the United Co. (222).

On April 30, 1907, the supreme judicial court gave to the legislature, in response to its request, an opinion that an act of the kind proposed aimed against certain of the clauses in use by the United Co. in its leases would be constitutional (220) (193 Mass., 605). Such an act was passed on June 1, 1907 (219–222). The company attempted to avoid the prohibition by adding to its leases a provision, in substance, that any provisions in the lease which were unlawful

should not be deemed to be binding, and also a provision reserving to the company the right to cancel the lease on 30 days' notice (222). A use of new machines in contravention of the language of the tying clauses involved thereafter to the shoe manufacturers the double danger of a decision that the clauses were valid and of a 30-day termination at the will of the company (222, 737).

In June, 1910, Thomas G. Plant, the owner of two-thirds of the stock and the executive head of the Thomas G. Plant Co., a large shoe manufacturer, claimed to have perfected a complete line of shoe machinery which was installed in the shoe factory of the company. Other shoe manufacturers had this examined in their interest and received a favorable report. Mr. Charles H. Jones, of the Commonwealth Shoe & Leather Co., who had been a client of Mr. Brandeis and his firm for over 15 years, asked Brandeis, Dunbar & Nutter for an opinion as to whether he could legally take the new machines or whether the leases were enforcible to prevent them (223, 736).

They reached the conclusion that under the conditions which then existed and in the light of the decisions rendered, notably the Wall Paper Trust decision (212 U. S., 227), rendered February 1, 1909 (219), that the company was then a combination in restraint of trade and that the leases were unlawful as essential parts in perpetuating its monopoly, and were in themselves restraints of trade, and that the fact that the machines were patented did not relieve the leases of this objection, because designed to create a monopoly in excess of the patent. They so advised Mr. Jones (163, 736). Other manufacturers received the same advice from able counsel (223).

When this opinion was given the leases were public property, the opportunities, theoretic and practical, of getting shoe machinery from the United Co., or from any other source, and the practical possibilities of installing and using an entire new line of machinery at one time were known to the shoe manufacturers. The essential facts for forming the opinion rendered were not obtained from the United Co., confidentially or otherwise (744).

Mr. Winslow, on direct examination and in his published letters, used language and made omissions calculated to create a contrary impression (160, 164); but he was unable to think of a single fact in support of the unfounded insinuation (185, 249), and when the question showed that he perceived the truth, Mr. Winslow receded to the point that his real criticism of Mr. Brandeis was *untruthfulness, not use of private information.*

He said, "I do not criticize Mr. Brandeis's acting for anyone if he had at all times scrupulously, or I might say, fairly, confined himself to statements that were correct or true" (202).

When this opinion was rendered to Mr. Jones, Brandeis, Dunbar & Nutter were as free in right and propriety to render it as any lawyers at the bar, and it was rendered to one who had been their client from a time before the United Co. existed or was thought of. They received compensation for this opinion (1154).

It was given to Mr. Jones for his guidance and not as an advertising weapon. Mr. Jones has testified that he showed it to Mr. Plant and Mr. Plant published it. Neither Mr. Brandeis nor his firm had any part in any scheme of Mr. Plant's, if any there was, to force the United Co. to buy him out (253).

At about this time—summer of 1910—Mr. Brandeis, in response to a question in casual conversation from Mr. Barbour, a member of the executive committee of the United Co., told him that in his opinion it would be unlawful suppression of competition for them to buy out Plant or his patents (219, 223)

The company bought out Plant on September 23, 1910, and at a time when a group of large shoe manufacturers from St. Louis were considering the purchase.

Two of these manufacturers, Mr. Jackson Johnson and Mr. Milton S. Florsheim, then conferred with Mr. Winslow. He says that they proposed that they be permitted to acquire stock in the United Co. on unduly favorable terms, and be given better terms on their shoe machinery than was accorded to other manufacturers (196, 191). They deny this (192, 193).

During the following fall and winter (200) these and other manufacturers formed the Shoe Manufacturers' Alliance, designed to secure an opportunity to acquire shoe machinery, whether by purchase or lease, on terms that left the shoe manufacturers free to choose one or more machines at a unit price (163); that is, without tying or exclusive-use clauses. Their object was to get the freedom which Mr. Brandeis had advised the United Co. four years before that they ought to give.

Apparently the information which started the proceedings of the United States against the United Co. came from sources disconnected with this alliance and before Mr. Brandeis acted for them (739).

On January 4, 1911, a resident of Fall River, Mass., wrote the Attorney General about the matter. In consequence, on January 11, 1911, the Department of Justice asked the United States attorney for Massachusetts for information on the subject, and by March the representatives of the Government were making investigations at the offices of the company (201).

On May 3, 1911, the Western Shoe Manufacturers related to the Senate Committee on Finance the alleged monopolistic position which the United Co. had attained (Senate Hearings on the Tariff, 1–5, 1911, p. 3, Cong. Lib. H. F. 1756–a3–1911).

On May 4, 1911, in debate on the farmers' free list, in the House, Mr. Thayer, of Massachusetts, quoted the act passed in Massachusetts in 1907 and severely attacked the United Co. as a trust (Cong. Rec., 62d Cong., 1st sess., vol. 47, pt. 1/2, 953–954). This was followed by his introducing a bill on June 8 (pt. 2, p. 1808).

On May 9, 1911, Senator Gore introduced a resolution for an investigation into the use of patents in the creation of monopolies (pt. 2, p. 1072) (740).

The subject matter of the proposed legislation was the betterment of conditions as they existed in 1911, and not an attack upon past acts. The same is true of the equity suit brought by the Government and the indictment was limited to offenses committed since 1908.

On May 22, 1911, for the first time, representatives of the Shoe Manufacturers Alliance consulted Mr. Brandeis and he said that he was willing to act if what they were after was not special terms but freedom in the acquisition of shoe machinery for themselves and their competitors. They were in accord with this purpose and showed no hostility to the United Co., but the reverse (224, 737).

One of the first steps taken by Mr. Brandeis was to endeavor to ascertain what sources for shoe machinery were in existence (738).

In response to the request of the shoe manufacturers, Mr. Winslow apparently for the first time submitted to them a scheme for separating the different departments so that they would be independent of each other (201–260).

About this time, The Standard Oil decision (221 U. S., 1), having been rendered in May, Mr. Matz, one of the directors of the United Co., requested Mr. Winslow to bring the relations of the Government before the directors and to have Mr. Brandeis and Mr. James A. Garfield, his friend and lately Secretary of the Interior, talk to the directors. It was known that Mr. Brandeis was acting for the Shoe Manufacturers Alliance (200). On June 17, 1911, Mr. Matz had sought advice from Mr. Brandeis and he had advised him to resign, as he, Brandeis, had done in 1906 (227, 741). Mr. Garfield advised Mr. Matz to bring the matter before the directors and this was done on July 12, 1911 (221). At this time Mr. Brandeis stated fully to the directors his own course in severing his connection with the company at the end of 1906, his reasons therefor and his belief as to the effect of the company's course as a suppression of competition (221, 227).

When Mr. Winslow attacked Mr. Brandeis in his published letter of January 19, 1912 (217), to Senator Clapp, Mr. Matz gave Mr. Brandeis permission to write to Senator Clapp what Mr. Brandeis had said at this meeting, concerning his own course, and Mr. Brandeis did so (217, 221), omitting any reference to the fact that he had attended at Mr. Matz's request. Mr. Winslow, well knowing this fact (201), described the meeting in his published letter of February 29, 1912, to Senator Clapp as a "part of the same campaign," i. e., that for the Western Alliance of Shoe Manufacturers.

In the following December (14, 15, and 16), 1911, Mr. Brandeis in the course of a 3-day discussion before the Senate Committee on Interstate Commerce as to trusts, made reference to the United Shoe Machinery Co. as an illustration of the ultimate effect of a monopoly however innocently created and prudently managed (741).

In these remarks Mr. Brandeis made no point of the advantage of his former connection with the company.

Mr. Winslow in his testimony says that Mr. Brandeis's words carried added weight because of his known former connection (165, 202). In his letter to Senator Clapp January 19, 1912, Mr. Winslow criticized Mr. Brandeis for failing to disclose this former connection and promptly himself gave the added weight, if any.

On January 26, 1912, before the Judiciary Committee of the House in the hearings on the Thayer bill, the Lenroot bill, and the Peters bill (743, p. 13), and on February 16, 1914, before the Judiciary Committee of the House, he spoke on the same subject.

The statements made in these hearings (1025–1050), which Mr. Winslow says are false (166-168), are statements of inferences fully warranted by the information furnished by shoe manufacturers, and others familiar with the real situation, and by the fact that these manufacturers do not know where they can get sufficient equipment of the necessary machines, except from the United Co. (746).

Some of the leases of what are regarded as essential machines provide in substance that on failure to observe the conditions of the

exclusive use, additional machinery, or tying clauses of that or any other similar lease from the company, the company may terminate not only the particular lease, but all other leases from the company.

Mr. Brandeis's statements concerning the effect of the United Co. upon Mr. Plant's credit were clearly expressed to be his own inferences (167). The hostility of the United Co. with its great power would tend to reduce and perhaps to destroy Plant's credit even if the company did absolutely nothing. Mr. Plant, who did not testify in the suit of the United States against the United Co., had said, in August, 1910, that the company had cut off his credit in Boston and that he must therefore try New York (746). He says there was a definite basis for this belief. In New York negotiations were taken up with Mr. Evans and Mr. Wallace, of New York, and in the course of them Mr. Wiggin, of Chase Bank, a director of the United Co., spoke to Mr. Evans about the matter. It appears that Mr. Wiggin brought one of the attorneys for the United Co. into communication with Mr. Evans and Mr. Wallace (747). He says that he did not discourage the financing, but Mr. Plant did not know that and did not learn that they were in communication.

It is not possible to try out in detail the accuracy of Mr. Brandeis's statements; but enough has been said to show that there is no warrant for any of Mr. Winslow's assertions that they were not scrupulously truthful.

These services have been without compensation to Mr. Brandeis (742).

The most significant fact in this case is that Mr. Brandeis voluntarily and with no prospect of profit to himself gave up his connection with a profitable client as soon as and because he became convinced that the policy which it was pursuing and would not change was wrong. Four years later, and again without desire for profit to himself, he gave his assistance to the effort to stop what he believed would be the future and increasing effect upon the community of that wrong policy. It may well be asked, How long does an employment mortgage the lawyer's conscience? After all, what "private information" was divulged? I can not see that there was any.

GILLETTE CASE.

It is urged that the action of Mr. Brandeis, taken for Mr. Gillette in the organization of the Gillette Securities Co., was unprofessional because of its effect upon Mr. Joyce. (Richardson, 355 to 371; Williams, 372 to 384.) This contention seems to me to be far-fetched, if there can be found, indeed, the slightest reason to urge it.

Mr. Brandeis and his firm acted as counsel for Mr. Gillette, beginning about 1901 (887). In 1906 suits were brought against Gillette, Joyce, Curran, Holloway, and Heilborn (888), claiming that they had conspired to obtain, and in consequence had obtained, stock of several stockholders of the Gillette Safety Razor Co. by false representations, and that the defendants had also, as directors of the company, paid Gillette, Joyce, and Holloway excessive salaries. The defendants made a joint defense, and Brandeis, Dunbar & Nutter acted for them in so doing.

During the pendency of the suits Mr. Gillette and Mr. Holloway became convinced that Mr. Joyce was cooperating with another

stockholder in measures to oust Mr. Holloway and possibly Mr. Gillette from their official positions in the company (889). Mr. Joyce probably had other counsel (889). Mr. Gillette and Mr. Holloway obtained the cooperation of other stockholders to guard against the ousting of Holloway and Gillette. In order to obtain a majority of the stock it was necessary to secure the stock or the cooperation of Mr. Stewart and Mr. Flaccus, plaintiffs in the pending litigation (889) and believed to be the clients of Mr. Richardson with whom Mr. Williams was supposed to be cooperating because he had clients having a similar interest (888).

Mr. Brandeis acted for Mr. Gillette in some of the conferences with Mr. Richardson, which resulted in the purchase by Mr. Gillette of Mr. Flaccus's stock and an agreement between Mr. Gillette and Mr. Stewart whereby Mr. Stewart exchanged his stock for stock in a holding company which was formed to acquire a majority of the stock of the razor company (889).

There was nothing in the proceedings that bore any relation to the pending suits, except that the sale of Mr. Flaccus's stock involved his giving up the pending suit, and this was by so much to the advantage of Mr. Joyce (891).

The facts of this matter became known to Mr. Joyce about January, 1907. Brandeis, Dunbar & Nutter continued the defense of the pending cases for all of the defendants and obtained a decision wholly favorable to all the defendants except Mr. Heilborn. Before this decision had become final, other suits had been brought against Mr. Heilborn and Mr. Joyce, not including Mr. Gillette or Mr. Holloway. In these Mr. Joyce's counsel, Hurlbut, Jones & Cabot, appeared for Mr. Joyce. They also appeared in the Stewart case, Mr. Jones, of that firm, having stated that Mr. Joyce thought that his interests might differ from those of Mr. Holloway, so that he wanted to be separately represented (892).

In connection with negotiations with Mr. Stewart to have him join in exchanging his stock for stock in the holding company, Mr. Gillette agreed to cause him to be elected an officer of the company. Mr. Gillette subsequenlty did all that he could to carry out this agreement, through action by the board of directors in which he and those in sympathy with him did not have a majority of the votes. Before the next annual meeting, Mr. Gillette bought Mr. Stewart's stock and so terminated his obligation by agreement with Mr. Stewart (986).

At a later date, Mr. Joyce purchased Mr. Holloway's stock in the holding company and then brought a suit to dissolve the holding company or to convert his holding company stock into stock in the razor company, which would have given him a majority of the stock in the razor company (893). Subsequently, in December, 1911, Mr. Joyce bought Mr. Gillette's stock, or a substantial part of it, and thereby secured control and the suit was dismissed (893).

There was nothing to criticize in Mr. Brandeis's connection with the matter at any point (883).

ILLINOIS CENTRAL RAILROAD PROXIES.

It is charged that Mr. Brandeis misrepresented his relation to the procuring of the proxies for the meeting of the stockholders of the Illinois Central Railroad Co. in the fall of 1907. (Peabody, 754.)

On May 19,1908, Mr. Joseph B. Warner, the chairman of the commission on commerce and industry, in committee of the Massachusetts Legislature, in supporting the position taken by the majority of that commission in favor of the New York, New Haven & Hartford Co. against the opposition of the minority (638, 639), referred to Mr. Brandeis, who opposed the position taken by the majority of the commission. In the course of his remarks Mr. Warner referred to Mr. Brandeis's activities in connection with the obtaining of proxies for the meeting of the stockholders of the Illinois Central Railroad Co. On the same day, May 19, 1908 (697), Mr. Brandeis wrote to the chairman of the committee a precise statement of the exact relation of himself and of his firm to these proxies (352).

In the fall of 1907 Mr. Brandeis's partner, Mr. Nutter, was requested by Mr. Catchings, of the firm of Sullivan & Cromwell, New York, to supervise the solicitation in and about Boston of proxies in the interest of the existing board of directors of the Illinois Central Railroad Co., of which Mr. Harrahan was the president and Mr. E. H. Harriman an important member. The opponents in this contest were a faction headed by Mr. Fish. Mr. Nutter appealed to Mr. Brandeis before taking the matter up to assure himself that there was nothing in it that would conflict in any way with the work Mr. Brandeis was doing in connection with the attempted so-called merger of the Boston & Maine Railroad with the New York, New Haven & Hartford Railroad. Mr. Brandeis made special inquiries to assure himself that there was no conflict and that the side which was advocated by Mr. Catchings, in the internal difficulties of the company, was one which appeared to be for the best interests of the stockholders (340). There was nothing to indicate, and there is nothing now to indicate, that either side in this controversy had any relation to the railroad situation in New England. Mr. Brandeis "was expected to do nothing, and he did do nothing," in this matter (342), and the evidence is consistent with the statement in the letter of Mr. Brandeis to the chairman of the House Committee on Railroads (352). It would seem that anyone looking at the evidence (353–354) and the letter signed by Alfred Jaretzki, and noting the failure to produce Mr. Jaretzki, could not fail to dismiss this charge as wholly unsupported.

LENNOX CASE.

The claim asserted in this matter is that Mr. Brandeis was guilty of unprofessional conduct in accepting employment as counsel for P. Lennox & Co, or James Lennox, and then acting against them.

P. Lennox & Co., a partnership consisting of Patrick Lennox and his son, James T. Lennox, and doing a large tanning business in Lynn, Salem, and Peabody, Mass., found themselves seriously crippled financially at the beginning of September, 1907. At this time the active partner was James T. Lennox. His father had been inactive in the business for about 10 years. This financial embarrassment led James T. Lennox to send for Mr. Stein of the Abe Stein Co., of New York (1104), who was a creditor (Whipple 286). Mr. Stein and his counsel, Mr. Stroock, reached Boston on the night of September 3, 1907; and on the morning of September 4, they had a conference with James T. Lennox; Mr. Spaulding, of the Columbia Kid

Co., conducting a selling agency (778) for P. Lennox & Co., and Mr. Coburn, treasurer of the Tracy Bros. Leather Co., in which James T. Lennox owned an interest (770; Stroock, 311). On learning of the financial situation, Mr. Stroock suggested that as he was counsel for Mr. Stein and not a Massachusetts lawyer, Mr. Lennox ought to have counsel (1073, 1114). He suggested Mr. Brandeis, and he being satisfactory to Mr. Lennox, Mr. Stroock called on Mr. Brandeis on the morning of September 4 (1074) to arrange an interview.

The subject under consideration at this time was the possibility that Mr. Stein might make Mr. Lennox a further loan, if the prospects were such that this was safe and likely to bring success. (Stroock, 315; Whipple, 286; Brandeis letter, 289, 1099.) Mr. Stein was ready to make the loan (1105).

Mr. Stroock arranged (1076) with Mr. Brandeis for an interview and soon after 10 in the morning of September 4 (Stroock, 310, 1014), Mr. Stein, Mr. Stroock, Mr. Lennox, Mr. Coburn, and Mr. Spaulding called together on Mr. Brandeis. He had never met Mr. Stroock or James T. Lennox (Stroock, 312), and never has met Patrick Lennox.

Shortly after the interview began (Stroock, 311), or in the afternoon, a stenographer was called in and took notes of the interview (1014; stenographer's report, 775). The first thing dictated was a form of letter which apparently Mr. Stroock desired to send to certain concerns holding leather received from P. Lennox & Co., to which Mr. Stein asserted title under the terms of certain trust receipts (Stroock, 313), under which he had originally supplied the skins to P. Lennox & Co. (788, 1014). This was dictated in the presence of all (1077, 1112).

The interview lasted into the afternoon, or, as Mr. Stroock put it, consisted of two interviews on that day, at both of which all the same persons were present (Stroock, 310). Mr. Stroock's recollection is that it was at the afternoon interview that the stenographer was present first (311) and that the morning conference lasted but a few moments (311). Mr. Stroock says that it was at the afternoon interview that Mr. Brandeis said, for the first time, that he could take the matter up (312), notwithstanding his firm's sometime relation to a creditor, Weil, Farrell & Co. The stenographer's report indicates convincingly that this remark did not occur until the following morning (788). She has no reference to such a statement on the afternoon of September 4 (775–787), and has one on the following morning inconsistent with the question's having been settled the day before (788). Other remarks which Mr. Stroock attributes to the afternoon of September 4 (312) do not appear in the stenographer's notes of that interview (775–786), but do in those for September 5 (790), notably Mr. Stroock's statement that—

> I said that I saw no reason why Mr. Brandeis could not go over the matter and work out *the whole situation* for the benefit of all the parties, because it seemed to me that this was a situation where the *interests of the debtor* and *the interests of the creditors* were alike (312). [Italics not in original.]

Mr. Lennox says that the stenographer was present when Mr. Brandeis said he would take the case (1119) and that the first day, September 4, Mr. Brandeis said that he would not give his decision about undertaking his case until the following day (1131), and that on the following day he said that he would act as his counsel. This shows clearly that Mr. Lennox is testifying to the same things which

appear in detail and with precision in the stenographer's notes of September 5, hereafter referred to.

The conversation on September 4 was conducted openly in the presence of all and without any private communications between Mr. Lennox and Mr. Brandeis. *Mr. Lennox was at no time alone with Mr. Brandeis.* Mr. Stein was a creditor, Mr. Spaulding a debtor, Mr. Coburn a business associate and adviser (785). The conversation was long. The names of the principal creditors and the amounts of their claims were stated, and also the character and value of the assets (775–787). Mr. Lennox said that the partnership consisted of Patrick Lennox and himself (775), and it was not intimated even remotely that there was any question about it (Stroock, 313, 314). Mr. Lennox now says that the partnership consisted of his father and himself (1128). Mr. Lennox's statement of his assets and his liabilities showed clearly the insolvency of the partnership (775–786).

Mr. Brandeis then said:

> Well, now, I think it perfectly clear that you ought to discuss this matter with your father. He has unfortunately not had any information up to now, but he ought to have it now, and he ought to know fully the situation, and he ought to consider whom he would like to have represent him (774 786).

Mr. Lennox said that his father would leave it all to him, and that as notes were coming due every day it was imperative that he do something (786).

Mr. Brandeis said that the situation was much more serious than he had supposed from what Mr. Stroock had said in the morning, and that he had very little doubt that it would be necessary to make an assignment to trustees for the benefit of creditors (786). Mr. Lennox was a man of 30 years' experience in business and accustomed to business in a large way and understood what an assignment for the benefit of creditors was (1119, 1123).

The interview closed with Mr. Brandeis repeating that Mr. Lennox should talk the matter over with his father, who might have some preference in the matter of counsel, and asking Mr. Lennox to make up a more detailed statement of assets and liabilities, and suggesting another conference early the next morning (787).

On the following morning, September 5, Mr. Lennox and Mr. Stroock called on Mr. Brandeis. Mr. Stroock says that the others were present also (311). The stenographer's notes do not show this (791). Mr. Lennox began by reporting that he had talked with his father, and that he had no suggestion to offer (791, 1122). Then, after a short talk about assets and liabilities, Mr. Brandeis said:

> Well, now, Mr. Stroock, I should think that the question that we ought to decide now is whether I should act for Mr. Lennox in this matter or not. I of course understand you came to me after conference with Mr. Lennox to ask me whether I would act for Mr. Lennox.

To this Mr. Stroock replied:

> May I ask you this question, Mr. Brandeis: From all you know, do you believe that you could remain in the case in view of your firm's position with Weil, Farrell & Co.?

To this Mr. Brandeis replied:

> Yes, I think I could. The position that I should take if I remained in the case for Mr. Lennox would be to give to everybody, to the best of my ability, a square deal (792).

It seems clear that this conversation is the one which Mr. Stroock, testifying after eight years, has placed as occurring on the preceding day (312).

It is apparent that it was still being considered whether Mr. Brandeis should act in the matter at all. He followed this by saying that the only course for Mr. Lennox was absolute squareness and frankness to creditors, each to have whatever his legal rights might be. He said:

I should, if I acted for Mr. Lennox, see that he got his legal rights—no more and no less (793.)

Next he repeated that he thought an assignment for the benefit of creditors would be advisable. Mr. Stroock suggested the *possibility of bankruptcy if the assignment was made.* Mr. Brandeis said it was a possibility, but he thought that the creditors would want to avoid bankruptcy (793). Then Mr. Stroock suggested Mr. Brandeis's acting for Stein rather than as "attorney for trustee of the Lennox family" (793). Mr. Brandeis favored the latter course and said:

I should feel if I were acting for Mr. Lennox as trustee that it was the duty of the trustee to see that everybody got his legal rights as nearly as we could make it.

and in cases of doubt—

I should feel that we ought to have a committee of the creditors with whom the trustee could confer; and if there are any questions of doubt in adjustment, that we get the advice of that committee and through them make the proper settlement. (793.)

This is followed by repetitions of the same ideas in other words, with an explanation that an assignment would transfer all the property to the trustee for the purpose of liquidation and distribution to creditors (794); that the trustee could employ Mr. Lennox and that the trustee would have to determine with the creditors whether the business should be continued. This part of the discussion closed with Mr. Lennox's inquiry:

You are speaking now of Mr. Brandeis acting as my counsel?

To this Mr. Brandeis replied:

Not altogether as your counsel, but as a trustee of your property. (795.)

These are the conversations that determined the only understanding upon which Mr. Brandeis took this matter up; that is, as a trustee of this property for the benefit of the creditors and the debtors (1121). Mr. Lennox, Mr. Stroock, and Mr. Brandeis then agreed and now agree that the interests of the creditors and of the debtors were common and to realize as much as possible on their property, and not in conflict. (Stroock, 312; Whipple, 289; Lennox, 791, 1126.) Mr. Lennox asserted that his father also wanted to pay his creditors in full (791). They desired Mr. Brandeis's assistance to bring about this result.

All agreed, and now agree, that an assignment to a trustee for the benefit of creditors was the wisest course. (Stroock, 314, 795, 1088.) Indeed, there was no other course open except immediate bankruptcy proceedings.

Instead of Mr. Brandeis acting personally as trustee, it was agreed that Mr. Nutter should do so. (Stroock, 313.)

Up to the time that the assignment was made there had been no private communications between Mr. Brandeis and Mr. Lennox. They had never talked together alone. No papers had been shown or delivered to Mr. Brandeis. The attorney of the creditors was

there all the time. There was no reason to suppose that the facts concerning the condition of the business could be longer concealed, or that there was any desire or intention to conceal them.

Whatever may have been the occasion for coming to Mr. Brandeis in the first place, *the only employment which he accepted was that of trustee for the benefit of creditors or as attorney for such trustee* (827, 828). He was free to act. He was under no obligation to become or remain counsel for Mr. Lennox in opposition to this trust. He was not employed by any other client in this matter. He gave the only sound advice that could be given at that time, and everything which he did thereafter was consistent with, and required for, the performance of that trust (834).

The assignment was in the printed form (796) in use in the office. It described the assignors as Patrick Lennox and James T. Lennox, copartners as P. Lennox & Co., and the assignee as George R. Nutter. James T. Lennox signed it and gave Mr. Nutter a letter to his father, Patrick Lennox (314, 801). Mr. Nutter called on Patrick Lennox and told him that this was an assignment for the benefit of creditors, and told him what an assignment was (802). Patrick Lennox was in full (1122) possession of his faculties and in physical condition to be at his place of business the following day.

September 5, 1907, Mr. Nutter arranged with an audit company to begin work the next day to find out the exact financial condition.

On that day, pursuant to prior arrangement with Mr. Stroock and Mr. Lennox (795), Mr. Brandeis talked with numerous creditors, and told Mr. Lennox, Mr. Spaulding, Mr. Nutter, Mr. Stein, and Mr. Stroock, that he had told those creditors that the assignment had been executed but that they would like to avoid recording it (803–804).

Then followed lengthy interviews for the information of the trustee as to the condition of the accounts, assets, and liabilities (804).

On September 6, 1907, Mr. Nutter went to the office of P. Lennox & Co. Before entering he met Patrick Lennox and he asked him how things were getting along, and Mr. Nutter said all right (804). This was the second and last time (805) that Mr. Nutter ever saw Patrick Lennox. Mr. Nutter learned that the books had not been balanced since 1902 and did not cover many outside business transactions and were meager (293, 804).

The employees of the audit company called to Mr. Nutter's attention two checks for $5,000 each, apparently drawn on September 3 to pay notes, and that no notes to be paid on that day could be found (804).

On September 7, 1907, Mr. Brandeis, Mr. Nutter, and Mr. Lennox had an interview in which Mr. Nutter asked Mr. Lennox what had become of these two checks for $5,000 each, drawn on September 3 (804). Mr. Lennox said finally that he had the money in the safe of another man in Lynn (804). He then agreed to bring the money to the assignee, and did so on September 9. Nothing by way of lack of frankness to Mr. Brandeis and Mr. Nutter on Mr. Lennox's part had been noticed by them before this (805).

On September 9, it became apparent that an extension by the creditors was out of the question and the newspapers published a statement that the firm was financially embarrassed (314, 805, 1102). On that day Mr. Nutter told Mr. Lennox that hope of an extension

was out of the question and that it was necessary to record the assignment. Mr. Lennox assented to this (805) before it was recorded (1169).

On September 10, 1907, Mr. Nutter recorded the assignment.

On September 10, 1907, Mr. J. P. Leahy called upon Mr. Nutter and said that he acted for Mr. Patrick Lennox and from that time he continued to appear in that capacity in this matter, for two or more years (805, 806). This showed a clear understanding that Mr. Brandies was not counsel for Patrick Lennox, and there was nothing to distinguish between Patrick and James T. in that respect.

Patrick Lennox took a position of opposition immediately (291), and it was this opposition more than anything done by James T. Lennox that rendered bankruptcy proceedings inevitable (1130, 1133, 1134).

On September 11, 1907, Mr. Stroock and Mr. Stein called on Mr. Brandeis and asked him to act particularly for Mr. Stein, and Mr. Brandeis told them that he could act for Mr. Stein only as for all the creditors equally and that he had no objection to their getting independent counsel to act for them specially (819, 820). They decided not to do so for the time being (823). This interview as a whole shows that there was a clear understanding that Mr. Brandeis was acting for the trustee for creditors only (815, 828, 1097).

From September 4, 1907, to September 18, 1907, the interviews between James T. Lennox and Mr. Brandeis and Mr. Nutter were almost daily. On September 18, Mr. Lennox declined to go on with the matter and help the assignee in discovering the assets and liabilities unless he received $500 per week (1131, 1127). Mr. Nutter said that this sum was unreasonable and would not be approved by the creditors, but that he would pay him $100 per week and perhaps could get approval of something better. This was declined by Mr. Lennox and he rendered little or no assistance to the assignee thereafter (828, 1127, 290).

Mr. Brandeis took substantially no active part in the matter after this, and Mr. Lennox did not consult him in any way or ask him to do anything (290). He last saw him in the matter on September 19, 1907 (828).

On October 4, 1907, Mr. Nutter submitted to Mr. Leahy a draft of his proposed report to creditors, and at Mr. Leahy's request he inserted in it a statement that for some years Patrick Lennox had not been active in the business, and made some other changes until they agreed upon the form of the report (825). No objection was made to the part of the report which stated that P. Lennox & Co. was composed of Patrick Lennox and James T. Lennox.

On October 24, 1907, Mr. Nutter learned for the first time, and from Mr. Leahy, that it was claimed that Patrick Lennox was not a Partner in P. Lennox & Co. (826). This put Mr. Nutter in a position where he was compelled by his duty as trustee to establish the fact of the partnership (831). Creditors to the amount of about $380,000 had assented to the assignment (829).

During September and October, 1907, the investigations into the business were continued by Mr. Nutter, and he had several interviews with Mr. Leahy about possible terms of composition.

Mr. Nutter was unable to get from Mr. Lennox adequate information concerning the property covered by the assignment (303, 314),

and the creditors insisted that bankruptcy proceedings were necessary. Mr. Lennox was aware of this (832), and Mr. Nutter wrote him to this effect (1130). Mr. Lennox raised no objection to bankruptcy proceedings.

Mr. Nutter made repeated requests for information from Mr. Leahy as to the property of Patrick Lennox, but did not secure it (291, 1130). He became convinced that bankruptcy proceedings were necessary.

On October 31, 1907, Mr. Nutter, Mr. Herrick—representing Lee Higginson & Co., large creditors—and Mr. Leahy had a conversation at which it was stated by Mr. Nutter that bankruptcy proceedings seemed inevitable (829). He reported this to James T. Lennox by letter on November 9, 1907 (1130), and informed him that, under the circumstances, if a composition was to be effected it would necessitate bankruptcy (1130).

On November 11, 1907, Mr. Nutter issued a report to the creditors, stating that the estate could be administered in bankruptcy better than under the assignment (830).

Under the Massachusetts law, a voluntary assignee has no power to compel the assignor to submit to an examination as to the property covered by the assignment.

Between November 13, 1907, and January 4, 1908, several petitions in bankruptcy were filed on behalf of different creditors. The one on which Brandeis, Dunbar & Nutter appeared was brought first and by Allen Lane & Co. and other creditors (830). No compensation was paid by these (836, 847) creditors.

Mr. Lennox says that Mr. Nutter told him that he was assignee for the benefit of his creditors and not his counsel. Mr. Nutter told Mr. Lennox that he had better get independent counsel (836, 1126). This was prior to October 21, as Mr. Nutter saw him last on October 21 (290, 836, 1132).

On November 18, 1907, Mr. Sherman L. Whipple began to act as counsel for James T. Lennox and continued to do so for two years or more (290). He promptly saw Mr. Brandeis and told him that Mr. Lennox claimed that Mr. Brandeis had undertaken to act as his counsel. Mr. Brandeis at once told him the facts (289).

In the bankruptcy proceedings an answer was filed alleging on behalf of Patrick Lennox that he was not a partner in P. Lennox & Co. and that the assignment had been obtained by fraud (834). The manifest duty of the trustees was to maintain the integrity of the assignment and the existence of the partnership which had made it.

No evidence was offered in support of the allegation that the execution of the assignment had been obtained by fraud.

Mr. Lennox said that his only criticism of Mr. Brandeis or of Mr. Nutter was that Mr. Nutter would not pay him at the rate of $500 per week (828, 1131).

The stenographer's transcript of the interview defining Mr. Brandeis's relation to the matter was offered in evidence in the hearings in bankruptcy (1164).

The case was heard before a referee in bankruptcy, who found that the partnership existed (847). This was followed by a trial before a jury, at which the court directed a verdict (1167), and then the case was taken by Patrick Lennox to the circuit court of appeals, without success (847).

Mr. Nutter, Mr. Herrick, and Mr. Hall became trustees in bankruptcy (830, 1170). The administration as assignee and trustee took four years (1144).

Counsel for Mr. Lennox and the trustees negotiated for a composition offer and finally one was made by which the firm creditors received 40 per cent and the individual creditors 100 per cent, and the bankruptcy was closed (839).

Neither Mr. Brandeis nor Mr. Nutter ever deviated from the course which Mr. Brandeis outlined as the only one upon which he would act in the matter, that of trustee for the benefit of all the creditors alike, and of counsel for the trustee. Only the surplus, if any, was to go to the debtor. All the steps taken were necessary to protect the creditors and were taken in performance of the duty incurred. No compensation was received from any source, except out of the trust fund (847, 1145).

No retainer or other payment for services was ever made to Mr. Brandeis or his firm by Patrick Lennox or James T. Lennox, Weil, Farrell & Co., or any other creditors (315, 847, 1113, 1145).

When the assignment was made there was no reason to suppose that there was the slightest conflict of interests between the debtor and the creditor (289, 312). It was understood that Mr. Brandeis was to act as counsel for the trustee. In that sense he was to act for the creditors and for the debtors in common (289, 312) to the point where either had any interests adverse to those of the trustee. The trustee and his counsel and the debtors had the common moral and legal duty of discovering, disclosing and getting into the possession of the trustee all the property. They must perform that duty. When the debtors unexpectedly failed (303, 1134) to perform this duty, their conduct necessitated legal proceedings. They, and not the trustee or his counsel, were the ones who acted adversely to the common understanding on which the matter had been undertaken (289). Only that adverse action made the bankruptcy proceedings necessary (289, 834, 1130). The trustee and his counsel were not relieved (299,300) from performing their affirmative moral and legal duty by the fact that the debtors then took an adverse position, contrary to the understanding upon which the assignment was made. If the debtors withheld property, the assignee must take action to get it. If the debtors would not disclose their property, the assignee must take action to discover it. The examinations of James T. Lennox were in pursuance of the duty of the trustees to ascertain about the property of the debtors (820, 822, 823, 1007, 1170). This was the only action taken. No unwarranted feeling of embarrassment or taste (296) could justify the assignee or his counsel in neglecting the performance of this duty (290, 834).

When criminal proceedings were instituted against Mr. Lennox, the assignee and his counsel were under no duty to prosecute. They were asked to do so and declined (297, 304, 305, 837, 1145, 1170).

Mr. Whipple, who was his adversary, saw clearly that Mr. Brandeis's conduct was upright throughout (299).

Neither Mr. Brandeis nor Mr. Nutter declined to act for Mr. Lennox so far as it was consistent with the duty of a trustee for creditors (1131), and Mr. Lennox makes no criticism of either, except that Mr. Nutter would not pay him a salary of $500 per week (1132).

The events in this case were due entirely to the fact that the debtors went back on the plan to which they agreed and under which the matter was taken up, namely, to devote their property fully and without hesitation to the payment of their debts. They were never deserted in any way. When they refused their assistance and one of them denied a partnership which unquestionably existed and failed to turn over assets and charged fraud of which there was no evidence whatever, they were deserting, and it would have been dishonorable in the trustee and his firm to assist in the attempt or to fail to take all necessary steps to secure the performance of the trust. Such a course would have been inexcusable and the one pursued was the only possible one. The debtors were fully informed of everything and were never refused any assistance consistent with the trust. The course pursued by Mr. Brandeis and his firm was consistent and honorable throughout. No better one can be suggested (833). With Lennox's knowledge and consent Mr. Nutter became assignee. It is inconceivable that Mr. Brandeis would thereafter desert his partner.

GLAVIS APPEARANCE.

It is charged that Mr. Brandeis was guilty of unprofessional conduct in appearing for Louis R. Glavis at the expense of Collier's Weekly, and concealing the source of his compensation from the select committee engaged in the investigation of the Department of the Interior and of the Bureau of Forestry. (Senate 719, 61st Cong., 3d sess., 1072.)

On August 18, 1909, Louis R. Glavis, then Chief of Field Division of the General Land Office, made a report to the President setting out facts which, if true, indicated that Secretary Ballinger was not a fit official for his high position. On September 13, 1909, the President rendered a decision exonerating Mr. Ballinger and authorizing the dismissal of Mr. Glavis, which immediately followed. On September 20, 1909, Mr. Glavis wrote the President of his intention to make public the charges leading to what he believed was his unwarranted dismissal. (Investigation, 888.) On November 13, 1909, the charges were published in Collier's Weekly (330). On January 19, 1910, the resolution was passed by Congress for the investigation. This resolution contained a provision that "Any official or ex-official of the Department of the Interior, or of the Bureau of Forestry in the Department of Agriculture, whose official conduct is in question, may appear and be heard before the said joint committee or any subcommittee thereof, in person or by counsel" (988).

Collier's Weekly having taken the legal and moral responsibility of presenting Mr. Glavis's charges to the country, felt it imperative to see that all proper steps were taken to have these charges verified before the committee (453–460; Sullivan, 325–335, 385). Collier's accordingly asked Mr. Brandeis to act for Glavis (455) and undertook to pay him therefor, and subsequently did pay him. No pretense was made that Mr. Brandeis was acting as unpaid counsel or for the public, and it was probably assumed by the committee that he was to be paid (994) and that Glavis was not in a position to pay for five months of continuous work by a man of Mr. Brandeis's standing and ability. (Senator Fletcher of that committee, 994.)

It was thought by Collier's Weekly that it was not seemly to attempt to get the credit of conducting the investigation (455), but no attempt whatever was made by anyone to conceal the fact that Mr. Brandeis was to be paid by Collier's (330, 332, 455). It was freely talked about (332, 455). It was known to members of the Interior Department who were in opposition (455). When occasion arose, the fact that Collier's Weekly was paying Mr. Brandeis was referred to in the paper itself (706).

Mr. Brandeis's efforts in the case were directed toward establishing the truth of the Glavis charges. He made no effort to have his own position or any belief that he was acting merely as a friend give any added weight to these efforts; and no occasion arose on which there would have been any propriety in his parading the fact that some one other than Glavis was the source of his compensation. That fact was assumed generally. If it were improper to give or to take compensation for such services except from the party of record, no poor man could ever have competent counsel in any extensive proceedings. These investigations are not social functions, but serious affairs. The truth is the goal to be attained. The facts are the same no matter who may have paid the lawyers. The committee did not ask Mr. Brandeis who was paying his fee, because then it made no difference. The fact that during the trial Mr. Finney, of the Interior Department, knew that Mr. Brandeis was employed by Mr. Hapgood, of Collier's (455), seems to me to demonstrate that those interested knew the situation then as well as they do now. This incident has nothing in it detrimental to the nominee.

MR. THORNE'S OPPOSITION.

Mr. Brandeis was employed to represent the Interstate Commerce Commission in the Five Per Cent Advance Rate case of 1913, and worked in the matter for about a year. His letter of employment was as follows:

> We are of course aware of the fact that the carriers will not fail fully to present their side of the case, and the commission has felt that every effort should be made in the public interest adequately to present the other side. Would you care to undertake that burden? As you are already aware, in a number of cases of large importance and wide interest special counsel have been retained by the commission. As a matter of fact that has not been their real relation in these controversies. They have been retained by the commission not as advocates or to support any special theory of the issues involved, but as a means by which the commission might be advised of all the facts and not have to decide the issue upon a record made up largely in one interest. It is with this general thought in mind that the commission has reached the conclusion that in the Rate Advance case special counsel should be retained, and I have been asked to ascertain whether your engagements and inclinations are such as to permit you to undertake the task of seeing that all sides and angles of the case are presented of record, without advocating any particular theory for its disposition. In making this last observation you will of course understand that you will be expected to emphasize any aspect of the case which in your judgment, after an examination of the whole situation, may require emphasis. The commission, however, wishes to avoid a record based solely on a particular view or theory.

His duties were (1) to get before the commission those facts omitted by the carriers which might help the other side (2) to see that all sides and angles of the case were presented and (3) to emphasize any aspect of the case which in his "judgment" required it (8).

Mr. Thorne was employed by a number of railroad or public utilities commissions of several States and by organizations of shippers, some having general and some special and peculiar interests (7, 48, 53, 90).

Mr. Brandeis acted for the commission and not as a partisan (78, 87). He collected (76), formulated, and presented his evidence through the employees of the commission (51), and by the examination or cross-examination of the railroad employees and their witnesses (79) and not in connection with Mr. Thorne or any other counsel for particular interests (82).

Mr. Thorne prepared and presented his evidence in his own way "independently," as the witness puts it (80, 82).

The other attorneys for the railroads and for the shippers did the same.

The hearings for the reception of evidence began in October or November, 1913 (80), and closed on April 7, 1914, and the case was then set for the filing of briefs and the beginning of arguments on April 27, 1914 (15).

Counsel separated and prepared their briefs and arguments without conference or communication with each other concerning them (17, 50, 61, 82).

On April 27, 1914, they gathered, the briefs were filed, and it was arranged that the shippers' counsel should close their arguments first, with Mr. Thorne as the last, then Mr. Brandeis, and then counsel for the railroads.

On April 27 or 28 (76) Mr. Thorne asked Mr. Carmalt, the examiner attached to Commissioner Harlan's office and now chief examiner for the commission, what Mr. Brandeis's position in argument would be, and Mr. Carmalt told Mr. Thorne that Mr. Brandeis "would take the position that the net operating income of these carriers was not adequate, with especial stress on the lines in Central Freight Association territory, but that he would take the further position that the methods which the carriers had pursued to obtain greater revenues, namely, a horizontal increase of 5 per cent, was not the proper method of increasing their revenues" (19, 76, 81, 83, 84). Mr. Thorne also asked Mr. Brandeis on that day and received substantially the same information as to his position (19).

This brief was understood to take substantially the same position (20, 61).

It was two or three days later, on April 30, that Mr. Thorne began his argument.

He was followed by Mr. Brandeis, who opened by saying that he had reached the following conclusion:

> First, that on the whole the net income, the net operating revenues of the carriers in official classification territory are smaller than is consistent with their assured prosperity and the welfare of the community, and that this is notably true of the C. F. A. lines, and it is true practically as to other lines also, because of the C. F. A. scale.
>
> In view of this, it is desirable that steps should be taken as promptly as reasonably may be to increase those net revenues.
>
> Secondly, that the method proposed by the carriers for increasing these net revenues is essentially unsound; that it is, except as to a small part of the tariffs that have been submitted, entirely too low, and would, if approved, involve the exceeding of the powers vested by Congress in this commission; and as to that small part of the tariffs as to which it would be legal to approve them, it would be extremely unwise, both for the carriers and for the commission, to grant that approval.
>
> Third, that there is nothing in the conditions of the carriers which should prevent the adoption of those methods of increasing their revenues which are conformable to

and in accordance with their interests and that of the community, and that there exists, as has been indicated on this record, adequate means of increasing those revenues without resort to the unsound, largely illegal, and undesirable method of the horizontal increase (33).

Mr. Brandeis had developed in evidence with great diligence and skill the facts (77) which might bear adversely (84) on the railroads. The evidence as a whole had convinced him of the soundness of the conclusions stated. He would have been derelict in his duty to the commission employing him if he had concealed this from his employers (62, 63, 64, 66, 68, 84, 92). His conclusions should be those which he could advise the commission to write into an opinion. They could accept or reject his advice, but were employing him for such help as he could give (63, 71).

On the merits of his conclusion, the difference between Mr. Thorne and him appears to be that Mr. Thorne grouped (32) the net revenues of a whole body of carriers and struck an average which was, of course, not available to the many carriers who were below that average and some of them below zero, whereas Mr. Brandeis stated these revenues in detail in his brief (p. 55) and classified them into four classes—(1) above 12 per cent, (2) 6 to 12 per cent, (3) 0 to 6 per cent, and (4) below 0 (988).

Rates fixed by the average of revenues derived from different and not comparable services, would not save the community (66) from receiverships over those roads performing a necessary service and having too small net revenues or none at all (988).

Counsel for shippers and their clients recognized the correctness of Mr. Brandeis's position (14, 88, 89).

Mr. Brandeis opposed the increase and filed an elaborate brief (11, 89), and argued in opposition, taking the position that even if the "net revenues" of some of the railroads were inadequate the rates sought to be raised did "yield an adequate return to the common carriers, the railroads operation in official classification territory" for the services rendered, so that the first question laid down by the commission (12–13) should be answers in the affirmative.

Mr. Brandeis's remark as to the surplus was elicited by Mr. Thorne's inquiry and was not a part of his argument (32). It is to be read on the light of his argument that rates were not to be fixed by reference to surplus earnings but that if the rates were fixed at such an amount that railroads properly managed had an adequate return and no more, any excess produced by extra skill and diligence should not be taken from them, by adopting a fixed limit to allowable earnings. He desired to increase the incentive for greater efficiency (31).

The increase in rates sought by the carriers was denied on the grounds urged by Mr. Brandeis (36).

Later, in the light of the new conditions created by the European war, a part of the increase sought was granted, against his opposition (36).

Mr. Brandeis performed his duty fully and with due regard for all parties and counsel interested, and for the commission which retained him as their counsel.

No complaint has been made by the commission, nor by any member of it, that I am aware of. Suppose Mr. Brandeis had taken the opposite view and had "decided" every point according to the view of Mr. Thorne, would he then have considered such a course wrong?

The fact that the commission adopted Mr. Brandeis's view forces the conclusion that if Mr. Brandeis was culpable so is the commission. If he, as their attorney, advised them to do wrong and they did it, we must conclude that they indorsed the wrong or are incompetent, a conclusion which would shock the judgment of the country. In my opinion this charge is without any merit whatever.

FREDERICK M. KERBY.

It is suggested, rather than charged, that it was improper for Mr. Brandeis to receive information from Mr. Kerby because he was in the employ of Mr. Ballinger (650). This refers to the Ballinger case.

Kerby was in the employ of the United States, was paid by the United States, and his duty of fidelity was as much to the United States as to his immediate superior. It is not necessary to go further on that point. He was a stenographer assigned to work under Mr. Ballinger when he was the Secretary of the Interior.

On August 18, 1909, Louis R. Glavis, then Chief of Field Division of the General Land Office, made a report to the President setting out facts which, if true, indicated that Secretary Ballinger was not a fit person for his high position. On September 13, 1909, the President rendered a decision exonerating Mr. Ballinger and authorizing the dismissal of Mr. Glavis, which immediately followed.

On January 19, 1910, a joint resolution was passed for an investigation of the Department of the Interior and of the Bureau of Forestry.

In the investigation which followed, the main issue was whether Mr. Ballinger or Mr. Glavis was wrong. Upon this issue Glavis suffered from the inevitable presumption that the President's decision was right. It therefore became important to show the fact that the decision had been drafted, in substantial respects, in Mr. Ballinger's office after an ex parte presentment of the facts by Mr. Ballinger, and had been rendered in an unwarranted reliance upon him and his subordinates, and that Mr. Ballinger and his subordinates were disingenuous in their statements.

In September, 1909, Oscar Lawler, Assistant Attorney General, assigned to the Interior Department, drafted a letter of decision for the President to sign, condemning Glavis and exonerating Mr. Ballinger. He dictated this in part to Kerby.

Shortly after the publication of the President's letter exonerating Mr. Ballinger, Hugh A. Brown, a friend of Kerby's, asked him what he thought of the President's letter, and Kerby informed him that it was practically written in the Secretary's office (988; S. Doc. 719, 61st Cong., 3d sess., pp. 4395–4489, 4398). In response to a similar inquiry, Kerby also told another acquaintance, Arnold, who represented the United Press (4398). These communications were supposed to be confidential (4398). At some time Brown told Mr. Garfield that the draft had been prepared in the Secretary's office. Brown had been private secretary to Mr. Garfield when he was Secretary of the Interior.

In February, 1910, Brown told Kerby that Mr. Garfield knew that the letter had been prepared in the Secretary's office, and that he might be called as a witness (665). Kerby, apparently recognizing

the right of the investigating committee to have the truth and his own duty to disclose it, feared that he might be dismissed as Glavis had been, and he therefore sought an interview with Mr. Garfield to see if there was not some way in which the information could be brought out without his being called. (S. Doc. 719, 4397, 4441.) Brown undertook to arrange this meeting for a particular evening, between February 10 and 15, at the house of Mr. Gifford Pinchot, where Mr. Garfield was staying. Kerby, supposing Brown had made this appointment, called on Mr. Garfield (665) and told him of his desire to avoid being called if the fact could be brought out in some other way. Mr. Garfield asked him to talk with Mr. Brandeis, who was at the house at the time, and he did so. This was the first time that he had met Mr. Brandeis (666).

After this conference Mr. Brandeis made several calls for papers, evidently seeking production of the Lawler memorandum (648)

On or about May 8, 1910, Arnold introduced Robert S. Wilson, of the Newspaper Enterprise Association, to Kerby (S. Doc., 4400) and Wilson sought to get a statement of the facts for publication and assured Kerby of a position if he was dismissed; but Kerby declined to give it as he had a family dependent upon him (S. Doc., 4413). Later, on reading Mr. Ballinger's testimony (S. Doc., 4415, 4456), and seeing that the memorandum was not produced in response to the calls (S. Doc., 4419, 4443, 4449, 4460), and being sure that it was known that there was a copy of the letter in the department (S. Doc., 4419, 4429, 4448, 4452), and observing that a majority of the committee had declined (S. Doc., 4493) to call on the President for the production of the draft letter, he decided to publish the facts and so to force the production of the letter (649).

He had an interview with Mr. Brandeis at Wilson's office, in which Mr. Brandeis told him that he thought it was impossible for him to get the facts before the committee, but declined to advise him whether or not to publish the story (651).

This was the second and last time that Mr. Brandeis ever talked with him (S. Doc., 4448). In neither interview did Mr. Brandeis urge him to make the disclosure or offer him any inducement (S. Doc., 4431).

Kerby decided to publish the facts and they appeared in the newspapers of May 14. On May 17, at the suggestion of the chairman of the committee, Kerby was called as a witness and examined by Mr. Ballinger's counsel and by Mr. Brandeis and testified in detail as to these facts (650, 667). There are no limits to suspicion, but there are rules of evidence, as well as just ways for determining the probatory effect of facts. Shall we ignore the proved facts and indulge a suspicion in order to condemn the nominee? I can not. The facts in this matter leave no stain upon Mr. Brandeis.

FAIR TRADE LEAGUE.

No charge has been suggested against Mr. Brandeis in connection with this league.

Mr. Brandeis has spoken in support of the price-maintenance principle and of the provisions therefor embodied in the Stevens bill. This has been without compensation and because of his belief in the principle underlying the bill (812, 976).

The evidence under this head was brought out at the instance of the committee for the same reason as stated under the heading "Dingley bill wool duty."

EQUITABLE POLICYHOLDERS' PROTECTIVE COMMITTEE.

It is charged that Mr. Brandeis, or his firm, was paid for his services as counsel for this protective committee, and subsequently accepted employment by the Equitable Life Assurance Society in a manner that was unprofessional (886).

From 1901 to the present time, Brandeis, Dunbar & Nutter have acted from time to time in different matters for the Equitable Life Assurance Society when that society had occasion to employ counsel in Boston (690).

In 1905 strife developed betwen the different officers of this society; and thereupon a number of large policyholders formed a protective committee to investigate and determine what, in their opinion, should be done for the best interests of the society, and Mr. Brandeis acted as unpaid counsel for this committee. He and the committee criticized the methods which had been pursued by the officers (669) and made many suggestions for improving the methods of this and other life insurance companies (689, 696). The committee continued as long as its services were of value (698). One of its members became a director (971). The committee was not designed to be antagonistic to the society, but for its protection and benefit (972). Mr. Brandeis rendered faithful, diligent, and satisfactory services to the committee (971). His employment by the company was that of attorney in specific cases, having nothing to do with the company's management. He had no retainer, but was paid for what he did. I can see nothing to criticize in his conduct.

NEW YORK, NEW HAVEN & HARTFORD RAILROAD CO. MERGER.

It is charged that Mr. Brandeis was in some way responsible for the destruction of the financial condition of the New York, New Haven & Hartford Railroad Co (123). This charge is without foundation (271).

In 1907 and thereafter Mr. Brandeis did a large amount of public-spirited work in attempting to prevent the acquisition or retention by the New York, New Haven & Hartford Railroad Co. of the control of the Boston & Maine Railroad Co. and other transportation facilities in New England, tending, as he then claimed, to produce artificial transportation monopoly and suppression of normal railroad competition (809).

He investigated and made public the financial condition of this railroad (271, 618, 627). He was bitterly assailed for this (618, 620, 627, 642). The correctness of his position is now generally conceded (271, 638, 639, 645, 641). This extensive work was done without compensation (991).

WILLIAM F. FITZGERALD.

It was insinuated that Mr. Brandeis counseled an improper method for obtaining additional finances for the Old Dominion Copper Mining & Smelting Co., improperly concealed a report from stockholders, and

went over to interests adverse to those of the Old Dominion Copper Mining & Smelting Co. because of the money to be obtained thereby (1225).

These insinuations were so entirely unwarranted that the entire committee thought it unnecessary to hear the facts in reply (1251).

From January 9, 1902, to April 2, 1902, Mr. Brandeis acted for Mr. Fitzgerald, Mr. Smith, and others in obtaining sufficient proxies to elect a new board of directors for the Old Dominion Copper Mining & Smelting Co. in place of the board favorable to Albert S. Bigelow, then president of the company (1246) (1228). On April 2, 1902, the new board was elected and Charles Sumner Smith was by it elected president of the company, and has remained the president ever since. The board of directors selected Mr. Brandeis as the counsel for the company, and he never was counsel for Mr. Fitzgerald in this matter thereafter (1247) (1231). He instituted suits against Mr. Bigelow and Mr. Lewisohn to discover alleged promoters' profits taken by them in the organization of the company in 1895 (1247).

In the late summer of 1903 it became apparent that the company must have additional funds. A plan was formed to secure these funds by having the company issue bonds to the extent of $750,000 with a bonus of stock to a securities company, the stock of which should be subscribed for by all of the stockholders in the Old Dominion Copper Mining & Smelting Co. Mr. Fitzgerald testified that this plan failed because only about one-third of the stockholders availed themselves of the opportunity to subscribe (1248).

At this time, in October, 1903, negotiations were taken up between the company and men connected with Phelps, Dodge & Co., owners of the stock of the United Globe mines, a corporation owning mines adjacent to those of the Old Dominion Copper Mining & Smelting Co.

These negotiations finally resulted in a plan for the formation of a holding company, organized under the laws of the State of Maine, called the Old Dominion Co. This company was to acquire the stock of the United Globe mines and the stock of such of the stockholders in the Old Dominion Copper Mining & Smelting Co. as wished to exchange their shares for shares in the new company.

This plan involved the consideration of the advantages which would result from this connection with the United Globe mines, in the value of the mines and the known financial strength and mining ability of Phelps, Dodge & Co.

The entire board of directors of the Old Dominion Copper Mining & Smelting Co., including a partner of Mr. Fitzgerald, was favorable to the plan. Mr. Fitzgerald desired to have a receiver appointed for the company and Mr. Smith opposed this (1250, 1282).

Mr. Smith requested a mining engineer to examine the United Globe mines (1281). He made an examination involving only a few hours (1281) and made a report to the effect that the United Globe mines property did not have a value as high relatively to those of the Old Dominion Copper Mining & Smelting Co. as the proportion of stock which it was proposed should go to the stockholders of the United Globe mines had to the value of the stock which it was proposed should be received by the stockholders in the Old Dominion Copper Mining & Smelting Co. Mr. Smith did not feel that the report of this cursory examination was of any value and believed that the connection with the stockholders in the United Globe mines had a

value greatly in excess of what was to be gained from the acquisition of the properties which they owned (1281). Mr. Smith announced that the engineer's report was at the company's office, and many stockholders did come in and see the report and were given an explanation of its value (1281). He believed that the report alone, if published, would be misleading rather than helpful to stockholders (1281, 1283). He accordingly did not publish this report. In this he acted on his own initiative, and Mr. Brandeis was not responsible for its not being published (1282). At the end of October Mr. Fitzgerald requested the publication of the report (1252). It was published on November 11, 1903 (1254).

The agreement under which the Maine company was formed was made after this, and the holders of a very large proportion of the stock in the Old Dominion Copper Mining & Smelting Co. exchanged their stock, and the enterprise has since been very successful and to the advantage of the stockholders who exchanged their stock and to those who did not (1284, 1236).

As a part of this new organization, it was provided that whatever the Maine company received in dividends from the New Jersey company, resulting from the suits against Bigelow and Lewisohn, and certain other assets amounting to about $94,000, should be paid over by the Maine company to trustees for the benefit of the existing stockholders in the Old Dominion Copper Mining & Smelting Co., who transferred their stock to the Maine company, or to those persons to whom they might transfer their rights, the trustees to receive as compensation an amount not exceeding 5 per cent of the funds handled (1280). The trustees selected were Mr. Smith and Mr. Hoar, who was then a partner in Brandeis, Dunbar & Nutter. The purpose of this arrangement was to have these proceeds go to the benefit of the existing stockholders in the New Jersey company, and not go to those stockholders in the Maine company who had become such by reason of having been stockholders in the United Globe mines (1272).

At this time the litigation against Mr. Bigelow had been going on for more than a year without any specific arrangement having been made as to the amount to be charged by Brandeis, Dunbar & Nutter as counsel. This situation continued for three years more, and until the suits had passed the stages of demurrers and the greater part of the evidence in support of them had been taken.

In the fall of 1906, four years after the suit was started, the board of directors desired to have some specific agreement made as to the liability which they were incurring for the services of counsel. This resulted in an arrangement that the payments on account of these should be not exceeding 6 per cent on the fund of $94,000 (1275)—that is, $5,500 a year (1279)—and that in addition there should be paid as a balance for these services an amount not exceeding 10 per cent of the judgment or settlement obtained in the cases (1276). This amount was suggested by Mr. Smith (1275) and approved by the board of directors, who believed that this would be a reasonable arrangement (1276). The company considered a settlement at one time of a hundred thousand dollars (1285), subsequently five hundred thousand dollars, and then a million dollars, but ultimately about two million dollars was obtained (1276). The litigation incident to this claim or growing out of it has been conducted during about 13 years in about 15 courts (1256). The payments which

have been made have been based upon the agreements, and everything has apparently been entirely satisfactory to all parties (1274).

There is no evidence whatever that Mr. Brandeis did anything but what was entirely commendable. Mr. Fitzgerald, notwithstanding the questions urging to the contrary, said that he was not prepared to charge any irregularity in the matter (1245) and that he did not mean in any way, shape, or manner to suggest that Mr. Brandeis was working for the Phelps-Dodge interest or conspiring to do anything in that way, because he knew he was not (1246), and that to his mind Mr. Brandeis advised him that his best interests would be to go into the reorganization (1239).

EDWARD R. WARREN.

The charge, if any, to which Mr. Warren's testimony related was that Mr. Brandeis had misrepresented to a committee of the Massachusetts Legislature the attitude of the State board of trade concerning certain legislation as to the Boston Consolidated Gas Co.

This company, or the interests which were consolidated into it, were urging to be allowed a capitalization of $24,000,000 (808). The Public Franchise League opposed this (1309). Mr. Warren was the chairman of the executive committee of this league which consisted of 12 or 14 men, and Mr. Brandeis acted as its counsel. The State board of trade cooperated in this opposition (1309).

At or shortly before the beginning of May, 1905, it became evident that the legislation which the Public Franchise League wanted, namely, a general law concerning the consolidation of gas companies, could not be passed (1315), and that the company could be persuaded to accept a capitalization of $15,124,600 (1315) (808). This was somewhat higher than the Public Franchise League desired.

Mr. Brandeis urged upon the league that they should support the bill for the capitalization of $15,124,600, and the executive committee voted unanimously, with the exception of Mr. Warren, to support this bill (1309). Mr. Sprague, representing the State board of trade, did not concur in this position (1309).

The charge made against Mr. Brandeis was that he represented to the committee of the legislature that the State board of trade did concur. No evidence in support of any such charge has been offered, and on the contrary, it appears that Mr. Brandeis informed the legislative committee that the State board of trade could not favor this compromise bill, and was opposed to it (1315). This fact was reported to Mr. Warren and to Mr. Sprague the same day (1315).

These are all the charges and embrace every matter as to which the evidence related except the opinions evidence.

I yield to none in respect for that "greatest judicial tribunal," our Supreme Court. Its importance in our scheme of government is manifest; and that the appointing power has always looked upon the selection of the justices of that court as involving a sacred duty is proved by the great ability and probity of certainly a very large majority of its membership at all times in our history. Nevertheless, its membership must be recruited from the people, and anyone measuring up to the required standard in ability would be suspected at once of a lack of initiative and personal force if he had not made some enemies and had not engendered an opposition, which could, if it felt so inclined, make a plausible fight against his confirmation. The

nominee whose name is before us now has been an active, forceful quantity in his city, State, and country. He has enjoyed a large, lucrative law practice almost ever since he was admitted to the bar. He has been for many years a member of the bar of the Supreme Court, a member of the American Bar Association, and of similar associations in his home State; a member of the board of visitors of Harvard Law School; a writer upon law as well as general subjects; a public speaker and lecturer with pronounced views, and with exceptional powers for impressing those views upon the public; the unpaid counsel of labor organizations, protective associations, and other civic bodies; the paid counsel in many of the most important legal contests before the courts and other public tribunals; an arbitrator in strikes and labor disputes; and the special counsel of the Interstate Commerce Commission.

Such a man, so prominently active in public and private life and at the period when the construction of the Sherman law, the awakening of the States to their duty concerning industrial combinations and the determination of the dividing line between State and National power, is bound to have been engaged in contests before the courts and before legislative bodies more or less bitter; and he would indeed be a human prodigy if he had not aroused some bitter antagonisms. It is in evidence that there was a systematic campaign of advertisement to injure him in the estimation of the public. I must, therefore, either decide that the active, earnest, fearless man who might, in the discharge of his duties in his own way, arouse such opposition, is forever debarred from judicial appointment, or else inquire into the grounds of the opposition and determine whether or not such opposition is based upon good and sufficient reasons or otherwise. Anyone who reads the protests made against Mr. Brandeis must come to the conclusion that the opinion expressed by those who undertake to give his reputation is based upon some one or the other of the charges heretofore discussed at length, and since I find that no fault can be attributed to the nominee as to any of those charges in the light of the facts brought before us, then I am bound to say that those who express the adverse opinion have been erroneously influenced by the advertising campaign carried on against him.

To give an idea of the character of the campaign which has been waged against Mr. Brandeis, I clip from the Wall Street Journal, of March 27, 1916, under the heading, "Sacredness in confidences," the following:

> No lawyer can faithfully serve a client without gaining knowledge of that client's peculiarities, strength in parts and weakness in parts, which would make him doubly valuable as a counsel to his opponent.
>
> When an attorney has accepted the confidence and compensation of one side and then gone over to the compensation and confidences of the other side, and the President and Senate of the United States place him upon the Supreme Bench of the land, a new era has dawned for the priest, the physician, and the advocate, or there is condemnation for both bench and bar, for a Senate of lawyers, for a President, and for a party and its politics.
>
> When James Lennox in the presence of several witnesses unbosomed himself to his attorney and later found his $10,000 credited against the $48,000 received from the other side with the denial that his attorney was ever his attorney, what can we think of honor at the bar?
>
> But when that attorney goes to the United States Supreme Bench, what can the world say of honor within the United States with both bench and bar?
>
> Brandeis at the bar may represent individual wrongs, but Brandeis on the bench puts the United States before the world below even the present standards of his Teutonic ancestors.

If the writer of the above will read the record of the evidence taken before the subcommittee I do not doubt that he will be ashamed of having penned it. It is absolutely false to say or intimate that Mr. Lennox ever paid Mr. Brandeis a cent, much less $10,000, for any services to be performed by the latter, or for any other purpose, and Mr. Lennox never made any such claim; and yet the average person would infer from the above editorial that Mr. Lennox had paid Mr. Brandeis as a retainer the sum of $10,000.

The testimony of Mr. Barron, to which I have already referred, shows that he fostered an advertising campaign against Mr. Brandeis, and yet when he was brought before the committee and asked for the facts upon which his campaign was based, and after the committee had examined every witness suggested by him, obtainable, we find that there is nothing in the conduct of Mr. Brandeis to warrant Mr. Barron's opinion, and absolutely nothing to reflect upon Mr. Brandeis's character as a man or a lawyer. It is suggested in the brief of counsel of the protestants that if a doubt shall be raised concerning the ethical conduct of the nominee, he should not be placed upon the Supreme Court. If that theory shall obtain, then it is possible, by a campaign of slander, to bar the best men and the best lawyers in the country from the judicial office. I am not willing to indorse a campaign of slander, whether it was intended to be slander or not, when promulgated.

If after full investigation I find, as I do, that Mr. Brandeis is not guilty of the things charged against him by his enemies, then it is my duty to say so and to give him the benefit of a pure life and his upright conduct, regardless of the slander.

Judicial temperament is a thing of which it is not for man to judge except by actual experience on the bench. No one can tell whether a great lawyer will be a great judge until he has been tried. It seems to me that there is more in the life of Mr. Brandeis as shown by this record to incline one to the belief that he has the qualities of a good judge than there is to the contrary. It is remarkable that friend and foe alike speak of his great ability as a lawyer. The late Chief Justice Fuller advised one seeking a lawyer in the East, as follows: "Go to Boston and see Mr. Louis D. Brandeis, as I consider him the ablest man who has ever appeared before the Supreme Court of the United States. He is also absolutely fearless in the discharge of his duties."

It is impossible to give in detail the testimonials to Mr. Brandeis's fitness and his high character, and it is unfortunate that there are so many of these coming from every part of the United States, from lawyers, judges, college professors, business men, labor leaders, and people in all walks of life, that it would be almost impossible to print them. I do not doubt that if one takes the pains to look at the protests upon the one side and the indorsements upon the other, in the light of the evidence in this case upon both, my conclusions will be found by him to be reasonable and fair. I therefore voted with the majority of the subcommittee to recommend confirmation.

W. E. Chilton.

I am authorized by Senator Fletcher to say that he concurs in the above.

W. E. C.

April 3, 1916.

NOMINATION OF LOUIS D. BRANDEIS.

Mr. WALSH, from the subcommittee of the Committee on the Judiciary, submitted the following

VIEWS.

[To accompany the nomination of Louis D. Brandeis.]

To the COMMITTEE ON THE JUDICIARY,
United States Senate:

The unusually grave character of the duty with which this committee has been charged quite fully justifies, if it does not require, from each member thereof an expression of the course of thought through which he has arrived at the conclusion in consequence of which he assumes the responsibility for the recommendation he makes.

The testimony taken by the committee is voluminous. In the infinite multiplicity of the duties devolving upon Senators it is quite vain to hope that any considerable number, except those upon whom the burden of investigation has been directly imposed, will read it all or read any of it.

Outside of the Senate opinion will be based in very small part upon anything more trustworthy than a résumé of the evidence collected by the committee. I assume the task of reviewing it with a just sense, as I hope, of the importance of the office to which it relates in our scheme of Government. The interest in the nomination in respect to which we are called upon to act, manifested alike by the citizen in the humble walks of life and by those whose influence is nation wide reveals the universality of the conviction that in large measure the liberties and the destiny of the American people have been intrusted to the great court to fill a vacancy in which the President has named Louis D. Brandeis.

It so happens that the nominee has awakened unrelenting enmities and fast friendships. He is the object of unrestrained admiration on the one hand and of fierce vindictiveness on the other. The qualities that evoke the just praises of those who believe in him need not engage our attention. It is conceded on all hands that in intellectual equipment and professional attainments he easily measures up to all requirements—indeed, in that respect his qualifications are superb.

His character is assailed, however, as too perverse to justify the Senate in advising or consenting to his appointment. His private life appears to be blameless. It is not charged that he is corrupt, at least by any one not moved by reckless malevolence. The accusations, if they may be so called, relate entirely to alleged disregard of ethical standards in his professional relations. Singularly enough, there is very little opportunity for dispute in respect to the facts constituting the incidents which the committee deemed worthy of its notice.

There is wide divergence of view touching the significance of the facts disclosed. Interpreted by those bent on finding something to criticize or ready by prepossession to attribute discreditable motives to Mr. Brandeis, they assume a sinister aspect. Men of the highest character, frank admirers of that gentleman, who participated in the transactions in respect to which he is denounced, insist that his conduct was either irreproachable or altogether honorable. It is particularly important in this quite curious situation, in order to form a just estimate of the conduct and character of the nominee, to guard against the insidious influence of detraction and calumny.

Long before his name came to the Senate for the high office of associate justice of the Supreme Court efforts were made through the public press and by means of circulars widely distributed to bring him into disfavor and disrepute. Not unlikely some impression such as it was hoped might be conveyed may remain on the minds of some Senators who fell under the influence of these and like attacks. Moreover, it is scarcely to be expected that one unacquainted with local conditions, who has not followed with scrupulous care the inquiry as it proceeded, would be wholly uninfluenced by the fact that a considerable number of the members of the bar of Boston, the home of the nominee, have protested against the confirmation of his nomination and have organized to oppose it, and that some of them have testified that he is regarded in that community as untrustworthy. These conditions make it imperative, before attempting to survey the particular transactions to which reference is made as justifying the ill opinion thus expressed, to have in mind some incidents in the career of Mr. Brandeis which may have predisposed those by whom it is entertained.

It is clear that he has been a vigorous, aggressive, relentless antagonist in all his legal battles. Moreover, he has been successful. In illustration: One of the lawsuits in connection with which some misconduct was charged is referred to as the "Old Dominion case." The nature of the dereliction with which he was accused need not be adverted to. It was utterly puerile, the testimony drawing from a member of the committee (Senator Cummins) a public declaration that it was valueless. Mr. Brandeis had been employed to assist in securing stock or proxies sufficient to take the control of the Old Dominion Copper Mining Co. from the hands of one Bigelow and associates, who had promoted the company. The effort was successful and a new board elected, through which suits were brought in the name of the company by Brandeis as its attorney to recover of Bigelow the value of a large block of the stock of the company which it was averred they had fraudulently converted. The litigation was bitterly contested in the courts of Massachusetts, New York, and New Jersey, repeatedly reaching the reviewing courts and even-

tually the Supreme Court of the United States. Judgment was finally rendered against Bigelow for two and a quarter million dollars, on which, after a contest lasting 14 years, payment of upwards of $2,000,000 has been enforced. It may well be assumed that any man of whom a judgment in excess of $2,000,000 can be collected is one whose influence is felt even in a city the size of Boston, at least in the banking center and in financial circles. Those who know something of the development of the copper-mining industry with which Boston has been long and creditably identified are aware of how commanding that influence was. It is quite reasonable to suppose that his social standing was in keeping with his great wealth and the magnitude of the enterprises with which he was associated. It was bad enough to be required to give up $2,000,000, but to be branded as having misappropriated so much of the property of the stockholders who had been induced to come into a corporation organized by him was a grievance that very naturally rankled. It is altogether probable that Mr. Bigelow would not express himself in complimentary terms concerning Mr. Brandeis if he were moved to speak of him.

> No wretch e'er felt the halter draw
> With good opinion of the law,

and few with good opinion of the lawyer. So it is likely that all Mr. Bigelow's friends, or most of them, share the ill opinion which he may be excused for holding of Mr. Brandeis, if he does cherish such.

The part that Brandeis had in exposing the malefactors of great wealth who, in insolent contempt of the law, monopolized the transportation facilities of New England, merging them in the New York, New Haven & Hartford system, and milking the properties in the process is more generally known. These were the very high priests in the temple of Mammon. Boston was the New England as New York was the western terminus of that system. The fight was waged before the Legislature of Massachusetts and the railroad commission of that State long before it engaged the attention of the National authorities. Among many public-spirited citizens who, singly and through local organizations, attempted to prevent the absorption of the Boston & Maine by the New Haven, Brandeis was conspicuous. Before legislative committees and officials of the State government, in public addresses he declaimed against the consolidation. He not only attacked through pamphlet and the public press the design to impose a transportation monopoly on that highly industrial region, but he investigated and laid bare the financial condition of the company, in consequence of which its stock, a few years later, dropped spectacularly, and the system was brought to the verge of bankruptcy. He asserted that its securities were not a safe or proper investment for savings banks, by which they were held in great quantities. The timid deprecated his assaults and the guilty assailed him with unrestrained venom. He was placarded through paid advertisements in the press as a public enemy.

It will be remembered that the merger was accomplished, that afterwards suit was brought to dissolve under the Sherman Act, which was soon dismissed; that subsequently, pursuant to a resolution of the Senate, the affairs of the New York, New Haven & Hartford were investigated by the Interstate Commerce Commission; that the hear-

ing revealed a state of affairs at which the country stood aghast; that a new dissolution suit was instituted, resulting in a "consent" decree; that the directors participating in the merger transactions were indicted and upon trial some were acquitted and as to others the jury disagreed. We need not concern ourselves as to whether Mr. Brandies was right or was wrong in the warfare he thus waged. It may be that the absorption of the New England lines was a benevolent assimilation and not a criminal conspiracy. It may be that his elaborate figures touching the financial condition of the New Haven were not fully and altogether justified by the investigation conducted six or seven years afterwards by the Interstate Commerce Commission. I am endeavoring now merely to bring to mind some idea of the atmosphere breathed by those who speak in disparagement of him. To enforce this point I quote from testimony elicited on cross-examination of two of them—both very honorable gentlemen—Mr. Storey and Mr. Hutchins, of the Boston bar. In the testimony of the former will be found the following:

Senator WALSH. Is it your opinion that the conduct on the part of Mr. Brandeis was calculated unjustly to injure the New Haven road?

Mr. STOREY. I do not know that I can or ought to express any opinion on the subject. The feeling was that there were better ways of conducting that matter than were adopted. The undoubted result was apparent. The truth, of course, is that the New Haven Railroad under that administration was spending money recklessly, incurring liabilities recklessly, and doing various things which were most unfortunate for the property. There is no question that Mr. Brandeis called the attention of the public to those facts; but for some reason or other I think they did not make the impression on the public that they would have made if they had come from another source.

Senator WALSH. But his communications through the public press at that time did direct the public mind to what afterwards was disclosed to be a rather questionable system of operation in finance?

Mr. STOREY. I have no doubt that is correct. (Hearings, 270-271.)

Senator WALSH. I judge from what you say that people associated with that organization exercise a very powerful influence, socially, politically, and financially, in your community?

Mr. STOREY. They did, certainly at one time. (Hearings, 272.)

Mr. Hutchins being on the stand, the following colloquy took place:

Mr. ANDERSON. Mr. Hutchins, I should like to ask you a few questions. Mr. Joseph B. Warner was chairman of the Commission of Commerce and Industry, if I have the name correctly, which wrote a report about 1908 which was quite a factor in the New Haven fight, was it not?

Mr. HUTCHINS. I think so; yes.

Mr. ANDERSON. And there was a pretty sharp controversy at that time relative to the statistics and figures which Mr. Warner and Mr. Charles F. Adams, jr.—I have forgotten the other members of the commission—had accepted and published as accurate, and what Mr. Brandeis alleged were the actual facts?

Mr. HUTCHINS. Yes.

Mr. ANDERSON. And the subsequent history of the New Haven tended, at least, in the minds of a great many, to show that those gentlemen were led into grave error. Is not that so?

Mr. HUTCHINS. I really can not speak of the merits of that controversy; that is, I mean as to the report of the commission, etc.

Mr. ANDERSON. You did not go into that in any detail?

Mr. HUTCHINS. I did not go into that.

Mr. ANDERSON. But there was a good deal of bad blood engendered in and about Boston in that New Haven fight, was there not?

Mr. HUTCHINS. Yes; a good deal.

Mr. ANDERSON. A lot of people maintained for years that there was nothing but a wicked drive being made on the New Haven, and that everybody who criticized the New Haven was a destroyer of properties and values, and the facts as they later appeared did not justify that criticism, did they?

Mr. Hutchins. I do not know about the justification of the criticisms, but there was certainly a great deal of sentiment of the kind that you express in your question.

Mr. Anderson. Assuming that the Interstate Commerce Commission investigation developed something approaching the truth, the atmosphere against Mr. Brandeis in 1908 and 1909 was an atmosphere of harsh and unwarranted criticism, was it not?

Mr. Hutchins. The criticism was harsh. Whether it was unwarranted or not I do not feel competent to judge.

It is quite proper to say here that no one save one Barron, a newspaper publisher, shown to have acted as publicity agent for the New Haven road in the course of the long struggle being outlined, ventured to question the purity of the motives which actuated Mr. Brandeis therein, however the soundness of his judgment as to the methods he pursued or the conclusions he drew might be questioned. No one has suggested that he had any private interest to subserve, and he received no compensation from any source.

One circumstance in this connection would not be mentioned but that it helps to a correct resolution of his conduct in the Lennox case, hereafter to be noticed.

Those who think of him as grasping and avaricious, if there are any such, may find one hue in his acts in that case; those who believe him a man of high ideals or as not afflicted with an inordinate love of money may give them quite a different color. Not only was he paid nothing for the herculean labors he performed in the New Haven fight, involving him in a torrent of abuse and villification, but he declined employment by parties holding Boston & Maine securities in a large amount who, like him, were opposing the merger, preferring, as the subject was one of public concern, to be untrammeled. And then, because he had deprived his firm of a lucrative engagement, he paid into it $25,000, a sacrifice that was not so great as it might seem to some in view of the volume of business the firm was doing and the fees it was accustomed to receive. (Hearings, 991, 995.)

Seven members participated in its earnings and it employed a house full of clerks, stenographers, accountants, and other like subordinates. The record discloses another instance in which he pursued, in substance, the same course.

Just how far the animosities engendered by the New Haven fight, considering the infinite ramifications of its interests and of those vitally concerned in effecting its purposes and in concealing the unstable character of its finances, may have influenced the minds of those about Boston who protest against this appointment is a matter of speculation. Doubtless most of the wealth and culture of the community were arrayed on its side.

While it stands out most prominently in the public mind because of the vast interests involved and the standing in the financial world of the chief figures in it, the New Haven fight was not singular. Perhaps less is known yet much has been told of his warfare on the United Shoe Machinery Co., a corporation with a capital stock of $25,000,000, with headquarters at Boston. When in 1910, four years after he ceased to be a director of that company, it was about to acquire control of the Thomas G. Plant Co., then threatening to become a formidable rival, he declared that the penitentiary would yawn for any one concerned in the consolidation. Indictments were found against the officers of that company, the Department of Justice being satisfied that there was sufficient foundation for a prose-

cution, though the indictments were afterwards quashed. A deep-seated hatred was aroused against him on account of his criticisms of that company that is still virulent, and not the less so that Congress, by the agitation, was moved to insert provisions in the Clayton law and the Trade Commission law which it is hoped may correct some of the evils most intimately associated in the public mind with the operations of that company.

The Consolidated Gas Co. of Boston, whose career is not as sweet smelling as might be wished, found Brandeis a serious obstacle in the way of getting everything it wanted from the Massachusetts Legislature. It was the central figure in another protracted fight which has vexed the Boston people. Indeed, the public-service corporations of that city exhibited such a disposition to lay hands on anything they could secure that the people organized themselves to resist their exactions and propensities. The Public Franchise League came into existence to protect the public. Brandeis was a prominent member of the organization, as was George W. Anderson, afterwards a member of the Massachusetts Utilities Commission and at present United States district attorney for the district comprising that State.

It is not without excuse, whatever reason they may have, that some Boston people do not like Mr. Brandeis. A number of the members of the bar of that city sent a protest against his confirmation, reciting that his reputation among the lawyers of that city is that he is untrustworthy. One of the signers wrote a letter setting out why in his opinion such a view was entertained and giving his own judgment of the merits and demerits of Mr. Brandeis's character. It is so judicial in spirit, so keenly analytic, that I venture here to insert it.

BOSTON, MASS., *February 24, 1916.*

GEORGE W. ANDERSON, Esq.,
85 Devonshire Street, Boston, Mass.

MY DEAR ANDERSON: You have asked me to write you a letter giving my views on Mr. Brandeis and on his appointment to the Supreme Court and on the way in which that appointment would be viewed by the Boston Bar. I am not seeking to be involved in this controversy any further than necessary, but I do not feel that anyone asked for such an opinion has a right to refuse.

First, then, so far as ability goes, there can be no question as to Mr. Brandeis's professional standing. He is universally acknowledged to be one of the ablest men at our bar, both in point of legal learning and of effectiveness, and if the question was of intellectual ability alone, his appointment would be generally approved.

There is, however, equally little question that he is not generally popular with the bar, and that among a considerable proportion of the lawyers here he has the reputation of not being a man with whom it is pleasant to deal in business matters, and one who is unscrupulous in regard to his professional conduct. Just how far there is any solid foundation for such a reputation it is extremely difficult to say. So far as specific charges go, all of any consequence of which I have ever heard have been or will be brought to the attention of the committee at Washington, and of those it is unnecessary that I should speak, especially as I can add nothing of my personal knowledge.

The general reputation remains, and it is certainly one which is worthy of consideration, in estimating the fitness of an appointment to the bench. Indeed, I think in the existing state of the feeling here that no one can be fairly criticised for opposing the appointment. Many of his opponents are my personal friends and I understand and respect their point of view, though I believe they are mistaken. At the same time, I believe that the reputation to which I have referred is not founded so much on anything that Mr. Brandeis has done as it is on other causes. He is a radical and has spent a large part, not only of his public, but of his professional career, in attacking established institutions, and this alone would, in my judgement, account for a very large part of his unpopularity. It would be difficult, if not impossible for a radical to be generally popular with Boston lawyers, or to escape severe adverse criticism of his motives and conduct. Certainly I have never heard of anybody, from Joseph Story down, who has ever succeeded in doing so. The fact, too, that Mr.

Brandeis has been the object of constant attack, and in particular of a very skillful and long continued press campaign, engineered on behalf of the New Haven management by Mr. C. W. Barron, has probably increased the feeling against him, for such advertising inevitably produces effect, by mere repetition, upon people who are not conscious of its influence. When you add to this that Mr. Brandeis is an outsider, successful, and a Jew, you have, I think, sufficiently explained most of the feeling against him.

Undoubtedly he is a merciless antagonist, fighting his cases up to the limit, and with great technicality, and taking every advantage which the law allows him, without perhaps always a keen regard for fair play. So far as I am aware, nothing more than this could be fairly considered as proved against him. On the other hand, there is, except among a comparatively small number of people, a general recognition that Mr. Brandeis has rendered public service to the community of extraordinary value, and that in doing so he has been actuated by disinterested motives. He lives with great simplicity, and has throughout his career devoted to unpaid public work a very large proportion of his time and energy. With the opportunities that have been open to him, he could, by following more conservative courses, have been a much richer man than he is to-day. I do not think it can fairly be doubted that he deliberately chose to serve the public rather than to devote himself entirely to making money, nor do I think it can be fairly questioned that in doing this he was actuated by high motives.

Throughout his career he has shown unusual interest in and sympathy for those classes in the community upon whom economic conditions bear hardly, and has devoted a large part of his time and energy to measures which he believed would help them. The work which he has done along these lines has been sanely planned and carefully worked out, and he has acquired in doing it an unusual grasp of those social and economic conditions which underlie many of the most important questions with which the Supreme Court will have to deal. I believe he will bring to the consideration of these problems not only great legal acumen and deep sympathetic insight, but a power of careful analysis and an ability to see facts and law in their larger relations, which will make him a great judge. Once on the bench the things which have injuriously affected his standing at the bar will cease to be important and his strong qualities, his great ability, his knowledge not only of law but of economics and social conditions, and his capacity for taking a broad judicial view of any questions to which he applies his mind, will be of inestimable value.

Of his fundamental honesty of purpose, and his deep moral enthusiasm, I feel absolutely sure. His qualifications for the position of Supreme Court Judge far outweigh, in my judgment, anything which can fairly be urged against him. For these reasons I sincerely hope his nomination will be confirmed.

I ought, perhaps, to add that I have never had any legal or other business either with Mr. Brandeis or against him, and have no reason to expect that I ever will have such business. I have known him for many years, but never intimately, and I entirely disagree with his political opinions. My knowledge of him is simply that which I have gained in 20 years' practice at the same bar. I have no reason to desire his appointment, except the interest which every citizen, and particularly every lawyer, has, to wish that the best possible man should be selected. It is only because I know no one in this community whom I consider so well fitted for the position that I hope he will be confirmed.

Yours, sincerely,

ARTHUR D. HILL.

(Hearings, 619, 620.)

In the light afforded by what has been said, I proceed to consider the several matters in connection with which the nominee is said to have shown himself unworthy of the high honor with which the President desires to invest him. I pass directly to the two apparently deemed most grave—the Lennox case and the Warren case. Astonishing as it may seem, the leading counsel in both of these cases, representing the parties whose cause Brandeis is charged with abandoning, completely exonerates him from any misconduct worse than an error of judgment. In respect to the Lennox case, Mr. Sherman L. Whipple, who, as the attorney for James T. Lennox, developed in certain proceedings in bankruptcy the exact facts touching the relations which Mr. Brandeis had sustained to his client (the stenographic

notes of the interviews out of which the alleged employment rose having been read), asserted that in his opinion Brandeis acted from most honorable motives and with a high ideal of the duty of a lawyer in the premises. Later his exact language will be quoted.

THE LENNOX CASE.

The business of the firm of Lennox & Co., tanners, had been developed by Patrick Lennox, who, at the time of the occurrences to be narrated, was nearly or quite 80 years of age. For 10 years his son James T. Lennox, the other member of the firm, had managed the business. Its transactions amounted to about $1,000,000 a year. The firm property and private assets of the partners exceeded that sum. In the panicky season of 1907 the firm became embarrassed, and a creditor, one Stein, was called to Boston from New York by James T. Lennox. With his lawyer, one Stroock, he met Lennox, who, in detailing his situation, disclosed that if not actually insolvent he was dangerously near being so. Stroock suggested that he, Lennox, ought to consult a lawyer, and, mentioning Brandeis, Lennox assented. The three waited on Brandeis, under whose questioning, which was exhaustive, going in detail into assets and liabilities, the condition referred to was more clearly exhibited. Stein was friendly. Another creditor participated to some extent in the conferences and it was determined that a general assignment without preferences should be made and that Brandeis should try to work out some general agreement among the creditors—for an extension or a composition, as the progress of negotiations might suggest. This was done, one of Brandeis's partners, George R. Nutter, being named as assignee. It was canvassed in the course of the conference whether Brandeis should become attorney for Stein or for Lennox, but it was agreed eventually that the plan could be worked out most effectively if Brandeis did not represent Stein or any other creditor and that he would represent Mr. Lennox in the manner stated. Stroock having asked Brandeis whether, in view of relations which his firm had sustained to a creditor, Weil, Farrel & Co., he could act for Lennox, the latter said:

> Yes; I think I could. The position I should take if I remained in the case for Lennox would be to give everybody, to the best of my ability, a square deal. (Hearings, 792.)

And he continued:

> I should, if I acted for Mr. Lennox, see that he got his legal rights; no more, no less. (Hearings, 793.)

Again, he said:

> I should feel if I were acting for Mr. Lennox as trustee that it was the duty of the trustee to see that everybody got his legal rights as nearly as we could make it. (Id.)

And then Lennox, referring to some comment by Stroock, remarked:

> You are speaking now of Mr. Brandeis acting as my counsel?

Whereupon Brandeis interjected:

> Not altogether as your counsel, but as trustee of your property. (Hearings, 795.)

It is plain from the foregoing that Brandeis proposed (whatever may have been the understanding of Lennox) that the latter and his father should turn over to him, Brandeis, all their property, he to

deal with the situation with justice to everybody and in the hope of making an adjustment that would be satisfactory to all concerned, or, in the event that such a solution could not be reached, to apply the assets to the liquidation of the indebtedness.

The assignment was made in pursuance of that plan, and Brandeis immediately got into communication with the other creditors with a view to carrying it out. When the assignee went to take possession under the assignment, he learned, through accountants who had been directed to examine the books, that James T. Lennox had but recently cashed checks to the amount of $10,000, the avails of which did not appear. Inquiry revealed that he had the cash in his possession. On being questioned in the present hearing, he stated that he needed the money. The assignee required him to surrender it, which he did, though reluctantly. A short time after a controversy arose between him and the assignee concerning the compensation he was to receive for assistance which he was rendering pursuant to request in attempting to straighten out the tangled affair—the books being fragmentary and the business having been run without much system. He demanded $500 a week; the assignee refused to allow him more than $100. Meanwhile, on September 10, the assignment having been made on the 5th and recorded on the 9th, one J. P. Leahy, of Lynn, where the Lennoxes lived, called upon Mr. Nutter, representing, as his counsel, Patrick Lennox. He conferred with Nutter and forwarded his work for some time, but toward the close of October Patrick Lennox, through Leahy, set up the claim that he was not a member of the firm of Lennox & Co. and that he had never signed the instrument making Nutter assignee or that his signature had been obtained fraudulently or without full understanding of its purport. When Nutter refused to hire James T. Lennox at $500 a week he ceased to assist actively in carrying out the trust, and much difficulty was encountered on account of his indifference or apathy and the claims of the elder Lennox referred to. Meanwhile the creditor, Weil, Farrel & Co., was threatening to proceed criminally against James T. Lennox on an alleged fraudulent statement of his financial condition and sought to employ the Brandeis firm to conduct the prosecution, but they declined. An indictment was afterwards returned. The execution of the trust with which Brandeis had charged himself through the assignment proving impracticable, on account of the attitude of the Lennoxes, it was resolved to see it carried out through bankruptcy proceedings, to which various creditors had recourse. Several petitions were filed, one by the Brandeis firm. An adjudication went, the court holding that the assignment was duly made and constituted an act of bankruptcy. In the original conference it had been mentioned that it was such and would require an adjudication, if asked, but the hope was expressed that the creditors would assent to the assignment. (Hearings, 788.)

The thing worked out as was originally contemplated. A composition was effected under which the individual debts of the partners were paid in full and the firm creditors got 40 cents on the dollar. There is no doubt that the making of the assignment, though an act of bankruptcy, was the wise course to pursue under the circumstances. None of the parties involved are making any complaint. Mr. Leahy was not called to express any complaint on behalf of the elder Lennox

and it will be borne in mind that an organization of protestants was represented at the hearing by counsel who undertook to present to the committee the names of any witnesses his clients deemed it advisable to call. James T. Lennox came in response to a subpœna, but was excused on his request on saying that he could add nothing to what had been said by Mr. Stroock and Mr. Whipple. He was later called, at the instance of a member of the committee, but he showed no hostility to Mr. Brandeis. Whipple was employed to resist the bankruptcy proceedings. He is the head of a leading firm of Boston lawyers, said without dispute to be one of the ablest trial lawyers in New England, an enviable reputation which those who heard him testify will agree he doubtless fully merits. When the story was told him of how the Lennoxes employed Brandeis in their troubles only to find that his firm had filed a petition in bankruptcy against them, he did the manly and fraternal thing. He called on Mr. Brandeis. Let him tell the story of the interview. Introducing the subject which gave rise to his call he said:

They say that you advised an assignment to your partner, Mr. Nutter, and took all of Mr. Lennox's property, and that you now claim that you are not and never have been his counsel, and I thought, Mr. Brandeis, it would be better for me to come right to you and talk over a situation which seemed to me to be serious, because if you did agree with the Lennoxes that you would act as their counsel, and now are acting in a position hostile to them, through this assignment, you will agree with me that a rather serious situation is presented. (P. 287.)

The witness continues:

He said, "Of course it would be," or he said, in substance, "Of course, that would be a serious situation, but it is not the situation at all; I did not agree to act for Mr. Lennox when he came to me. When a man is bankrupt and can not pay his debts, Mr. Whipple, he is a trustee for his creditors; he has no individual interest; he finds himself with a trust, imposed upon him by law, to see that all his property is distributed honestly and fairly and equitably among all his creditors, and he has no further interest in the matter. Such was Mr. Lennox's situation when he came to me, and he consulted me merely as the trustee for his creditors, as to how best to discharge that trust, and I advised him in that way. I did not intend to act personally for Mr. Lennox, nor did I agree to." "Yes," I said, "but you advised him to make the assignment. For whom were you counsel when you advised him to do that, if not for the Lennoxes?" He said, "I should say that I was counsel for the situation." I said, "Yes; but you advised an assignment of all his property, so that your firm became possessed of it, because Mr. Nutter was your partner." He said, "Yes; and I knew no one better in the city of Boston than my partner, Mr. Nutter, to execute such a trust as that. He stands high; he has everybody's confidence, and that is why I advised it." I said, "I must say, Mr. Brandeis, it looks to me very much, according to your principles, as if when a man was bankrupt and went to a lawyer, and the lawyer advises him to make an assignment for the benefit of his creditors, he assigns his lawyer with it, very much in the way a covenant runs with land." He said, "Mr. Whipple, I think that is a very unkind and very ungenerous statement for you to make. It impugns my motives, and I can only assure you that I had no such motive in doing it. I was merely occupying myself with seeing that this property, which was brought into my office in this way, was equitably and fairly distributed among the creditors, and I was looking after the interests of everyone; I was looking after any interest that Mr. Lennox had, if any, if anything should be left after the settlement with his creditors, but, in the first place, looking after the interests of the creditors." (Hearings, pp. 287–288.)

The impressions Mr. Whipple took away are expressed by him as follows:

Mr. Whipple. You see, my belief was, at the time, that there was a misunderstanding. My belief was at the time, and is now, that Mr. Brandeis was misunderstood. That is, I preferred then, and prefer now, not on account of any personal friendship or feeling, but my view was that there was a misunderstanding. I think Mr. Brandeis was so much absorbed in the question of caring for the situation, and so much interested in the development of his ideas as to how this estate should be administered, that he

unconsciously overlooked the more human aspect of it, which would perhaps have appeared to another; but here was a man confronted with perplexities and charges and troubles, who wanted his personal and individual care and attention. But I think Mr. Brandeis looked upon it as a problem of distribution.

He did not view Mr. Lennox, with his difficulties and troubles and desires, in quite the human way that certainly some lawyers would. He took a broader view, as it seemed to me, that he was charged with the duty and responsibility, not merely of looking to Mr. Lennox or to Mr. Lennox alone, but that he owed a larger and broader duty to all the interests involved. Now, I felt then, and I feel now, that that was a mistake, but it does not mean, to my mind, that Mr. Brandeis was culpable; that he deserted a client; that he neglected a duty to a client, because, as it seemed to me—and I will say it frankly—at first he was going with the property and had a more lucrative job. I was convinced from my talk with Mr. Brandeis and from my knowledge of his character, that the mercenary motive did not exist; that the thought of deserting Mr. Lennox's case and interest did not enter his head. I thought then, and I think now, that he made a mistake in this, at least, that he did not make it clear, so that a layman would understand just what he was talking about. When a lawyer talks to a business man about being charged with the responsibility of an equitable division of the estate among all who may be interested, such talk, I think, goes right over the head of the ordinary business man who does not understand clearly the fiduciary duties of a man in that position, and who does not understand the clear and fine definition of the fiduciary duty in its different aspects.

To this he added:

I was convinced of his sincerity, his devotion to a thought, and an idea with regard to the administration of this estate, which was credible—credible because it is true that a man when he is a bankrupt is the trustee for his creditors, and he has no right to try to keep money from his creditors or to prevent an equitable and fair distribution or to prefer them. That is true. It is a high and proper ideal of practice. A lawyer who is charged with the duty of advising under those circumstances has a duty not only to the debtor who comes to him but to every creditor, and he must and ought to be scrupulous in his discharge of it. But, of course, his scrupulous discharge of that duty to all the others must not permit him to neglect his duty to the one who needs his help the most. (Hearings, 300–301.)

These observations prompt me to inquire what a man wants with an attorney anyway after he has made a general assignment for the benefit of his creditors? All his property is gone and there is nothing an attorney can do except to see that the trust is managed to the best possible advantage, so that the property will go as far as may be to discharge the claims of creditors or possibly satisfy them in full, leaving a residue which becomes his again. The best thing a lawyer can do for him, the only thing he can do, is to become attorney for his assignee and aid him in administering the trust. There can be no diversity of interest so long as the assignor purposes and seeks to have the trust carried out. He needs no lawyer except the attorney for the assignee. It is the universal practice, accordingly, for the attorney who draws the deed of assignment to become counsel to the assignee. Lennox must have known—it was impossible that he could fail to know—that the Brandeis firm would become the attorneys for Nutter, the assignee. He could not by any possibility have imagined that in a contest of any character arising between him and the assignee Mr. Brandeis or the Brandeis firm was going to counsel him, except as both he and Nutter were counseled; or that if, perchance, any difference between him and the assignee found its way into court, Brandeis or his firm was to represent him as against the assignee, Nutter. He never paid the Brandeis firm anything and no charge was ever made against him. When he put himself in an attitude of hostility to Nutter he knew that he could not count on Mr. Brandeis as his personal legal representative. It is an embarrassment to a lawyer who has drawn an assignment and

become attorney for the assignee to make a choice should a disagreement unhappily arise between him and the assignor. He could, perhaps, not be blamed whichever way he determined lay his duty. But as Mr. Brandeis's partner was the assignee there was no choice open to him. Nor was there, apparently, any choice open to the assignee, when it became evident to creditors that the trust was not being carried out and could not be carried out in view of the hostile claims being made, but to resort to the bankruptcy court or watch the assets pass out of his control through proceedings in that court instituted by creditors who would not sit idly by while the assignors were perhaps getting away with the property. Mr. Brandeis apparently resolved that an obligation rested upon him to carry out the trust in the only way open to do so. Some may differ with him as to what ought to be done in a case so rare, but no one who does not view the proceedings with a jaundiced eye can doubt that he acted conscientiously in the course which was taken.

THE WARREN CASE.

On leaving college Brandeis formed a partnership with a classmate, one S. D. Warren, the son of a successful paper manufacturer, S. D. Warren, sr. After the youths had been in business in Boston under the firm name of Warren & Brandeis for about 10 years the elder Warren died, about 1888, leaving three other sons, Edward, Henry, and Fiske, a daughter, Cornelia, and a widow, their mother. The children, of whom S. D. was the eldest, had all reached their majority. The law firm had so successfully established itself by that time that Warren was drawing out of the business about $10,000 a year. The property which had enriched the family was left by the will of Warren, sr., to his widow and children. Warren & Brandeis became the attorneys for the executors. It was the desire of all that the business be kept in the family, and yet Edward was in Europe most of the time, devoted to antiquarian research and the collection of antiquities; Henry was a student in feeble health, who died not many years after; Fiske was a youth without much experience. The ladies were cultured, but their capabilities in a business way had not been put to the test. It was in mind that those who undertook to run the business should assume the risk and that the other members of the family should be relieved of personal responsibility. It was planned that the property should be conveyed to trustees, and these trustees should lease the property to those who undertook to manage it. One Mason, a relative, had long been associated with the elder Warren in the business. He, S. D. Warren, and Fiske Warren took it over, the old firm name continuing. The mill property was conveyed to trustees, Mrs. Warren, S. D. Warren, and Mr. Mason, the deed reciting the trusts and authorizing the trustees to lease to a firm of which any of the trustees might be members. It was then leased to the new firm, which agreed to pay to the trustees 6 per cent on a valuation placed upon it and one-half the profits. The movable property appurtenant to the mills was taken over by the firm and the value of the respective shares credited on its books to each beneficiary. Substantially, the firm bought this property

and became indebted for it. S. D. Warren, who had given some attention to the business during the later years of his father's life severed his relations with the law firm, and thereafter devoted himself to the paper business, though the firm name of Warren & Brandeis was carried for a number of years thereafter.

The firm of which Mr. Brandeis was the head after the retirement of S. D. Warren became attorneys for the trustees and for the firm of S. D. Warren & Co., their fees being paid in part by each, respectively. Edward Warren was abroad when the instruments mentioned were prepared and the deeds had to be sent there to him for execution. With the letter went a list of the accompanying instruments, as follows:

1. Deed of Cumberland mills and other property, from the residuary devisees under father's will to John E. Warren.
2. Deed of Copsecook mill, same to same. The property covered by both these deeds will be conveyed by deed of even date to the trustees named in—
3. Declaration of trust by Susan C. Warren, Samuel D. Warren, and Mortimer B. Mason, of which I send you a copy.
4. Deed of Forest Paper Co. property to Louis D. Brandeis. This will be conveyed by him at once to the purchasers of the property, Mortimer B. Mason and Samuel D. Warren.
5. Bill of sale, residuary legatees, to new firm of S. D. Warren & Co.
6. Brief explanation of proposals, showing the reasons for the various transfers. (Hearings, 843.)

The letter, after giving directions concerning execution of the instruments, continued:

I do not send you at the moment detailed figures of the condition of the estate, such I have submitted to the other children, for two reasons, first, because I do not like to have them go out of my possession and run any chance of going astray, and, secondly, because I have found so much explanation necessary to their comprehension by the other children that I do not think you would understand them without explanation. All the others have been carefully into the matter and approve of the proposed arrangement; and I shall have to ask you to take my word for it so far as you do not understand it. When you return in the fall, I will go into all details to your satisfaction.

The upshot of the whole matter is that the Forest Paper Co. is sold to Mortimer and myself at what I think is a fair price for the one-half interest of the estate (viz, $90,000), the other half being owned by George W. Hammond. The assets of the old firm of S. D. Warren & Co. are sold to the new firm at a fair valuation. The Cumberland and Copsecook mills and other real property in Maine are conveyed to the trustees for 33 years to be dealt with for the benefit of the residuary devisees in the proportions in which they are interested under the will. For the present the rental allowed to the firm of S. D. Warren & Co. for the use of these mills will be 6 per cent per annum on the value of the plants at any time plus 50 per cent of the net profits of these mills. This I think an extremely favorable arrangement for the devisees.

I should add, lest you get an inflated idea of your income, that the profits of last year (in which you had a larger interest than those of this) were larger by a considerable sum than they will be this year, or than they ever were before; 1888 was the high-water mark in profits.

Please execute these papers as soon as convenient and return them immediately on execution, care S. D. Warren & Co., 220 Devonshire Street, in a waterproof envelope clearly addressed.

Your affectionate brother,

Samuel D. Warren.

(Hearings, 844.)

Edward did return in the fall, and came to this country at intervals thereafter. The liveliest affection had always, until differences unhappily afterwards arose, obtained among the various

members of the family. Even on the eve of starting suit against his brother S. D., in the year 1909, Edward wrote him as follows:

My Dear Sam: I have had to file the bill, because otherwise it would have been difficult to obtain a satisfactory before Monday next, but—

First. I hope that you will make me contented to withdraw it; and

Second. The phrases are such as in a legal document I have felt obliged to sign, but are very far from representing my feelings toward you aside from the business or my desire for unanimous fraternal procedure.

Let us try to agree; it would be much pleasanter.

Your affectionate brother,

E. P. Warren.

Bellevue Hotel, Boston,
December 13, 1909.

(Hearings, p. 860.)

Annual statements were sent to all the beneficiaries and remittances or settlements made. In 1902, after the plan had worked without friction for 13 years, Edward exhibited some dissatisfaction. He employed a lawyer, one William Youngman, who, several years thereafter, brought a suit for Edward, asking that his brother S. D. be removed as trustee, for a decree annulling the lease, and for an accounting. Issue was joined. S. D. Warren was examined at length before a master, the examination being conducted by Sherman L. Whipple, heretofore referred to. S. D. Warren died before his examination was completed, and a settlement of the litigation was effected, under which the interest of Edward Warren was acquired. Mr. Moorfield Storey was employed by Fiske Warren and represented him in the litigation. Mr. Storey appeared before the committee as a protesting witness. He signed a remonstrance as an ex-president of the American Bar Association, appearing in the record. He appeared to tell that Brandeis had been employed to wreck the New England Railroad, to be hereafter referred to, and that the reputation he bore at the bar of Boston was not good. Asked about the Warren case, he said:

Mr. Storey. The position is this: When Mr. Samuel D. Warren, sr., was alive, he owned the mills and was the controlling partner in the firm. The firm sold the goods, and there was some arrangement between the firm and Mr. Mason, personally, for a division of the expenses and profits. When he died that situation existed and something had to be done in order to carry on the business, and an arrangement was made whereby the property formerly held by Mr. Warren, personally, was vested in trustees, and Mr. Samuel Warren took his father's place in the firm, and Mr. Fiske Warren was also in the firm, but with a smaller interest. Mr. Edward Warren was in Europe engaged in the study of arts and curiosities, and was not in active business.

The arrangement which was made seemed to me, as I examined it, a perfectly fair arrangement. It probably, in view of what happened afterwards, would have been better if Mr. Edward Warren had independent advisers to counsel him. But the thing was submitted to him and agreed to by him, and I saw nothing in the arrangement as to which he could complain. I sat through the trial which had begun, and Mr. Warren was on the stand, as I remember, about six weeks, and during that time was cross-examined by Mr. Whipple. There were about six weeks more, as I understand it. It looked as if the cross-examination might last longer, when Mr. Warren died. During the cross-examination nothing developed which reflected upon Mr. Samuel D. Warren in any way, or upon Mr. Brandeis.

As I say, I saw nothing in the case up to the time the case ended of which Mr. Warren could be in any way ashamed. It seemed to me he had treated his brother with great fairness. I should have done perhaps very much as Mr. Brandeis did if I had been in his place. It would have been a matter of caution, however, to have independent counsel, but apparently the family united——

Mr. Anderson. Was there any more reason for suggesting independent counsel for Mr. Edward D. Warren than Mrs. Warren—I mean at the outset?

Mr. STOREY. I do not know that there was.

Mr. ANDERSON. Was there any more reason for suggesting separate counsel for Edward Warren than for Fiske Warren?

Mr. STOREY. They were all of age, and Fiske Warren, up to that time, had not been very active as a business man, any more than Edward Warren, but he was on the ground and was in a position to employ counsel. Mr. Edward Warren was on the other side of the water. At the time, as I say, there was nothing in the relations between the different members of the family to suggest that there was any divergence of interests, or any reason why they should not act harmoniously, as they did. (Hearings, 277, 278, 279.)

Perhaps that is all that need be said about the Warren case.

If Mr. Storey, with his opportunity to know the facts, and he was obliged to investigate them in order properly to advise his client, found nothing to criticize, the quest is not likely to yield much.

Mr. Hollis Bailey was associated with Youngman in the litigation. He is likewise an adverse witness.

The following indicates his view of Brandeis's wrongdoing:

Senator WALSH. So far as the Brandeis firm are concerned and Mr. Brandeis's connection with it, as I understand you, the complaint which you make against him is that this firm acted during this period at one and the same time for the lessors and for the lessees in these arrangements?

Mr. BAILEY. Yes; and that should rightly have suggested to him, when there were conflicting interests, that independent counsel would have been quite proper to act.

Senator WALSH. The point you make is that it was the duty of the Brandeis firm to have suggested to your client, as soon as differences arose, that he should get independent counsel?

Mr. BAILEY. Independent advice. (Hearings, 149.)

I think, further, that if Mr. Brandeis had properly considered the rights and interests of Mr. Edward Warren he would have said to him, "Your brother, Samuel, while he is trustee, is getting these very large sums for carrying on the business under the lease."

Senator WALSH. That is to say, that when the lease was made originally you think Mr. Brandeis should have advised Edward that he ought not to consent to that lease or enter into it because his brother, Samuel, was getting a better bargain than he ought to get?

Mr. BAILEY. Not to do it, in any event, without having the advice of independent counsel. Those are the main points. (Hearings, 150.)

But why should Brandeis advise Edward Warren that he ought to get independent counsel? Would not such a suggestion from him be an affront, and a perfectly gratuitous affront, to S. D. Warren, who might be presumed by any one knowing him and particularly by his law partner to give his brother such information as the conditions might seem to require? Edward was at the time 30 years of age—a graduate of Oxford. If Brandeis ought to have advised him to employ an independent lawyer certainly he owed the same duty to Mrs. Warren and to Cornelia and to Fiske and to Henry. It would be an absurdity as a business proposition to bring into a family settlement of that character a lawyer for every member or even one representing each diverse interest and there were at least three.

As to advising Edward when differences arose to get another lawyer, he forthwith employed Youngman and it was unnecessary to give him any advice on that point.

But it was suggested at the hearing, perhaps by a member of the committee, that when suit was begun against S. D. Warren, the Brandeis firm ought not to have acted for him because it had been attorney for Edward Warren in the transactions under investigation in that it had been attorney for the trustees to whom he stood in the relation of *cestui que trust*. That is a startling doctrine. Certainly Edward Warren had disclosed nothing to the firm, confidential or otherwise,

which could be used against him. The firm had learned nothing and could have learned nothing that each beneficiary was not entitled equally to know. Can it be that when the title of the trustee or his administration of the trust is attacked by one of the beneficiaries the attorney for the trustee can not represent him because, forsooth, the former has been drawing pay out of funds which belong equitably in part to the suing *cestui*? Is an attorney for a corporation precluded from defending its directors when assailed in court for maladministration? Is the attorney for an executor or administrator? The suggestion must have been made unreflectingly.

The suit was founded upon the supposition that the lease fell within that class of contracts which equity avoids, not because of any fraudulent purpose but because of a public policy springing from a desire to remove the temptation to defraud.

Here is what Mr. Whipple has to say of this affair:

> The question was then whether all parties who were involved—all the beneficiaries—knew it and assented to it, fully advised and with their eyes open, and it was contended in behalf of Mr. Edward Warren, who was at the time abroad and whose information all came by correspondence, that he intrusted the whole matter to Mr. Brandeis and was not fully informed, so that that was the ground of the position which we took in the litigation and with reference to which my cross-examination of Mr. Samuel D. Warren proceeded; but Mr. Bailey, as I noticed by the public press, stated, in response to a question by one member of the committee, that he believed that Mr. Brandeis intentionally framed this lease and other papers so as to give Mr. Warren this opportunity to make private profit. That belief I do not share with Mr. Bailey. I cross-examined Mr. Warren at length, and I was then impressed, and so expressed myself, that the idea of defrauding his brother or the other members of his family, or securing a personal advantage to which he was not entitled, did not enter his head; that the entire transaction was free from any taint of dishonest motives or intentional fraud.
>
> I had the feeling with regard to Mr. Brandeis somewhat like Mr. Storey has just expressed, that he was possibly careless in not making very, very clear to Mr. Edward Warren just the whole transaction and its possible effect upon his rights, but I felt at the time, and I feel now, that Mr. Brandeis, who has been the family counselor and been trusted for many years, thought that there was a perfect understanding and accord among all the members of the family; that Mr. Samuel D. Warren, who, by the death of his father, became the head of the family, should be charged with the responsibility of handling and operating this large property and should have what he could make out of it. Of course, if that was so, and all parties assented, there was no violation of trust; and there was no moral wrong. Therefore, I reached the conclusion that there was a legal wrong; that there was a violation of that principle of law with regard to trusts which I have just pointed out, but that there was no reprehensible motive to secure a personal advantage secretly or in any way like that. (Hearings, 283–284.)

Mr. Youngman, referred to, overwhelms Mr. Brandeis with accusations in connection with this case, but it may be said in charity that his employment by Barron to gather up the material for a newspaper campaign against Brandeis probably warped his judgment touching the acts of that gentleman.

THE BALLINGER INQUIRY.

The essential facts in reference to this matter are well known. Glavis, a subordinate in the Interior Department, had laid before President Taft charges affecting the administration of that department under Secretary Ballinger and had been dismissed from the service. It was claimed among other things, that by a laxity or liberality in the practice of the department, the Secretary was permitting the coal lands of Alaska to be fraudulently appropriated. Complicity in the general purpose or at least, toleration of it, was

understood by many to be implied. The incident intensified a suspicion of the Secretary entertained by the so-called "conservationists," headed by Gifford Pinchot, Chief Forester. Collier's Weekly, an advocate of the ideas of the "conservationists," printed the Glavis charges. A congressional investigation into the causes of the removal of Glavis was ordered. Collier's Weekly employed Brandeis to appear at the investigation. Upon consideration it was determined that he should appear for Glavis, their contributor, and not seek to introduce the paper as a party to the proceedings.

Glavis was presumably quite willing to have so able a lawyer as Mr. Brandeis. He announced to the committee that he appeared for Mr. Glavis, and as his attorney conducted the inquiry. Collier's paid him $25,000 for his services, which extended over a period of 5 months. He is accused of unprofessional conduct in not announcing to the committee that he was employed and paid by Collier's.

It is asserted and not denied, that it was common knowledge at the time that he was employed by Collier's. He never was asked who hired him or by whom he was paid. The committee, perhaps, thought it quite immaterial. They could scarcely have believed that an impecunious Government clerk was feeing one of the first lawyers in the country.

Be that as it may, were it not for the views of some members of the committee, I should unhesitatingly declare the charge absurd. It presents the question of whether a lawyer may with propriety have his name entered in a cause as attorney for a party who pays him nothing under employment by another, but with the assent of the party he nominally represents. I assert that it is a practice of daily occurrence, not only tacitly approved but recognized by the courts. Can not a mother employ an attorney to defend her son charged with crime? Must he announce in entering his appearance who employed him and where he gets or expects to get his pay?

The stock association of my State frequently employs a lawyer to aid county attorneys in the prosecution of cattle-stealing cases. The local prosecutor is usually glad to have his assistance. Is he disqualified for judicial honors if he does not announce to the court that the State did not hire him and does not intend to pay him? I venture to assert that scarcely a term of the Supreme Court passes during which some lawyer does not have his appearance entered on the invitation, or by the assent of the counsel already of record, being employed by some one not a party to the suit, but who is interested in the principle involved. The court would stare at a lawyer who under such circumstances in beginning his argument, took its time to announce that he was not hired and did not expect pay from the party for whom he spoke.

If this is professional misconduct the bar needs regeneration.

Another charge in this connection is answered by the undisputed evidence of the record.

THE NEW ENGLAND CASE.

Barron told the committee that Hon. Moorfield Storey could tell that Brandeis had been employed in 1902 to wreck the New England Railroad. It was the conclusion of that gentleman that he had been so employed. The facts were that Brandeis had been retained by

one William Kelly, a reputable lawyer of New York City, now a supreme court justice, to bring suits against the directors of the New England road, charging misconduct on their part, to restrain the payment of dividends, alleged to be illegal because there were no profits from which to pay them, and to restrain the issuance of bonds because the bonding power of the corporation had been exhausted. A receivership was contemplated and a bill drafted. Separate suits were started in the States through which roads comprising the system ran. They represented a contest between Austin Corbin, Kelly's client, and the board in control of the road. He had been president, but had resigned, possibly under pressure. The suits were started in the name of Goldsmith, a liquor dealer of Boston, who was a stockholder. The season of financial depression was on. After carrying on the litigation with success, so far as it progressed, Corbin, in 1893, quit and directed Kelly to give no further attention to it on his account, advising him that the New Haven, which had meanwhile acquired the property in foreclosure proceedings, would take care of the litigation. He insists that Corbin was in no way associated with the New Haven at the time the suits were commenced, that Corbin indeed was fighting that system, running a rival road. Be that as it may, there is not a breath of testimony that Brandeis knew or had any reason to suspect that Corbin was acting for the New Haven, if he was, nor is it intimated that the suits were without foundation, so palpably baseless as to suggest to an ordinary lawyer that they were malicious.

In 1893 the Massachusetts Legislature inquired whether the New Haven had not forced the New England into insolvency with a view to the monopolization of transportation facilities. The examination was conducted by Mr. Storey. He called Mr. Brandeis and interrogated him concerning the suits and his employment. Brandeis quite deferentially declined, in the first place, to tell, claiming the privilege and the duty of counsel, but later told, as herein set out, about the matter. The litigation had evidently engendered bad blood between these two lawyers, as evidenced by the examination referred to. I should be loathe to believe that Mr. Storey carried to this day the animosity thus aroused, but the opinion of a man often defies analysis.

Another protesting ex-president of the American Bar Association, Simeon E. Baldwin, was counsel in Connecticut in that litigation for the directors of the New England road, which Corbin charged with misdeeds of many kinds. This affair narrows down to the question of the offense of Brandeis in bringing the suit in the name of Goldsmith, who was fully indemnified by Corbin. Goldsmith afterwards sued the Corbin estate to recover on account of expenses incurred in the litigation. It was not asserted that the court held that his agreement with Corbin was contrary to public policy or good morals.

It is conceded that whatever right Corbin had to maintain the actions, Goldsmith had the same right. The question is akin to that presented in the Ballinger case.

The Supreme Court of the United States held in Wheeler *v.* Denver (229 U. S., 342) that a taxpayer could maintain a suit in the Federal court, though it was brought by his permission by the attorneys for a corporation which could not sue therein, which had indemnified him against costs and damages, provided the attorneys, and borne all the expenses.

A fight was waged in my home city for years between the municipality and a water company. On a number of occasions when action was taken by the city which the company thought inimical to its rights or interests, and which in its opinion would justify a taxpayer's suit, it got some friend, possibly a director of the company, to bring suit; that is, started suit in the name of the taxpayer under an indemnity to him. The most high-minded lawyers at our bar have pursued this course, and it never occurred to me that they were subject to disbarment or open to censure for having appeared as they did. What harm is done? What evil is to be feared? Isn't it true that the law is no respecter of persons? The "saloon keeper" Goldsmith looked to the court quite like the capitalist Corbin. It does not appear why Corbin preferred not to have the suit brought in his name, but, as in the Ballenger case, it was generally known that he was back of them. They were referred to as "the Corbin suits." That is immaterial. It was of no consequence to the court in the determination of the suits whether Goldsmith proceeded on his own motion or at the instigation of some one else. Neither the facts nor the law could be affected.

THE ILLINOIS CENTRAL.

This complaint simmers down to a question of whether Mr. Brandeis dissimulated or prevaricated in a statement made in a letter in relation to his being or having been the attorney for E. H. Harriman. The letter having been read and the facts having been developed by testimony, Senator Cummins, a member of the committee, addressed the following question to Mr. Fox, who was conducting the case for the protestants:

> Senator CUMMINS. I would like to know, before we go further, your view of Mr. Brandeis's statement or letter to Mr. Walker. Wherein do you think it shows false? Wherein do you think that it departs in any degree from the truth? (Hearings, 354.)

To this he got no answer; presumably because Mr. Fox was able to give none. Neither am I.

THE SHOE MACHINERY CO.

Mr. Winslow, president of the Shoe Machinery Co., heretofore referred to, made bitter complaint against Brandeis. Prior to 1899, when that company was organized, the latter had been the representative—business rather than legal, apparently—of the Henderson family, of Chicago, owning interests in one of the companies uniting to form the Shoe Machinery Co. Brandeis became one of 19 directors in view of the interest referred to and had such part in the work of the board as a director not immediately concerned with the management of the business ordinarily has, being one of 19.

Perhaps more, because his business capacity is perhaps not much less marked than his talent as a lawyer. His firm, though not the general counsel for the company, was frequently employed by it. In 1906 an attempt was made before the Massachusetts Legislature to have an act passed declaring void so-called "tying clauses" in leases under which the company let out its machinery. At the request of Mr. Winslow, the president, Mr. Brandeis appeared before a committee and made an argument against the bill. It will be noted that the

bill proceeded upon the assumption that the tying clauses were perfectly legal. It proposed to outlaw them. Up to that time the legality of the clauses in question had not been the subject of any special comment, and nothing appears to show that the Brandeis firm had ever been called upon to express an opinion on the subject. In the effort to defeat this legislation the Shoe Machinery Co. had the cooperation of a number of the shoe manufacturers, clients of Brandeis, whose sympathy and help had been enlisted partly, at least, through his efforts.

The controversy directed attention in a special way to the specific provisions of the leases and the legislation failed, due to some extent at least, to a promise secured by Brandeis from Winslow to confer with the shoe manufacturers concerning certain provisions of the leases to which, as the contest proceeded, they expressed a decided objection. These conferences took place in the fall, Brandeis insisting that the leases should be changed, but without convincing Winslow. Thereupon Brandeis resigned as a director of the company. Some lawsuits then pending, apparently of no great consequence, in which his firm represented the company, were afterwards tried, but save for that work all his relations with the company ceased.

In 1907 the Massachusetts Legislature passed an act outlawing tying contracts. The bright legal minds which then guided the affairs of the Shoe Machinery Co. found it easy to circumvent the law, as they thought, by inserting a provision in the lease authorizing the company to cancel it at will. A lease could be avoided, then, against any man who appealed to the new law.

In 1911 the Supreme Court affirmed the decisions in the Standard Oil and American Tobacco Co. cases. Other decisions were rendered shaking the faith of many people that a combination, the basis of which was patent rights, was immune under the Sherman law. Enlightened by these cases the Brandeis firm gave an opinion to the effect that the tying clauses were void under the Sherman Act, of course with respect to interstate business.

Meanwhile the Thomas G. Plant Co. was acquired by the Shoe Machinery Co., as heretofore recited. Thereafter at hearings before congressional committees and in public addresses to illustrate some point he was making in connection with the trust problem, Brandeis frequently referred to the oppressive tying clauses of the Shoe Machinery Co.—which by the way were a growth dating from 1861—and to practices of that company, all of which he roundly denounced. It is not claimed that he ever disclosed any facts concerning its business not long public property, of which he might have learned either as director of the company or as casual attorney for it. Indeed, the things of which he complained had already been communicated to the Department of Justice, and had been the subject of comment by representatives of the shoe manufacturers before committees of Congress.

Mr. Winslow seems to be possessed with the idea that because Brandeis had taken fees from the Shoe Machinery Co. he bound himself forever not to criticize its policy or its practices—that in a way he had violated his fealty. It is not an uncommon view on the part of those who manage great industries and command many men that they may insure the support of lawyers on public questions by putting them on the pay roll or paying them from time to time for legal services

In the case of Brandeis the assumption seems not to have been well founded. In that he did something to dispel that notion, he deserves well of his profession.

It is claimed that in some respects his position in relation to questions in which that company was concerned was inconsistent. Doubtless he finds it easy to reconcile whatever differences may appear or he may frankly admit that on at least one occasion he was in error. What if he was inconsistent? Is it forbidden to a man that he change his mind?

If in the impetuosity of attack or the ardor of advocacy he was led sometimes into giving too vivid a hue to the facts touching the methods of business of Mr. Winslow's company or drew unwarranted conclusions from them, there was no such obliquity of mind disclosed or faults of character revealed as would in any wise unfit him for judicial duties. It is impossible in reason to attribute his attitude toward the Shoe Machinery Co. after he parted company with it to any but the most creditable motives. There had been no quarrel, no heated interchanges, when the separation came that might have bred some deep-seated resentment to satisfy which the subsequent accusations were made by Brandeis. He was moved either by a sincere purpose to serve the public interest or he was playing the part of a demagogue. Few who plead the cause of the great public escape the imputation from those whose privileges they seek to curtail of pandering to popular prejudice.

In the Illinois Central matter he was getting proxies in New England for what may be called the Harriman interests as against the Fish interests while he was fighting the merger of the Boston & Maine. In these matters, too, it is said he occupied positions that were wanting in consistency. It would serve no useful purpose to inquire whether the local fight was an attempt to "Harrimanize" New England or whether the ousting of Fish was to be desired notwithstanding the influence of Mr. Harriman would be extended.

THE GILLETTE SAFETY RAZOR CASE.

I shall not enter into the details of this matter. Brandeis's firm was employed to defend the directors of that company in a maladministration suit, and to resist actions brought by various parties against the directors to rescind sales of stock sold them without disclosing the true value of it and the condition of the company.

While these actions were pending the defendants quarreled. Certain of them, including Gillette, the inventor of the device, fearing a plot on the part of others to oust them from the directory, went to Brandeis and employed him to help them to secure enough outstanding stock to give them control. He did so, and the firm continued to defend them all, in the actions in which they were employed, until they were finally disposed of. None of the parties are complaining, but the plaintiff in one of the annulment suits had some stock. Brandeis besought his attorney to induce his client to sell. He did so, and the stock was acquired. Now the attorney for another claimant prosecuting a similar suit, but who owned no stock of record, had been associated on the record as counsel for the plaintiff. The original attorney asserts that Brandeis asked him in the course of the negotiations not to mention the matter to the attorney for the other claim-

ant who had thus been associated. He bore no relation whatever to the directors to whose interests it is suggested Brandeis was not faithful. They are, as stated, not complaining, nor does it appear that they ever did complain.

THE ADVANCE RATE CASE.

Mr. Brandeis was employed by the Interstate Commerce Commission to resist the application of the railroads made in 1913 for a 5 per cent increase in freight rates. He had appeared for certain shippers in a similar application which had been made in 1910, and which had been denied.

Clifford Thorne, one of the railroad commissioners of the State of Iowa, appeared for various shippers and for the State authorities for a number of the Central Western States, who naturally resisted any raise.

The inquiry involved two questions; first, as to whether the net revenues of the railroads as a whole were adequate—that is, without any new economies or change of business methods; and, second, if they were not, how were the net revenues to be increased, and particularly whether they were to be increased by a general raise.

The shipper is not ordinarily concerned, or, at least, not so deeply concerned about what the rate is going to be on any commodity except his own. It may be that the rates as a whole do not produce the requisite revenues and that something additional ought to be raised by an increase on his particular line of goods.

An attorney to represent all interests, as one employed by the commission must, approaches the proposition from a slightly different angle from that from which the attorney for the shipper views it.

It was assumed, however, that the railroads would be represented by able counsel who might be relied upon to bring out all facts helpful to their side of the case.

Mr. Thorne, whose diligence and fidelity, not to speak of his talents, which are undoubtedly of high order, can not be too much commended, in his testimony and in his argument before the commission advanced that the net revenues on the whole were sufficient to pay the companies a reasonable return on their investment.

Mr. Brandeis, in closing the case, declared that in his opinion they were not on the whole sufficient. He then proceeded to tell how by making readjustments here and instituting economies there they could be made sufficient without any raise in general rates. The increase was denied. It is said that Brandeis should not have made the admission that he did. Naturally it was disappointing to Mr. Thorne, but no one suggests, not even Thorne, except from his manner, that Brandeis had not reached the conclusion he announced after a thorough and painstaking inquiry, bringing to bear on the subject his masterful faculty in the analysis of accounts. But it is asserted that he might have said, "If it be conceded, etc.," or "I shall assume for the purpose of the argument, etc."

Mr. Brandeis's critics are hard to please. In the Ballinger and Goldsmith cases it is said he should have been more frank with the court; in this case, that he should have been less so.

The remainder of the matters submitted to the committee do not seem to require notice. It would be useful, perhaps, if time per-

mitted, to outline them in order to show the frivolous character of most of them—indicating a straining after results and a consciousness that the case made on the matters reviewed is a weak one.

The real crime of which this man is guilty is that he has exposed the iniquities of men in high places in our financial system. He has not stood in awe of the majesty of wealth. He has, indeed, often represented litigants, corporate and individual, whose commercial rating was high, but his clients have not been exclusively of that class. He seems to have been sought after in causes directed against the most shining marks in it. He has been an iconoclast. He has written about and expressed views on "social justice," to which vague term are referred movements and measures to obtain greater security, greater comfort, and better health for the industrial workers--signifying safety devices, factory inspection, sanitary provision, reasonable hours, the abolition of child labor, all of which threaten a reduction of dividends. They all contemplate that a man's a man and not a machine. A letter addressed to me by Hon. David I. Walsh, concerning his activities in a public way in the State of Massachusetts, affords some light on the opposition to this nomination. It is made an appendix hereto.

It is said that it is to be regretted that any such controversy as this in which we are involved should arise over a nomination of a justice of the Supreme Court. So it is. But when it is said further that one might better be chosen over which no such bitter contention would arise, I decline to follow. It is easy for a brilliant lawyer so to conduct himself as to escape calumny and villification. All he needs to do is to drift with the tide. If he never assails the doer of evil who stands high in the market place, either in court of before the public, he will have no enemies or detractors or none that he need heed. The man who never represents the public or the impecunious citizen in any great forensic contest, but always the cause of corporate wealth, never has these troubles. It is always the other fellow whose professional character is a little below par.

The bar is still the bulwark of the liberties of the people. To it they must look in the future as they have looked in all of our history for fearless champions. Discouragements enough beset the ambitious youth who resolutely sets out upon the path of devotion to duty and to the cause of justice, who strives to render some real public service. I do not care to warn him to abandon the hope of reaching the summit of his profession by that route.

My vote is for the confirmation of the nomination of Louis D. Brandeis for associate justice of the Supreme Court.

Respectfully submitted.

THOMAS J. WALSH.

APRIL 3, 1916.

APPENDIX.

WASHINGTON, D. C., *February 7, 1916.*

MY DEAR SENATOR WALSH: It seems to me a public duty to write to you in regard to the appointment of Mr. Louis D. Brandeis, of Massachusetts, as a justice of the Supreme Court of the United States. During the two years I was governor of Massachusetts, and in the years preceding them, I had repeated occasions to observe this man and his high ideals and common sense; his wide practical knowledge of the law; his extensive understanding of the business, economic, and social problems of our

time; his sound judgment and ardent devotion to the public welfare. As you know, we are justly proud of the number and ability of our public-spirited men in Massachusetts, and it would be difficult to point out a better example of generous, unpaid, diligent constructive work upon the side of the public interests than that which has been done by Mr. Brandeis.

On numerous occasions, beginning at least as far back as 1896, whenever the creation and control of the Boston subways was before the legislature, he has been, as a private citizen, a tireless and successful leader against powerful opposition in support of the principle that the value of the subway franchises should be kept for the public, after giving to the operating company a reasonable return for services rendered. He declined to accept any compensation for his long continued and very valuable constructive work during all these years in this cause.

When the gas situation in Boston appeared to be in a hopeless condition he urged again as a private citizen the plan by which the dividends of the gas company were made dependent upon the price charged for gas to the consumers. This has resulted in a reduction in the price of gas to the public and in a corresponding increase in dividends to stockholders of the company.

When the insurance investigations occurred he devised and successfully pressed for legislation in Massachusetts permitting, for the first time in this country, our savings banks to issue small-payment life insurance policies. This has resulted in an opportunity for our working people to insure themselves at much lower rates than were being charged by the industrial insurance companies and has led these companies to make lower rates. To my personal knowledge Mr. Brandeis has given annually thousands of dollars to further the work of bringing to the working people of our State this opportunity for less costly insurance. For more than 20 years prior to the Massachusetts law there had been no reduction in the cost of industrial insurance, but since the passage of the law so successfully advocated by Mr. Brandeis in Massachusetts, the premiums of the old-line companies have been reduced on an average 20 per cent, thus saving to the people of this country, insured in industrial companies, from $15,000,000 to $20,000,000 annually and to the people of Massachusetts about $1,000,000.

The system of arbitration which he devised for the New York Garment Workers is an equally significant example of his judicial qualities and his public service in other fields.

In 1906 the people of New England began to awaken to the fact that the New Haven Railroad was apparently successfully seeking to create a New England transportation monopoly. The event which focused public opinion most sharply was the acquisition of the controlling interest in the Boston & Maine Railroad. Mr. Brandeis, again as a private citizen, commenced an exhaustive study of this railroad problem and made public an analysis of the financial condition of the New Haven Railroad, pointing out for the first time to the people of New England the inevitable disaster sure to result from the course of mismanagement and waste then being pursued. His advice was unheeded, his warning derided, and his motives impugned. But time has shown that his conclusions were based upon carefully ascertained facts, to which he applied the clearest and most cogent reasoning power. Three years ago what he prophesied nine years ago became apparent to all and is now a matter of public knowledge and of record in Senate documents and elsewhere.

I instance these, among many public services covering a long period of years, as illustrative of the work done as a private citizen in the service of the public interest without compensation, at a large expenditure of his own time in the midst of a very active professional life.

Indeed, in extensive acquaintance with public men I know of no one who without emolument or honors of public office has given so much of the valuable constructive service of a trained lawyer to the public weal as Mr. Brandeis.

I have written mainly of Mr. Brandeis's public work for the past 20 years, but I would not have you overlook that before he engaged in these public activities out of which have grown results for which he is entitled to the gratitude of the American people, he had achieved already a position at the Massachusetts bar which would well have warranted his appointment to the Supreme Court at the age of 40. He is a great lawyer and a great citizen. Is not this a combination for a great judge?

Were I not hastening on a far journey I would seek a personal interview with the committee, but failing such opportunity, I venture to emphasize and perhaps to repeat some of the things I said to you orally, and I hope that you will communicate them to your committee, together with my very best respects.

Very sincerely yours,

David I. Walsh, *Boston, Mass.*

Hon. Thomas J. Walsh,
The Senate, Washington, D. C.

On May 10, 1916, the Committee on the Judiciary appointed the same subcommittee, with the exception that Senator Borah took the place of Senator Cummins (absent), to take further evidence regarding the matter brought to the attention of the committee by a member of the committee concerning the relation of Mr. Brandeis with a drug merger.

This subcommittee met on May 12, 1916, and heard the testimony of Mr. Louis K. Liggett, Mr. Frederick E. Snow, and Mr. George W. Anderson, and also heard the testimony of Hon. James S. Harlan, member of the Interstate Commerce Commission, all of which evidence was printed as a part of the record.

It seems that there was a holding company formed to take over certain drug companies, and Mr. Brandeis was consulted as to the legality of the corporation and proposed combination.

There was nothing in the employment out of the ordinary, and since the evidence was taken no one has suggested that there was anything improper in the employment or anything to be criticized in what Mr. Brandeis said or did. It was a proper employment, and, unless this committee is to supervise the private practice of the law. there is nothing regarding the charges to discuss.

This supposed charge is one of many which come under the notice of an honorable member of the committee, and he in good faith brought it to the attention of the committee, which, regarding its source, felt called upon to take the evidence.

We venture to introduce further comment upon this nomination with the following from an address made by Mr. Brandeis on May 4, 1905, before the Harvard Ethical Society, as follows:

> It is true that at the present time the lawyer does not hold as high a position with the people as he held 75 or, indeed, 50 years ago; but the reason is not lack of opportunity. It is this: Instead of holding a position of independence, between the wealthy and the people, prepared to curb the excesses of either, able lawyers have to a large extent allowed themselves to become adjuncts of great corporations and have neglected the obligation to use their powers for the protection of the people.
>
> The leading lawyers of the United States have been engaged mainly in supporting the claims of the corporations; often in endeavoring to evade or nullify the extremely crude laws by which legislators sought to regulate the power or curb the excesses of corporations.
>
> For nearly a generation the leaders of the bar have, with few exceptions, not only failed to take part in constructive legislation designed to solve, in the public interest, our great social, economic, and industrial problems, but they have failed likewise to oppose legislation prompted by selfish interests.

No doubt the distinguished audience which heard this address, as well as the bar and public generally, approved it; that the distinguished author of it deigned to put it into actual practice should go to his credit rather than to his prejudice.

The Five Per Cent Rate case was somewhat illuminated by the testimony of Hon. James S. Harlan, member of the Interstate Commerce Commission, found in part 22 of the hearings at page 157. This evidence makes it clear that the charges brought by Mr. Thorne

against Mr. Brandeis are certainly not taken seriously by the Interstate Commerce Commission. Mr. Harlan reviews the whole circumstances concerning the employment, and we quote from that part of his evidence, as follows:

Senator WALSH. Mr. Harlan, I want to ask you a question or two. I should like to inquire of you whether it had ever occurred to you or to any of the members of the commission, so far as you are permitted to speak for them, that Mr. Brandeis had been faithless to the commission or to the public in the discharge of the duties which he undertook?

Mr. HARLAN. Senator, I feel assured that I represent the views of my colleagues when I say that no such thought ever occurred to any of us. So far as I am concerned, personally, if I may express a personal view, I can not associate such an idea with Mr. Brandeis. It is not consistent with my view of him or with the impressions that I have formed from a long acquaintance with him.

Senator WALSH. Doubtless you know, Mr. Commissioner, the nature of the complaint made in this connection. It appears to be that, the questions involved being, first, whether the net revenues of the railroads as a whole, without any economies or change of business methods, were adequate, and, second, if they were not, by what means they should be made adequate. Mr. Brandeis, in opening the discussion before the commission, made the statement in effect that, in his opinion, the revenues of the railroad companies were not on the whole adequate, considering the needs of the railroads and the general welfare of the community. Do you recall the statement to which I allude?

Mr. HARLAN. Yes; I do, Senator.

Senator WALSH. In a general way at least?

Mr. HARLAN. Yes; I do.

Senator WALSH. What was your view as to the propriety or the impropriety of Mr. Brandeis expressing any such opinion as that to you in the course of his discussion of the matter as he had investigated it?

Mr. HARLAN. It never occurred to me that there was any impropriety in it. On the contrary, as I view the situation, it was precisely the sort of view that we looked to counsel to express as the result of his study of the case and the record as it lay before us. I do not mean, in saying that, that we had expected him to reach that conclusion on the record before us; I mean to say that it was that sort of judgment that we wanted from all the counsel discussing that case, and particularly from Mr. Brandeis. He had, of course, been in the case from the beginning. We wanted him to develop the facts—all the facts—that might bear upon the public interest, and I know of no more important fact in such a case than precisely that question. If the revenues of the carriers, the net incomes of the carriers, were not sufficient that was something that we ought to know. It was one of the questions that the commission undertook to investigate. Having retained Mr. Brandeis to bring out all the facts of value, as I have explained, I do not see how he could have failed, when discussing the record, to advise us of any conclusion he had reached from his study of the testimony and evidence adduced, and to point out from the record, as he did, the reasons for that conclusion. We were entitled to have the views of those who had studied the record. As far as I know, the impropriety of the statement by him, to which you refer, has never occurred to any of my colleagues. But in saying that, and in what I have said or shall say I speak only for myself.

Senator WALSH. That is all.

Senator WORKS. Mr. Harlan, that admission, if we call it an admission, practically covered the whole case, did it not?

Mr. HARLAN. Why, no, Senator.

Senator WORKS. The very question you had before you was whether these rates should be increased as asked for by the carriers, was it not?

Mr. HARLAN. Well, whether the net revenues were adequate in the public interest was a very different question from the reasonableness of the rates which were then in existence, or the rates which were proposed by the carriers.

Of Mr. Brandeis, Mr. Harlan said further in his testimony:

Mr. HARLAN. I do not believe that I am prepared to make any response to that question. I will say that, as far as my experience goes with Mr. Brandeis, he is a man who showed at all times great consideration for others. I do not

believe that Mr. Brandeis would consciously have done an unfair thing. I am perfectly certain that in saying what he did he was moved by a sense of duty, upon the record, to the commission. No other thought about it has ever occurred to me, and I never have heard any of my colleagues indicate any criticism of it, or that they were surprised by it. Now, that may not be responsive to your question.

Again, in answer to a question by Senator Fletcher, the following occurred:

Senator FLETCHER. And no matter what Mr. Brandeis or any of the counsel may have stated in argument, the commission itself had the whole record before it and all the facts were collected, and there has been no claim that any shipper or any other interest was omitted in the collection of the facts.

Mr. HARLAN. No; I have heard no criticism of that kind, and I do not think there is any basis for such criticism. I want to say also that I do not think the commission ever dealt with any case that engaged the personal attention of each commissioner more deeply and for a greater length of time than did the Five Per Cent case.

Again, in answer to a question by Senator Works, Mr. Harlan said:

Senator WORKS. I believe it was testified at this hearing with respect to this particular case, by one of those attorneys that you had previously employed, that he never assumed to give any such advice or opinion respecting such a matter as this but simply developed the facts.

Mr. HARLAN. I do not know who that was; but my own recollection is, and my understanding is, that we expect those who are retained by the commission for this purpose to be of aid to the commission not only in developing the facts but after weighing the record in pointing to the conclusions that the record seems to justify; and as I have said before, I say again, that I heard no comment or criticism in the commission of Mr. Brandeis's course upon the argument.

Senator FLETCHER. I understand that there was in your mind in writing the letter that presenting the other side meant in the argument of this case and when the facts were collected?

Mr. HARLAN. When the broad record was made.

Senator FLETCHER. As you expressed it further down in the letter: "And I have been asked to ascertain whether your engagements and inclinations are such as to permit you to undertake the task of seeing that all sides and angles of the case are presented of record," etc. Was there any claim or suggestion that he failed or neglected to do that?

Mr. HARLAN. I have heard none at all.

Senator FLETCHER. Even Mr. Thorne, in complaining about the statement made by Mr. Brandeis, never contended that Mr. Brandeis had failed in the effort to collect all the facts in the case?

Mr. HARLAN. I do not recall that he made that criticism, Senator.

Senator FLETCHER. Then, when you announced one issue in the language mentioned, "Do the present rates of transportation yield an adequate return to common carriers"? Is not that a different question than whether or not the net income of the railroads—the net operating revenues of the railroads—are sufficient?

Mr. HARLAN. I regard it, of course, as a very different question.

Senator FLETCHER. Yes.

Mr. HARLAN. I mean there is a very distinct difference between the two questions.

Senator FLETCHER. A very distinct difference?

Mr. HARLAN. Yes.

Senator FLETCHER. So that when an admission is made that the net operating revenues of a railroad company are insufficient, or the net income is insufficient as the road is being operated, it is not an admission that the rates are inadequate?

Mr. HARLAN. No; by no means. The adequacy of net operating revenues brings up questions of credit, adequate facilities, efficient service, extension of tracks, and matters of that kind. Whether the rates are adequate brings into view their reasonableness and related questions. As I have before pointed out, the commission held in the first report in the Five Per Cent case that the net

operating revenues of the carriers were inadequate in the public interest, but at the same time we denied the increased rates demanded by the carriers and permitted an increase in central freight association territory only in connection with a finding that those rates were unduly low when compared with rate structures elsewhere in the country.

Senator CHILTON. It therefore follows that Mr. Brandeis's admission did not answer and conclude the first proposition that you presented?

Mr. HARLAN. Well, it certainly did not conclude it with the commission.

At another place in the evidence Mr. Harlan says:

But I do not understand that Mr. Brandeis was on either side. He was there in the public interest.

At another place, speaking for the commission, he said that the services of Mr. Brandeis were "eminently" satisfactory.

It seems to us that this evidence makes it perfectly clear that the charge of Mr. Thorne can not be sustained, but that on the contrary the conduct of Mr. Brandeis in this matter was honorable, in every way satisfactory to the commission, and showed fidelity to a most important trust.

In view of the fact that some citizens of great prominence have protested against this nomination, reference may properly be made to certain letters concerning Mr. Brandeis. One is a letter from the President of the United States in answer to a letter from Mr. Culberson, chairman of the Committee on the Judiciary, which letter and the reply thereto follow:

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D. C., May 5, 1916.

DEAR MR. PRESIDENT: As you are aware, the Committee on the Judiciary of the Senate has under consideration the nomination of Mr. Louis D. Brandeis for Associate Justice of the Supreme Court of the United States.

In response to the formal and usual request of the committee made to the Attorney General for all papers in the possession of his department touching this nomination, he replied that there were no such documents in his department.

Inasmuch as this request usually results in the presentation to the Committee on the Judiciary of papers showing the reasons which actuated the President in making the nomination, I would be glad to have you state these reasons, for the benefit of the committee, in case you see no objection to so doing.

Very sincerely, yours, C. A. CULBERSON.

To the PRESIDENT,
The White House.

THE WHITE HOUSE,
Washington, May 5, 1916.

MY DEAR SENATOR: I am very much obliged to you for giving me an opportunity to make clear to the Judiciary Committee my reasons for nominating Mr. Louis D. Brandeis to fill the vacancy in the Supreme Court of the United States created by the death of Mr. Justice Lamar, for I am profoundly interested in the confirmation of the appointment by the Senate.

There is probably no more important duty imposed upon the President in connection with the general administration of the Government than that of naming members of the Supreme Court; and I need hardly tell you that I named Mr. Brandeis as a member of that great tribunal only because I knew him to be singularly qualified by learning, by gifts, and by character for the position.

Many charges have been made against Mr. Brandeis; the report of your subcommittee has already made it plain to you and to the country at large how unfounded those charges were. They threw a great deal more light upon the character and motives of those with whom they originated than upon the qualifications of Mr. Brandeis. I myself looked into them three years ago when I desired to make Mr. Brandeis a member of my Cabinet and found that they proceeded for the most part from those who hated Mr. Brandeis because he had refused to be serviceable to them in the promotion of their own selfish interests and from those whom they had prejudiced and misled. The propaganda in this matter has been very extraordinary and very distressing to those who love fairness and value the dignity of the great professions.

I perceived from the first that the charges were intrinsically incredible by anyone who had really known Mr. Brandeis. I have known him. I have tested him by seeking his advice upon some of the most difficult and perplexing public questions about which it was necessary for me to form a judgment. I have dealt with him in matters where nice questions of honor and fair play, as well as large questions of justice and the public benefit, were involved. In every matter in which I have made test of his judgment and point of view I have received from him counsel singularly enlightening, singularly clear-sighted and judicial, and, above all, full of moral stimulation. He is a friend of all just men and a lover of the right; and he knows more than how to talk about the right—he knows how to set it forward in the face of its enemies. I knew from direct personal knowledge of the man what I was doing when I named him for the highest and most responsible tribunal of the Nation.

Of his extraordinary ability as a lawyer no man who is competent to judge can speak with anything but the highest admiration. You will remember that in the opinion of the late Chief Jusice Fuller he was the ablest man who ever appeared before the Supreme Court of the United States. "He is also," the Chief Justice added, "absolutely fearless in the discharge of his duties."

Those who have resorted to him for assistance in settling great industrial disputes can testify to his fairness and love of justice. In the troublesome controversies between the garment workers and manufacturers of New York City, for example, he gave a truly remarkable proof of his judicial temperament and had what must have been the great satisfaction of rendering decisions which both sides were willing to accept as disinterested and even-handed.

Mr. Brandeis has rendered many notable services to the city and State with which his professional life has been identified. He successfully directed the difficult campaign which resulted in obtaining cheaper gas for the city of Boston. It was chiefly under his guidance and through his efforts that legislation was secured in Massachusetts which authorized savings banks to issue insurance policies

for small sums at much reduced rates. And some gentlemen who tried very hard to obtain control by the Boston Elevated Railway Co. of the subways of the city for a period of 99 years can probably testify as to his ability as the people's advocate when public interests call for an effective champion. He rendered these services without compensation and earned, whether he got it or not, the gratitude of every citizen of the State and city he served. These are but a few of the services of this kind he has freely rendered. It will hearten friends of community and public rights throughout the country to see his quality signally recognized by his elevation to the Supreme Bench. For the whole country is aware of his quality and is interested in this appointment.

I did not in making choice of Mr. Brandeis ask for or depend upon "indorsements." I acted upon public knowledge and personal acquaintance with the man, and preferred to name a lawyer for this great office whose abilities and character were so widely recognized that he needed no indorsement. I did, however, personally consult many men in whose judgment I had great confidence, and am happy to say was supported in my selection by the voluntary recommendation of the Attorney General of the United States, who urged Mr. Brandeis upon my consideration independently of any suggestion from me.

Let me say by way of summing up, my dear Senator, that I nominated Mr. Brandies for the Supreme Court because it was, and is, my deliberate judgment that, of all the men now at the bar whom it has been my privilege to observe, test, and know, he is exceptionally qualified. I can not speak too highly of his impartial, impersonal, orderly, and constructive mind, his rare analytical powers, his deep human sympathy, his profound acquaintance with the historical roots of our institutions and insight into their spirit, or of the many evidences he has given of being imbued to the very heart with our American ideals of justice and equality of opportunity; of his knowledge of modern economic conditions and of the way they bear upon the masses of the people, or of his genius in getting persons to unite in common and harmonious action and look with frank and kindly eyes into each other's minds, who had before been heated antagonists. This friend of justice and of men will ornament the high court of which we are all so justly proud. I am glad to have had the opportunity to pay him this tribute of admiration and of confidence; and I beg that your committee will accept this nomination as coming from me quick with a sense of public obligation and responsibility.

With warmest regard, cordially and sincerely, yours,

WOODROW WILSON.

Hon. CHARLES A. CULBERSON,
United States Senate.

We submit also the following letter from Prof. Charles W. Eliot, emeritus president, Harvard University:

CAMBRIDGE, MASS., *May 17, 1916.*

DEAR SIR: I have known Mr. Louis D. Brandeis for 40 years, and believe that I understand his capacities and his character. He was a distinguished student in the Harvard Law School in 1875–78. He possessed by nature a keen intelligence, quick and generous sympathies, a remarkable capacity for labor, and a character in which gentleness, courage, and joy in combat were intimately blended. His professional career has exhibited all these qualities, and with

them much practical altruism and public spirit. He has sometimes advocated measures or policies which did not commend themselves to me; but I have never questioned his honesty and sincerity, or his desire for justice. He has become a learned jurist.

Under present circumstances, I believe that the rejection by the Senate of his nomination to the Supreme Court would be a grave misfortune for the whole legal profession, the court, all American business, and the country.

Sincerely, yours,

CHARLES W. ELIOT.

Hon. CHARLES A. CULBERSON.

Also, the following letter from Charles B. Greenough:

262 WASHINGTON STREET,
Boston, Mass., May 19, 1916.

Hon. CHARLES A. CULBERSON.

DEAR SIR: In reading the report of the hearings before the subcommittee of your committee on the question of approval of the nomination of Mr. Brandeis it has seemed to me that the testimony of some of the lawyers from this city as to the reputation of Mr. Brandeis did not do him justice.

I think I am able to speak with some authority, as I have been secretary of the bar association, treasurer, member of the council, vice president, and president from 1902–1905. These positions gave me an excellent opportunity of knowing the character and reputation of the members of the bar. I was also chairman of the grievance committee of the bar association for 15 years, and during these years there had not been to my knowledge any complaint against Mr. Brandeis's character or method of practice.

I know there is among a number of our leading attorneys a strong feeling of antagonism to Mr. Brandeis, which I attribute entirely to two causes: First, the vigorous and I think outrageous attacks upon him for his opposition to the United Shoe Machinery Co. in 1909. Thousands of pamphlets were sent to members of the bar. I myself received several, and I have no doubt many received their impressions from these public repeated attacks, which could not be as widely answered. The second reason was his attack on the New York, New Haven & Hartford Railroad Co. All holders of the stock resented his attacks and he was called a liar, a railroad wrecker, and many other similar names. As every trustee in New England held the stock—I held a lot of it myself, and was for a time inclined to resent his action—I have no doubt the distrust of him was increased thereby. That he was right, and conclusively shown to be so, came too late to dissipate the impression already formed.

At all times, however, and now his firm has the very best of reputation, and is the one most sought by students from the Harvard Law School.

I think I am justified in saying that a large number of the members of the bar to-day have a great respect for his ability and for his remarkable devotion to the public good, and would retain him without hesitation and with entire confidence in any matter relating to their own interests.

Very truly, yours,

CHARLES B. GREENOUGH.

An impression has gone abroad that a great majority of the lawyers of Boston and vicinity are protesting against this nomination. That is a great mistake, as may be shown, and we, therefore, attach some letters from prominent lawyers and eminent citizens of that community as an appendix to this report. It will be noted that among that number are the following:

Roscoe Pound, new dean of Harvard Law School and eminent juridical scholar.

George B. Dorr, friend of Samuel D. Warren.

Joseph B. Eastman, member of Public Service Commission, Massachusetts, formerly secretary Public Franchise League.

David I. Walsh, recently governor of Massachusetts.

A. S. Hall, lawyer, practicing in Boston during Brandeis's entire career.

W. T. A. Fitzgerald, register of deeds, Suffolk County, Mass.

Lionel Norman, lawyer, characterizing narrowness of opposition.

J. M. Head, lawyer, knowing Brandeis 40 years.

Richard H. Dana, lawyer, long prominent leader in Civil Service Association.

John W. Cummings, a leading lawyer, Bristol County, bar, supposed to have been offered and declined appointment to superior court.

Melvin C. Adams, former United States district attorney.

Joseph C. Pelletier, State district attorney.

John A. Coulthurst, member of the city council and candidate for mayor.

George U. Crocker, member finance commission.

Samuel K. Hamilton, president Middlesex Bar Association.

Roger Sherman Hoar, former Assistant Attorney General.

James P. Magenis, finance commission.

Frederick W. Mansfield, former State treasurer.

Robert W. Nason, former assistant district attorney.

W. R. Sears, of Whipple's firm.

John R. Thayer, of Worcester.

James H. Vahey, formerly candidate for governor.

George Wigglesworth.

Arthur D. Hill, professor in Harvard Law School.

Prof. William Z. Ripley, of Harvard.

Rev. Edward Cummings, successor of Edward Everett Hale.

Bernard J. Rothwell, former president, chamber of commerce.

Henry S. Dennison, vice president, chamber of commerce.

Robert A. Woods, license commissioner.

William Lloyd Garrison.

Mark de Wolfe Howe, editor Harvard Bulletin.

President Bumpus, of Tufts College.

Robert N. Washburn, brother of Representative Charles G. Washburn, of Worcester.

It has been urged that in view of the fact that these charges have been made, and, at best, there may be still a doubt in the minds of many as to the truth of some of them, this nomination should be rejected.

For the reasons stated in the report of the majority members of the subcommittee, we can not concur in this view, but there are many other considerations which make such a proposition unthinkable. First, the precedents of the Senate are against any such theory. The appointment of Chief Justice Marshall and Justice Story, Justice Taney and Justice Matthews were viciously attacked.

There were no ex-presidents of the American Bar Association to give their testimony as to the first two, but they did not lack critics of such high position as to impair their reputation at the time, and the criticisms from those of a different political faith were in no wise confined to political opinion.

Of Marshall, Thomas Jefferson said:

> Never will chicanery have a more difficult task than has now been accomplished to warp the text of the law to the will of him who is to construe it.
>
> The judge's inveteracy is profound and his mind of that gloomy malignity, which will never let him forego the opportunity of satiating it on a victim.

An opinion is huddled up in conclave perhaps by a majority of one delivered as if unanimous, and with the silent acquiescence of lazy or timid associates by a crafty judge who sophisticates the law to his own mind by the turn of his own reason.

It (Marshall's Life of Washington) is written, therefore, principally with a view to electioneering purposes. It will consequently be out in time to aid you with information, as well as to point out the perversions of truth necessary to be rectified.

These opinions from this respectable source were of a man of whom William Wirt said:

Marshall was justly pronounced one of the greatest men of the country;

and William Pinckney said:

A man born to be the Chief Justice of any country into which Providence should have cast him;

and John Quincy Adams said:

He was one of the most eminent men that this country has ever produced.

Chief Justice Marshall was elevated from the bar and held no judicial position before becoming Chief Justice of the United States.

Of Mr. Justice Story, Josiah Quincy, jr., said:

I remember my father's graphic account of the rage of the Federalists, when "Joe Story, that country pettifogger, aged 32," was made a judge of our highest court.

On the other hand, John Quincy Adams says:

The Associate Judges from the time of his (Marshall's) appointment have generally been taken from the Democratic or Jeffersonian Party. Not one of them excepting Story has been a man of great ability.

In his "Memoir of Joseph Story, LL. D.," 1868, George S. Hillard says:

Mr. Story, when he went upon the bench, was only 32 years old, a very early and, with the exception of Mr. Justice Buller, an unprecedented age for a lawyer to be advanced to a seat upon the highest judicial tribunal of his country. When we call to mind his youth and remember how earnest and conspicuous he had been on the unpoplar side in politics, it will not be a matter of surprise to learn that the news of his appointment fell with something like consternation upon the elder, the more apprehensive, and the more conservative portion of the people of New England. His merits as a lawyer could be scanned only by his professional brethren; his sweet and generous nature could be appreciated only by his friends. The public knew him as an enthusiastic partisan; and it is not too much to say that with many there was an apprehension that, in his hands, rights and property would hardly be safe. It is hardly necessary to add, that the existence of such fears was a striking proof of the truth of Mr. Jefferson's saying, "How much we suffer from misfortunes that never happen." From the moment he assumed his judicial office he shook the dust of politics from his feet, and he bore himself with such absolute impartiality that it is literally true that there was no act of his judicial life from which it could have been known to which of the two great parties which divided the country he had previously belonged.

Roger B. Taney was nominated by President Jackson in January, 1835, to be an Associate Justice.

Chief Justice Marshall interested himself in support of the confirmation.

History records the following:

At the last moment of the session the nomination of Mr. Taney was brought up in the Senate, and was indefinitely postponed, which was equivalent to a rejection.

It is sad to a reflecting man to witness in an august body like the Senate, composed at that time of men who, by their eminent abilities, would give the highest dignity to any legislative assembly in the world, the unreasoning domination of party spirit, making it do an act of which every Member was afterwards ashamed. (Memoirs of Roger Brooke Taney by Samuel Tyler, p. 242.)

Chief Justice Marshall died in the summer of 1835, and on December 28 President Jackson nominated Taney for Chief Justice. There was violent opposition, particularly by Clay and Webster. On March 15, 1836, the nomination was confirmed by a majority of 14 votes.

The contest over the confirmation of Mr. Justice Stanley Matthews shows how easily mistaken conceptions concerning the predisposition of a judge upon questions of law or policy may develop into an unwarranted attack upon his moral qualities.

He was nominated by President Hayes early in 1881 on the retirement of Mr. Justice Swayne.

Charles Theodore Greve in his Life of Matthews (Great American Lawyers, Vol. VII, pp. 418–420) says:

That his confirmation was bitterly opposed particularly by many in the East is a matter of public history. He had taken a most active part in one of the bitterest conflicts of modern politics and had been most conspicuous among the members of the bar as a representative of corporations and capital. To the objections that might have been urged as the result of mere differences of judgment were added as always happens in such cases the calumnies of personal enemies. Even a most unfair version of the old Connelly case of a quarter of a century before was made to do service. The opposition was sufficient to prevent confirmation during the few remaining weeks of President Hayes's term, but promptly after the inauguration of Garfield he, at Hayes's request, sent the nomination once more to the Senate. The opposition continued for some time but this extraordinary proof of confidence, the selection by two Presidents, each from his own State and each familiar with his entire career, finally led to his confirmation on May 12, 1881. He took his seat upon the bench of the Supreme Court on May 17, and soon came to be recognized as one of its strongest members. Whatever opposition may have been manifested at the time of his nomination was soon shown to be without foundation and those that led that opposition were glad to acknowledge their error. Principal among these was Senator Edmunds, who later bore testimony that "the grounds upon which many Senators (myself among others) thought it unfit that he should be called to this particular public service, turned out to be entirely mistaken, and in the public respect toward which our solicitudes were directed, his opinions delivered in this court and his assent to opinions upon that class of questions delivered by other judges, justified the President of the United States in insisting upon his appointment and convinced me, and I think no doubt all the other Senators who were opposed to him at the time, that it was our mistake and not that of the President of the United States." Senator McDonald, also a member of the Senate committee to which the nomination was sent, took occasion to brand as false any insinuations as to his conduct during the crisis of 1876–77, at which time he, McDonald, was one of the "visiting statesmen" on behalf of the Democratic National Committee.

The Connelly case, just referred to, gave ample opportunity for unjust criticism. In 1859, when Matthews was United States attorney for the southern district of Ohio, it became his duty to prosecute Connelly, the reporter of a local newspaper, who was indicted for aiding in the escape of fugitive slaves. Matthews was then believed to be sympathetic with the antislavery cause, and the prosecution was regarded as an unwarranted persecution by many influential citizens.

Another occasion on which Matthews found himself at the point where conflicting principles met was created by a resolution passed by the board of education of the city of Cincinnati, which provided:

That religious instruction and the reading of religious books, including the Holy Bible, are prohibited in the common schools of Cincinnati, it being the true object and intent of this rule to allow the children of all sects and opinions, in matters of faith and worship, to enjoy alike the benefit of the common-school fund.

Suit was brought to restrain the execution of this resolution. Matthews was at the time a pronounced Calvinistic Presbyterian. Nevertheless, he accepted employment to defend the board of education. His biographer says of him:

Matthews's appearance for the defense in this case shows as no other act of his life can show more plainly the liberal character of the man as well as his high conception of a lawyer's duty.

In arguing the case, Matthews said:

It is easy to swim with the tide, to go with the current, to follow in the wake of the multitude. To do things that are popular is not hard. But to stand by a man's individual moral convictions, in opposition not to enemies, but to friends, tries a man. If your honors please, it tries me.

The New York Sun had many violent editorials against Stanley Matthews from January to May, 1881, most of them by reason of his alleged connection with the Pacific railroads or Jay Gould. They appear on these dates: January 27, February 1, 2, 4, 7, 9, 11, 12, 16, 19, March 7, 19, 23, 24, 29, May 12 and 13.

Those of February 1 and 4 refer to the Anderson letters and indicate on their face that Matthews had been the custodian of papers that showed that Anderson had forged false return to get the necessary Hayes count in Louisiana, and show clearly that Matthews after he had this paper in his possession was active in endeavoring to get Anderson a Federal position. Matthews had stated in his testimony before the investigating committee that he understood that this paper was got up for blackmailing purposes, and that Anderson had not in fact been guilty of fraud in connection with the returns. These editorials refer to the committee as a "whitewashing" committee.

The February 7 editorial sets out the virtual trade that was alleged to have been made by Matthews on behalf of Hayes, not to interfere with the local State governments in control of the Democrats in certain States if the filibuster was stopped against the acceptance of the report of the Electoral Commission as to the presidential count. This editorial and some others refer to Mr. Justice Harlan's appointment on the Supreme Court bench as having been a reward for his help in the fraudulent counting in of Hayes.

Stanley Matthews was active in the Hayes-Tilden campaign of 1876 and visted Louisiana as an observer of the count. Subsequently one James E. Anderson made statements which led to an investigation by a select committee of the Senate: Allison, Ingalls, Hoar, Davis of Illinois, Whyte, and Jones of Florida, to determine what connection Matthews had had with real or pretended frauds in Louisiana and any promise of rewards that had been made to Anderson in connection therewith. Anderson was apparently a Republican election officer. They had heard and considered Anderson's

testimony and Matthews's testimony and decided that Matthews's statement was correct; that is, that he had had nothing to do with inducing Anderson to suppress testimony or to give false testimony. But it did appear from Matthews's statement that he had exerted himself to get an appointment in the Federal service for Anderson, apparently merely because he was, in Matthews's view, a worthy and needy Republican. The committee, after absolving Matthews from guilt in any other respect, concludes its report:

> * * * We can not but regard his action with respect to James E. Anderson's effort to obtain an appointment to office, under the circumstances, as wrong and injurious to the public interest. (Report, Mar. 1, 1879, vol. 2 of 1879, 45th Cong., 3d sess., S. Rept. 867.)

Thus it may be seen that Mr. Brandeis will not be the first distinguished lawyer to serve upon the Supreme Court of the United States after having been criticized most severely.

It is easy to make charges, and there is too much proof in this case of a preconcerted effort to weaken the power of Mr. Brandeis before the public, to think of permitting insinuations and inuendoes to take the place of reasonable proof. We should be certain to have an honest, capable man upon the bench, but unless one be appointed who has not had the capacity and the courage to take part in the discussions of the last quarter of a century, which have been pregnant with constructive legislation and decisions, as well as undergoing a revolution in public sentiment regarding many questions, then it would be hard to find one, whom either malice or interest could not easily disqualify. For instance, take such an eminent man as Senator Root, now the president of the American Bar Association. We take it that practically every one who has protested against Mr. Brandeis would gladly accept Mr. Root as the kind of a man and the kind of the qualified lawyer who would adorn the Supreme Bench. Yet it is the irony of the present situation that in a report published in 1902 entitled "Root's Record in Philippine Warfare," Mr. Moorefield Storey, who has been most prominent in fighting the nomination of Mr. Brandeis, joined in summing up conclusions, among others, as follows:

> That the statements of Mr. Root, whether as to the origin of the war, its progress, or the methods by which it has been prosecuted, have been untrue. That he has shown a desire not to investigate, and, on the other hand, to conceal the truth, touching the war and to shield the guilty, and by censorship and otherwise has largely succeeded.

Since that time Mr. Root has occupied many positions of trust and responsibility, among them the position of Secretary of State and United States Senator from New York and president of the American Bar Association. His preeminent position as a citizen is a guaranty that nothing which we quote now from Mr. Storey in 1902 can possibly do any injury, but if he had had less prominence and power, and disappointed railroads and other special interests had so desired, the above-quoted report would be certainly as substantial a foundation upon which to build a structure of doubt as formidable, in any view of the situation, as is the one which is now sought to be interposed against the nomination of Mr. Brandeis.

The active life of the people, the bitterness and intensity of political, legal, and civic controversies have made many prominent men the object of attack from large sections of the people or some particular communities. Instances of this could be multiplied, but we do not care to take liberties with others' names, preferring to let the illustration of one of the very distinguished members of the bar, which we have given, and who can not possibly be injured thereby, suffice.

Since 1907 Mr. Brandeis has been the object of bitter attack from those interested in defeating his opposition to the transportation monopoly sought by the New York, New Haven & Hartford Railroad Co. (620, 751, 615, 640, 499, 510) Before this time, his efforts in behalf of what he believed to be to the interests of the community had exposed him to the enmity of other public-service corporations, and the banking interests allied therewith (810, 613, 618).

But it was at the end of 1907 that the systematic efforts to discredit him began. This was done through inspiried news articles and editorials, and finally through extensive advertising (620, 640, 664, 239). This was placed to some extent through Clarence W. Barron (134), the editor of a financial paper called the Boston News Bureau, and Wall Street Journal, and some of the advertisements were approved by Mr. Charles F. Choate, jr., the counsel for the railroad and a son of one of its directors (640, 643). This advertising was put out under such headings as "Brandeis the Railroad Wrecker." It was not the sporadic outburst of spite. It was a systematic policy of defamation to break down the power of his opposition, which was effective because of his righ repute and could be broken only by attacking his reputation. The method adopted was to spread the idea that he was not acting disinterestedly for the benefit of the community, but under pay and for hostile private interests (640, 660). This is of particular significance when considering the nature of the alleged bad reputation. It is not that he is unfaithful to his clients or false to the courts; it is that he is not entirely "trustworthy" (153), is "ruthless" in the attainment of his objects, and not "scrupulous" in the methods he adopts (271); that he works "under cover" (653); that he is not "straightforward" (611), and not always truthful, and sails under "false colors" (750). This was the very reputation which an extensive and skillful campaign was conducted to give him (620). The meaning of the witnesses is still further defined by their illustrations, namely, that of his being paid by Collier's for appearing for Glavis (614, 269), and the false charge that he was knowingly acting for the New York, New Haven & Hartford Railroad Co. in bring the Corbin suits against the New York & New England Railroad Co. (415).

The coincidence of the beginning of this alleged evil reputation with a systematic campaign to create it is well shown by the testimony of Mr. Peabody, one of the hostile witnesses, who says that he has a wide acquaintance at the Boston bar, and for years has been a member of the same club with Mr. Brandeis, and yet the first that he heard by way of criticism of Mr. Brandeis's good faith was when he attacked the New Haven Railroad Co. in 1907 (753), and this was an attack to which Mr. Peabody was personally opposed (751).

This was an attack, as Mr. Storey says, upon people, many of whom exercised a very powerful influence, socially, politically, and financially, so that a man would not be in high favor with some of the best citizens of Boston who was engaged in exposing the shortcomings of these people (272).

Outside of this small circle and the influences of the hostile campaign, Mr. Brandeis's reputation is not only above reproach but is that of a man who is conspicuous for high standards of action, personally and in his profession.

With 38 years of practice in the Boston bar, Mr. Melvin O. Adams says of his reputation:

> If I may analyze it, as I observe it, there is a group of men of high standing, like Gen. Peabody, in the community, who are in the network of State Street, which is our financial street, who state and think that Mr. Brandeis is not straightforward in his practice. I think these opinions, when traced, run into some one of these pockets of more or less publicity, namely, the Lennox case, the United Shoe Machinery case, the wrecking of the New England—those allegations. That is a fair statement as to that group. On the other hand, there is a large body of the bar, who, coinciding with what I have said as to his being a very able lawyer, a man of profound learning, also believe that he is actuated by lofty purposes, is honest and trustworthy (766).

Mr. Thomas J. Boynton, lately attorney general of Massachusetts, says:

> That reputation, so far as I know it, is good. Down to the time this appointment was made I think the only thing that had ever come to my attention in any way reflecting upon Mr. Brandeis was certain printed matter circulated by the United Shoe Machinery Co. With that exception, I do not think I ever heard anything reflecting in any way upon his character as a man or as a lawyer (771).

The testimony of Mr. French and Mr. Walker are cumulative on this point.

Of his national reputation, Mr. Stephen S. Gregory, formerly president of the American Bar Association, says that "his reputation is excellent as a lawyer of ability and character" (711).

Hon. Newton D. Baker, Secretary of War, says that he knows Mr. Brandeis's reputation among social workers, and that among them he is regarded as not only the greatest lawyer of their group of aids but as a detached and spiritual and high-minded man (762).

This is emphasized by a memorial in Mr. Brandeis's favor signed by many well-known men (761).

Mr. Whipple, already quoted, says:

> As a lawyer, Mr. Brandeis is able and learned. As a man, he is conscientious and high minded. The feature of his career which is the most striking and remarkable has been his unselfish and unswerving devotion to the social, moral, and industrial uplift of the lowly and less fortunate of our people. I believe that on the Supreme Bench of the United States he will exert a strong influence in establishing the ideals to which he has devoted his recent years (282).

It is evident that the standing of Mr. Brandeis's firm in the public esteem can not rise above his own. Mr. Whipple says that it is a reputable firm, generally so regarded, one of the leading firms of the city (285), one to which go men of superior excellence in their work in the Harvard Law School.

Mr. Hutchins says that the firm is one of the high-standing firms of the city to which for 20 or 30 years a good many of the high-class men from Harvard have gone, and that it has done a large and varied

business, dealing on terms of good fellowship and general respect with the entire bar (621).

Without going further into details it may be said that the testimony of Mr. French, Mr. Walker, and others convinces your committee that the high standing of the law firm is not open to doubt.

The unreality of the strictures upon Mr. Brandeis's reputation is strikingly demonstrated by the treatment which has been accorded to him by some of the very men who now make these assertions. Among his critics are several of the overseers of Harvard College and members of that corporation. They are charged with the duty of maintaining the high moral standard of that institution, and of putting in places of prominence only those whose example will be elevating to the student body. Year after year these men have appointed Mr. Brandeis a member of the visiting committee to the Harvard Law School—a committee made up of such men as Mr. Justice Hughes, of the Supreme Court of the United States; Mr. Justice Loring, of the Supreme Court of Massachusetts; Mr. Justice Swayze, of the Supreme Court of New Jersey; Hon. James T. Mitchell, some time chief justice of Pennsylvania; Hon. Robert Grant, judge of the probate court in Boston; Hon. Henry L. Stimpson, some time Secretary of War; James C. Carter, leader of the American bar; Charles C. Beaman, member of the distinguished firm of Evarts, Choate & Beaman, a partner of Joseph E. Choate, lately ambassador to Great Britain; Francis C. Lowell, United States judge for Massachusetts; Charles J. Bonaparte, lately Attorney General; Jeremiah Smith, formerly justice of the Supreme Court of New Hampshire and one of its most distinguished citizens and professor in the law school after 1891; Charles S. Fairchild, formerly Secretary of the Treasury under Mr. Cleveland; Charles P. Greenough, formerly president of the Boston Bar Association; Robert M. Morse, one of the leaders at the Boston bar for the last 40 years; John Noble, clerk of the Supreme Judicial Court of Massachusetts; James J. Storrow, Edmund Wetmore, Henry W. Putnam, William Rand, George Putnam, Langdon P. Marvin, and Chandler P. Anderson.

Some of the members of the board of overseers of Harvard College, which has appointed Mr. Brandeis a member of the visiting committee to the law school, are the following:

Henry Cabot Lodge, Senator from Massachusetts; George F. Hoar, formerly Senator from Massachusetts; Roger Wolcott, formerly governor of Massachusetts; Moorfield Storey, one of the protestants; Francis C. Lowell, United States circuit judge, cousin and former partner of A. Lawrence Lowell; John D. Long, formerly governor of Massachusetts and Secretary of the Navy; William C. Loring, justice Supreme Judicial Court of Massachuetts; Winslow Warren, collector of port under Mr. Cleveland, father of Charles Warren, Assistant Attorney General of the United States; Frederick P. Fish, a protestant; John Noble, clerk of Supreme Judicial Court of Massachuetts and father of a protestant; Robert Grant, judge of the probate court, Suffolk County, Mass.; Robert M. Morse, one of the leaders at the Boston bar for the last 40 years; Solomon Lincoln, formerly a leader of the Boston bar; Moses Williams, a protestant; George O. Shattuck, formerly a leader at the Boston bar; James J. Storrow, Charles R. Codman, Henry W. Putnam, Leverett Salton-

stall, Edmund Wetmore, Louis A. Frothingham, and George Wigglesworth.

It will not do to oppose the nomination of a man like Mr. Brandeis and then, after a complete investigation, admitting that the charges are not supported, ask that the nomination be rejected because of the charges rather than of their truth. This would be an injustice to the nominee and to the court, and would be out of line with that sense of justice which pervades all classes of people. Having failed in the charges and admitting the eminent ability of the appointee, it would be the manly thing to concede the evident error in making the charges and ask for a confirmation.

APPENDIX.

Hon. William E. Chilton,
United States Senator, Washington, D. C.

Dear Mr. Chilton: I am venturing to write you the impressions of one who has come into this community from without and may perhaps have been able to judge Mr. Brandeis more fairly than it seems to me he is judged here. His friends, as it seems to me, make a great mistake in urging as his chief qualification his views upon social questions and the eminent services he has performed in the public interest. Important as these matters are, their importance does not lie immediately in the direction of qualification for the bench. What is not so generally known is that Mr. Brandeis is in very truth a very great lawyer. At the beginning of his career his article in the Harvard Law Review on the right of privacy did nothing less than add a chapter to our law. In spite of the reluctance of many courts to accept this, it has steadily made its way, until now it has a growing preponderance in its favor. All the cases upon this subject concur in attributing the origin of the doctrine to Mr. Brandeis's paper. The promise thus given has been amply fulfilled. One might instance the revolution which his brief in Muller *v.* Oregon achieved in the matter of arguing cases involving the constitutionality of social legislation. The real point here is not so much his advocacy of these statutes as the breadth of perception and the remarkable legal insight which enable him to perceive the proper mode of presenting such a question. Since I came to Cambridge, not quite six years ago, I have had many opportunities of observing Mr. Brandeis, and do not hesitate to say that he is one of the great lawyers of the country. So far as sheer legal ability is concerned, he will rank with the best who have sat upon the bench of the Supreme Court.

As to the charge that he is lacking in judicial temperament and would be a partisan upon the bench, it seems to me that those who urge this know very little about him and base their opinions upon newspaper accounts of the vigorous battles which he has fought as an advocate. Of course the newspapers are not interested in the purely legal side of his activities. Only those causes involving more or less sensational public interest attract general notice. In these causes he has appeared as a vigorous and sometimes radical advocate. But those who conceive him disqualified because of his advocacy of those cases make the same mistake as is made by others who have so often objected to putting sound and well-qualified lawyers upon the bench because they had often been engaged in advocating the cause of great corporate interests. Moreover it is well proved by experience that a great advocate may easily become a great judge also. A notable example is to be seen in the case of Sir Henry Hawkins, the greatest advocate probably of his generation. When he was appointed to the bench fear was expressed that he would carry his habits of advocacy into the judicial station. On the other hand, when he retired it was universally acknowledged that he had been a fair and sound trial judge in the very class of cases in which he had so often been engaged in the forum. One might instance also the late Lord Russell, easily the greatest advocate of his time, who filled acceptably the post of Chief Justice of England. In the case of Mr. Brandeis the very qualities that have made his advocacy so effective would,

I think, make his study of a controversy as a judge equally effective in achieving a sound legal result.

As to the charges of unprofessional conduct which are so much in the air here, I have no first-hand information. But I may call your attention to one circumstance which seems to me conclusive. At least from 1910 (when I came here) to the present Mr. Brandeis has been one of the committee appointed by the board of overseers of Harvard University to visit the law school. That is, the board of overseers have appointed him as one of a committee to inspect the work of teachers and students, and to advise as to the conduct of the school. At different times between 1910 and the present he has been associated on this committee with Mr. Justice Hughes, of the Supreme Court of the United States; Mr. Justice Loring, of the Supreme Court of Massachusetts; Mr. Justice Swayze, of the Supreme Court of New Jersey; Hon. James T. Mitchell, sometime chief justice of Pennsylvania; Hon. Robert Grant, judge of the probate court in Boston, and Hon Henry L. Stimson, sometime Secretary of War. During this period, in which Mr. Brandeis has been reappointed from time to time to serve with lawyers of the caliber of those just enumerated, the following lawyers have been members of the board of overseers by whom he has been so reappointed: Hon. Henry Cabot Lodge, United States Senator from Massachusetts; the late John D. Long; Mr. Justice Loring, of the Supreme Court of Massachusetts; Hon. James T. Mitchell, sometime chief justice of Pennsylvania; Mr. Justice Swayze, of the Supreme Court of New Jersey; William A. Gaston, Esq., of the Boston bar; Robert F. Herrick, Esq., of the Boston bar; Frederick P. Fish, Esq., of the Boston bar; Judge Robert Grant; and L. A. Frothingham, Esq., of the Boston bar. It can not be that these gentlemen would have appointed him along with such colleagues to a position of such importance had they then believed him deficient in professional honor or guilty of professional misconduct. Nor can it be asserted that the eminent members of the Boston bar who participated in the appointment and reappointment were ignorant of what is now charged, for these charges are not new. Conceding, as one must, the absolute sincerity of these gentlemen one is driven to the conclusion that the objections now urged against Mr. Brandeis at the Boston bar by his colleagues are the unconscious product of fear of his political views and aversion to his social and public activities.

Yours, very truly,

ROSCOE POUND.

SOMERSET CLUB,
Boston, March 21, 1916.

To the CHAIRMAN OF THE SENATE JUDICIARY SUBCOMMITTEE,
Washington, D. C.

DEAR SIR: Having followed with interest the report of evidence submitted to your committee in regard to the President's nomination of Mr. Brandeis for the Supreme Court vacancy, I find myself impelled, as a personal friend of his early partner, Mr. Warren, and as one of a now older group of Boston and Harvard men who have watched Mr. Brandeis's legal career develop from its commencement, in usefulness and distinction—to say that while well acquainted with the views of those who now oppose his confirmation and giving weight in other matters to the opinion of some among them, I believe them to be prejudiced and wrong regarding this.

Mr. Brandeis is a man of keen intelligence, but high ideals, possessing also a rare creative quality of imagination tha., combined with fearless courage of convictions, has brought him at times, to the public benefit, in conflict with vested interests and established points of view. We need such a man as this on that high bench to keep it open to the ever-changing thought and sentiment of the world and Nation, recognizing these in their changes and passing judgment on them through the decisions that it renders.

I trust accordingly, for the country's sake, that the Senate may confirm his nomination. And I remain, with respect,

Very faithfully, yours,

GEORGE B. DORR.

THE COMMONWEALTH OF MASSACHUSETTS,
PUBLIC SERVICE COMMISSION,
February 26, 1916.

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee on Brandeis Appointment,
United States Senate, Washington, D. C.

DEAR SIR: I have followed the press accounts of the hearings before your subcommittee in the Brandeis matter with a great deal of interest. After it has probed his record to the bottom, as I hope it will, I feel very sure that the committee will favor his confirmation. My confidence does not rest upon what others have told me about him, but upon personal knowledge.

Before I became a member of the Public Service Commission of Massachusetts I was, for some years, secretary of an organization in Boston known as the Public Franchise League. It was made up of a group of business and professional men of standing, who thought that they could be of service as citizens by making a disinterested study of some of the important questions that arise from time to time in regard to the public-service corporations of every community and by presenting the results of their study to the public bodies which have to deal with these questions. Mr Brandeis was one of the members of this league and I saw a great deal of him and worked with him intimately.

If your committee would care to have it, I should be glad to furnish you with a statement, in some detail, of what this league did in connection with street railway, railroad, gas, and electric matters, for its work was, in my judgment, of great public importance and value. It would also help you, I think, to understand the attitude which Mr. Brandeis has taken upon such public questions and the antagonisms which have been aroused. As you probably appreciate, it is impossible in a conservative community like New England for a man to speak plainly in the public interest upon such questions (especially if he also speaks forcefully) without creating enemies, some of whom are sincere but influenced by a prejudice which is often quite unconscious.

Louis D. Brandeis is a man of very unusual ability and power and a man of great moral courage. Furthermore, he is an indefatigable worker and student. The impression which some have that he is merely a brilliant advocate and addicted to reckless and extreme statements is not warranted. I have never known him, in any matter in which I was associated with him, to take a position before he was well grounded in the facts. This was particularly true in the New Haven Railroad matter. That he is honest and sincere I think no one who really knows him will doubt. I have no hesitation in expressing the opinion that he will make a very valuable addition to the Supreme Court, and I believe that you will feel the same after you have completed your investigation. My own feeling is illustrated by the fact that since I have been a member of this commission I have frequently consulted with him upon important matters.

It is, I think, hardly necessary to say that this letter is not an official communication, but the expression of my personal views.

Yours, very truly, JOSEPH D. EASTMEN.

FEBRUARY 16, 1916.

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: It is my desire to record my indorsement of Louis D. Brandeis, who is nominated as Associate Justice of the Supreme Court of the United States.

I have been a lawyer in active practice in the city of Boston more than 21 years and have been district attorney for more than 6 years. Previous to that time I served as civil service commissioner for the Commonwealth for 4 years and have held other nonelective public positions.

I want to speak of Mr. Brandeis's reputation at the Suffolk bar. I note that, according to the press, a gentleman recently claimed to represent the bar association of the city of Boston, of which I have been a member for many years. While as an officer he may have certain rights, or some committee may have given him authority, I want to call your attention to the fact that no meeting of the bar association has been held and the matter of Mr. Brandeis's indorsement has never been considered by the body as a whole.

I believe that in my private practice and in my official capacity I have been in a position to know much about the bar and the standing of its members.

Few men come in contact with more men in active practice, and, as you will appreciate, it is inevitable that the estimate of members of the bar, one toward the other, soon becomes known and a matter of current gossip, criticism, or praise. I have never heard the slightest criticism of Mr. Brandeis, but, on the contrary, he has always been admired and looked upon as one of our most brilliant trial lawyers and one of the best jurists at the bar, learned in the law, and skilled in its practice. I never have heard the slightest intimation that he was anything but honest and upright, as he is capable and energetic. He has never hesitated to take a strong public position on public matters and it is never difficult to place him.

He seems to have been a man who always had an ambition to do something to better the conditions of the people.

It is not unusual for a man of his large experience and long years of turmoil in the courts and out to have displeased many, and perhaps offended them very deeply, and this is true of any man of his years and of his activity.

I am confident that if a vote of the Boston Bar Association were to be taken, or if a vote of the members practicing at the Suffolk bar, many of whom are not members of the association, was to be had, Mr. Brandeis would receive almost a unanimous vote, and, regardless of individual feelings, the lawyers would indorse him as an honest man, well fitted by training and experience to hold a place on the bench of the Supreme Court of the United States.

I have seen in the press a protest against the appointment of Mr. Brandeis signed by some members of the Suffolk bar. These are all estimable men, but almost without exception men of one class and one kind. I see there few names of the active trial members of the bar. I see there few names of men who have had to struggle to attain success. I see there few names of men engaged in general practice. This is not to be taken as any reflection upon these men, but merely as calling your attention to the fact that the list of names which I saw published was far from representative of the Boston bar, where we have all races and creeds, whose opinion is worth while and whose standing is beyond question and who are perhaps much nearer to the people than those in the list I have mentioned.

I do not want to accuse anyone in particular, but I think I express the notion of the majority of the people of Boston when I say that there is a feeling that the underlying opposition to Mr. Brandeis is more because he is a Jew than that he is unfit by reason of anything he has ever done. I know that your committee will have this in mind and that such a thought and such a reason will have no harbor and no merit in your honest consideration of this case.

Very truly, yours,

JOSEPH C. PELLETIER.

WASHINGTON, D. C., *February 7, 1916*.

MY DEAR SENATOR WALSH: It seems to me a public duty to write to you in regard to the appointment of Mr. Louis D. Brandeis, of Massachusetts, as a Justice of the Supreme Court of the United States. During the two years I was governor of Massachusetts, and in the years preceding them, I had repeated occasions to observe this man and his high ideals and common sense; his wide practical knowledge of the law; his extensive understanding of the business, economic, and social problems of our time; his sound judgment and ardent devotion to the public welfare. As you know, we are justly proud of the number and ability of our public-spirited men in Massachusetts, and it would be difficult to point out a better example of generous, unpaid, diligent, constructive work upon the side of the public interests than that which has been done by Mr. Brandeis.

On numerous occasions, beginning at least as far back as 1896, whenever the creation and control of the Boston subways was before the legislature, he has been, as a private citizen, a tireless and successful leader against powerful opposition in support of the principle that the value of the subway franchises should be kept for the public after giving to the operating company a reasonable return for services rendered. He declined to accept any compensation for his long-continued and very valuable constructive work during all these years in this cause.

When the gas situation in Boston appeared to be in a hopeless condition he urged, again as a private citizen, the plan by which the dividends of the gas company were made dependent upon the price charged for gas to the consumers.

This has resulted in a reduction of the price of gas to the public and in a corresponding increase in dividends to stockholders of the company.

When the insurance investigations occurred he devised and successfully pressed for legislation in Massachusetts permitting, for the first time in this country, our savings banks to issue small-payment life insurance policies. This has resulted in an opportunity for our working people to insure themselves at much lower rates than were being charged by the industrial insurance companies, and has led these companies to make lower rates. To my personal knowledge Mr. Brandeis has given annually thousands of dollars to further the work of bringing to the working people of our State this opportunity for less costly insurance. For more than 20 years prior to the Massachusetts law there had been no reduction in the cost of industrial insurance, but since the passage of the law so successfully advocated by Mr. Brandeis in Massachusetts the premiums of the old-line companies have been reduced, on an average, 20 per cent, thus saving to the people of this country, insured in industrial companies, from $15,000,000 to $20,000,000 annually, and to the people of Massachusetts about $1,000,000.

The system of arbitration which he devised for the New York garment workers is an equally significant example of his judicial qualities and his public service in other fields.

In 1906 the people of New England began to awaken to the fact that the New Haven Railroad was apparently successfully seeking to create a New England transportation monopoly. The event which focused public opinion most sharply was the acquisition of the controlling interest in the Boston & Maine Railroad. Mr. Brandeis, again as a private citizen, commenced an exhaustive study of this railroad problem and made public an analysis of the financial condition of the New Haven Railroad, pointing out, for the first time, to the people of New England the inevitable disaster sure to result from the course of mismanagement and waste then being pursued. His advice was unheeded, his warning derided, and his motives impugned. But time has shown that his conclusions were based upon carefully ascertained facts, to which he applied the clearest and most cogent reasoning power. Three years ago what he prophesied nine years ago became apparent to all and is now a matter of public knowledge and of record in Senate documents and elsewhere.

I instance these among many public services covering a long period of years as illustrative of the work done as a private citizen in the service of the public interest without compensation, at a large expenditure of his own time in the midst of a very active professional life.

Indeed, in extensive acquaintance with public men, I know of no one who without emolument or honors of public office has given so much of the valuable constructive service of a trained lawyer to the public weal as Mr. Brandeis.

I have written mainly of Mr. Brandeis's public work for the past 20 years, but I would not have you overlook that, before he engaged in these public activities out of which have grown results for which he is entitled to the gratitude of the American people, he had achieved already a position at the Massachusetts bar which would well have warranted his appointment to the Supreme Court at the age of 40. He is a great lawyer and a great citizen. Is not this a combination for a great judge?

Were I not hastening on a far journey I would seek a personal interview with the committee, but failing such opportunity I venture to emphasize and perhaps to repeat some of the things I said to you orally; and I hope that you will communicate them to your committee, together with my very best respects.

Very sincerely, yours,

DAVID I. WALSH.

Hon. THOMAS J. WALSH,
The Senate, Washington, D. C.

FEBRUARY 1, 1916.

To the MEMBERS OF THE JUDICIARY COMMITTEE
OF THE UNITED STATES SENATE.

GENTLEMEN: I have practiced as a member of the Boston bar ever since the admission of Louis D. Brandeis. I have known him well and watched him with interest through all these years, though not connected with him in any

way. If confirmed by the Senate, as I have no doubt he will be, I am satisfied he will be an acquisition of the highest value to the Supreme Court. His mind is clear, analytic, exact, incisive, and sound. There is in my acquaintance no surer, saner, more exact and reliable mental machinery than is found in him. I know of no lawyer anywhere who could better assist in the correct solution and conclusion of the involved legal propositions coming before our highest court than Mr. Brandeis. He is versed in nearly all departments of the law. He is acquainted with all sections of the country. He knows all human conditions and has regard for them. His purpose is noble and untrammeled. His spirit and habit are modest, considerate, and kind. He is never obtrusive, but he never hesitates to take the consequences of his convictions. He accomplishes an enormous amount of work in a day, and he is ripe in wisdom, sense, and courage.

Mr. Brandeis is thoroughly judicial in temperament and habit. He is never hasty or extreme, but is calm, mathematical, incisive, and careful in his ready reasoning. His judicial analysis and conclusion in the numerous public issues with which he has been connected are often taken as controversial, because he sees the wrong sooner than others do, and then lays it bare to the world's inspection in the succinct, clear, unanswerable terms which the courts employ. His words are few; he never reiterates. He enunciates propositions which the courts and laymen adopt.

I have never known Brandeis to be assailed, except for turning on the truth. For instance, in the conduct of the New York, New Haven & Hartford Railroad all the Attorneys General, district attorneys, and administrators of Governments in the three States traversed by the railroad knew for years that the corporation was proceeding ultra vires and regardless of law. By enormous expenditures it quieted agitation, and New England thought it well enough for that railroad to be superior to law. Finally Mr. Brandeis alone made plain that its unlawful monopoly and wasteful aggrandizement were bringing financial ruin as well as moral abasement; that from $100,000,000 to $250,000,000 had been lost in its unlawful courses; and that all would yet be lost unless the policy were changed. The stockholders of that corporation are to-day indebted to Mr. Brandeis alone for effectuating the halt and turning about which have saved them whatever value they have left in the New Haven Railroad. For his stand against ruination, voluntary to be sure, some writers, like the editor of the Boston News Bureau, who received $104,000 from the railroad company to place among newspapers for advertising, have defamed Mr. Brandeis shamefully and relentlessly, claiming he ruined the credit of the road, whereas he saved the remnants of its value for restoration by a law-abiding management.

The Supreme Court and the country, now that the opportunity is given, should have the benefit of this plain, sincere, and remarkable personality in the position for which he is most signally qualified. Massachusetts could not make a better contribution to any department of the Government.

Respectfully, yours,

A. S. Hall.

February 18, 1916.

Senator William R. Chilton,
Chairman Subcommittee, United States Senate,
Washington, D. C.

My Dear Senator: This letter is written to urge the confirmation of Louis D. Brandeis as Associate Justice of the Supreme Court of the United States.

To identify myself to your committee, in order that you may know what opportunity I have had to pass upon the qualifications of Mr. Brandeis, I would say that I have been a member of the bar, practicing in Boston, for the past 18 years; in politics I am a Democrat and have served in the Boston city council, Massachusetts House of Representatives, and the Massachusetts Senate, and have been register of deeds for Suffolk County since 1907. I was president of the democratic city committee of Boston from 1902 to 1905, inclusive, and a vice president of the democratic State committee for several years. I was a delegate to the National Democratic Convention at St. Louis in 1904 and an alternate at the Democratic National Convention in Baltimore in 1912.

I first met Mr. Brandeis 20 years ago, when I was a delegate to the Boston Municipal League, an organization composed of representatives from many

improvement societies and other bodies who were interested in improving the civic welfare of the city and obtaining better laws for the benefit of the whole people and opposed to any privileged class, political or otherwise.

I recall that Mr. Brandeis was counsel for the league and had done considerable work for the organization, and I remember distinctly that it was a great surprise to me as a law student at that time when Mr. Brandeis presented to the league a receipted bill for $500, with his compliments, and declined to receive any compensation whatever or to make any use of the appropriation that had been made for counsel fees.

On many occasions since that time I know that Mr. Brandeis has acted in behalf of the public, and has represented civic and charitable organizations without compensation. I have seen him in action before legislative committees and at great gatherings of citizens discussing public questions. I have seen him in court in the trial of cases and I have never known a man that possessed a keener or more logical mind. I consider him the equal, if not the superior, of any man at the bar in this part of the country.

At a meeting of the Boston City Club about two years ago Mr. Brandeis made the ablest presentation of an antitrust argument that has ever been heard in this city, and it was the unanimous opinion of the members of all shades of political opinion that no more scholarly or logical address had been made at the club during its history, and our speakers have included Presidents Wilson and Taft, Hon. William J. Bryan, Hon. Champ Clark, many United States Senators and Congressmen, Cabinet officers, the governors of many States, college professors, eminent pulpit orators, and many leading lawyers of the United States, as well as members of the English Parliament.

At the dinner that preceded this address at the City Club brief speeches complimentary of Mr. Brandeis were made by representative citizens of Boston, and as a vice president of the club I was asked to speak. I said that I agreed with all the speakers, and with the entire community in fact, that Mr. Brandeis was an exceedingly able lawyer and a good citizen, but that I had been trying for many years to make up my mind whether he was a deep-dyed schemer, who had been carefully laying his plans to become mayor of Boston or governor of Massachusetts, or whether he was simply an honest man.

I felt that the time had come to make a decision, and, inasmuch as he had stood the test for nearly 20 years and had not declared himself a candidate for office, I had come to the conclusion that he was simply an honest man, sincere in all his endeavors in behalf of the common people, and that he had absolutely no ulterior motive in devoting his magnificent talent on many occasions to the public without compensation. I still adhere to that opinion, and believe that his confirmation would add great strength to the Supreme Court.

Many a man is loved for the enemies he has made, and I believe that Mr. Brandeis is to be congratulated for some of the enemies he has made, although there may be a few of his opponents who sincerely believe his confirmation unwise, but I think they do it because they can not see outside of their own sphere of influence and because Mr. Brandeis has attacked their interests.

These men, however, do not represent the general opinion of this community, and I have no doubt that a poll of the citizens of Boston would be overwhelmingly in favor of the confirmation of Mr. Brandeis.

Respectfully, yours,

W. T. A. FITZGERALD.

[Lionel Norman, attorney and counselor at law, 200 Devonshire Street.]

BOSTON, *February 19, 1916.*

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: I understand that you are chairman of the subcommittee having the matter of the confirmation of Louis D. Brandeis for the Supreme Court of the United States under consideration. While my law practice in the past has not been an extensive one, still I have had more or less trust matters, involving large sums of money, to attend to, and in this connection have had some contact with Mr. Brandeis's firm. One case involved a matter of $168,000, which was referred to Mr. Brandeis personally. The matter was dealt with in a manner showing great integrity and consideration, when it might easily have been dragged out for years and cost the estate a great deal of money. The fee

charged to the estate and the whole attitude in the premises made a very deep and favorable impression upon me.

Outside of the few hereabouts in Boston who represent what we call "God's own anointed," but who do not always practice God's precepts, Mr. Brandeis is regarded as a man of very high principles as well as of very great ability and deep legal learning. Possibly, if there is any criticism of him which I might be inclined to make, it would be that instead of being overpractical, as he has been accused of, he is too idealistic.

Yours, very truly,

LIONEL NORMAN.

BOSTON, *February 1, 1916.*

Senator W. E. CHILTON,
Washington, D. C.

DEAR SIR: I see from the daily papers that you are the chairman of the Senate committee which is to inquire and report as to the advisability of confirming the nomination of Mr. Brandeis to fill the vacancy in the Supreme Court.

Having known Mr. Brandeis as a student at the Harvard Law School in 1876, watched his career as a lawyer, and having lived in Boston for the past 12 years, I desire to urge your committee to recommend his confirmation.

Mr. Brandeis was certainly one of the leading men, if not the leading man, in his class at Harvard, and since his admission to the bar in Boston has gradually forged his way to the front until he is now, and for several years has been, recognized as one of the ablest lawyers in this city. His standing as a man and as a lawyer is the best, but like all leading men in his profession has necessarily made some enemies in attaining his present position. He is a lawyer who thinks for himself and is not afraid to express his convictions, and who realizes that the law must grow to fit existing conditions rather than undertake to apply precedents which have arisen out of conditions which no longer exist to present-day problems.

I hope you will find it consistent with your duty as a Senator to vote for and urge his confirmation as a member of the Supreme Court, as I confidently believe that the appointment of a man of his ability and character to the Supreme Court at this time is both wise and judicious.

Very truly, yours,

J. M. HEAD.

FEBRUARY 23. 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: I address you as chairman of the subcommittee on the question of confirming the nomination of Louis D. Brandeis, Esq., to the United States Supreme Court. If it is proper at this time to make a statement of opinion, as many eminent persons have recently done pending the investigation, let me say that I was in the law school with Mr. Brandeis and knew him well, and have kept up a friendship with him ever since.

Of late years I have retired from active practice and wholly withdrawn the last four years. I have, however, followed his course with great interest, have the highest opinion of his intellectual and moral qualities, and would not hesitate to entrust my affairs in his hands, feeling sure that if I did so he would look after them with the greatest intelligence and loyalty, and I believe his large knowledge of sociological questions would be of distinct benefit to the Supreme Court. Believe me,

Respectfully, yours,

RICHARD H. DANA.

FEBRUARY 16, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Chairman Subcommittee,
Washington, D. C.

DEAR SIR: I am glad to support the nomination of Louis D. Brandeis. I believe that he is an accomplished, able lawyer; that he has been zealous and faithful in his office as attorney; that he is in every way trustworthy and reliable and eminently qualified for the office of justice of the Supreme Court of the United States.

Very truly, yours,

JOHN W. CUMMINGS.

COPY OF RESOLUTIONS ADOPTED BY TAUNTON BAR ASSOCIATION.

[Prepared by Silas D. Reed and Louis Swig.]

Whereas the due consideration and formal expression of the Bar Association of the City of Taunton is proper and becoming upon such subjects as may specially and intimately concern the profession of the law, the said Bar Association of the City of Taunton at a special meeting and after due notice, in which was included reference to the subject of these resolutions—

Resolved, That it unqualifiedly and unreservedly indorses Louis D. Brandeis, Esq., of Boston, for appointment to the Supreme Bench of the United States. We regard that Mr. Brandeis's learning in the law, his training in its science, and his wide and reputable experience with men and affairs, eminently and becomingly qualify him for the honorable and learned service demanded of the justices of the Supreme Bench. We also voice the opinion that Mr. Brandeis eminently represents the spirit of the times and the democracy of the age. Popular government has a right to expect that such expression be represented in the judiciary as well as in the executive and legislative: Be it further

Resolved, That an attested copy of these resolutions be sent by the secretary of the association to the Senate of the United States, and that they be entered upon the records of the association.

February 16, 1916.

Hon. William E. Chilton,
United States Senate, Chairman Subcommittee.
Washington, D. C.

Dear Sir: I hope that the nomination of Mr. Louis D. Brandeis to the office of Justice of the Supreme Court of the United States will be confirmed. He is an able lawyer in good standing, and he has the confidence of the community.

Respectfully, yours,

Charles R. Cummings.

February 26, 1915.

Senator William E. Chilton,
Subcommittee, United States Senate, Washington, D. C.

Dear Sir: Apropos of the appointment of Mr. Louis D. Brandeis, of Boston, for Associate Justice of the United States Supreme Court, I feel that I should be remiss in my duty as a citizen of this Commonwealth were I not to say at least a word of commendation and assist the good cause so well begun by His Excellency the President.

I have known Mr. Brandeis for 30 years and have had ample opportunity to study him at close range. Having been a public servant, in that I served in the governor's council several terms, and was lieutenant governor of the Commonwealth of Massachusetts, I feel qualified to judge of the pulse of the people with regard to public officers. Consequently, I feel safe in saying that the appointment is one of the greatest acts which the President has done yet, to show that he intends to have as servants of the great American public, men who really will serve the public. The general public feels that no wiser move for the advancement and behalf of the so-called common people has yet been made by His Excellency.

Again I beg to state that I heartily indorse the appointment, and trust that no petty opposition arising from the disgruntled opponents whom Mr. Brandeis has unmercifully beaten in litigation will stand in the path of so worthy an appointee.

Sincerely, yours,

E. P. Barry.

February 10, 1916.

Hon. William E. Chilton,
United States Senate, Washington, D. C.

Dear Sir: This letter is intended as an indorsement of Louis D. Brandeis, who has been nominated as Associate Justice of the Supreme Court of the United States.

I may be identified as a lawyer in practice in Boston for 35 years and more, who is and has been a Republican, and who was United States attorney for

this district in 1905-6, resigning then by choice and not by request while there was a Republican administration at Washington.

I have known Mr. Brandeis since he was called to the bar and I became then and have remained through the continuing years his friend and admirer.

I have differed from him in many questions of politics and policy.

I do not recall that I have ever been associated with him in legal matters and causes, but I am sure he has many times represented interests which were adverse to those for which I appeared.

I have naturally known many men and many lawyers, but he to me seems supereminent in so ordering his life that with his splendid mental equipment and his great acquisition of learning there were always time and energy to recognize and pay his obligation to the State and the people as he in his vision saw it.

Of course, one can not assert that he has high judicial qualities without a trial, but of such as he great judges have been made, and therefore I think he should be confirmed. I am,

Very respectfully, yours,

MELVIN O. ADAMS.

FEBRUARY 24, 1916.

WILLIAM E. CHILTON, Esq.,
Chairman of Subcommittee of the United States Senate,
Washington, D. C.

DEAR SIR: I have read with dismay the press reports of the testimony given by Moorefield Storey and Hollis R. Bailey before the subcommittee of the Senate regarding Mr. Brandeis. In view of my knowledge of Mr. Brandeis it did not seem to me possible that these men and others would unite in an effort to prevent his appointment to the Supreme Court and to go to the limits they have gone in maligning him. I am thoroughly convinced that the ring behind this fierce and totally unwarranted opposition to Mr. Brandeis are the representatives of predatory wealth and vested interests, and those who are not directly the representatives of these interests have been influenced in their course by these interests.

My familiarity with conditions in Boston, where I have lived all my life and where I have actively practiced law for more than 15 years, convinces me that this chain of men and interests opposing Mr. Brandeis has been forged together from links which have been closely united for generations in this Commonwealth. These men think more or less alike and have a common purpose. Their thoughts and purposes have been in direct conflict with Mr. Brandeis's thoughts and in direct opposition to the purposes which Mr. Brandeis has made the precepts of his life. The present opposition to him is due entirely to the fact that he has been a vigorous opponent of their interests and that he has laid bare their business methods in a way which did not put them in any very enviable light. It is now their purpose "to get back" at him, and that weight should be given to their testimony (especially in so far as their testimony merely gives their opinions, and that is all the testimony seems to amount to) as would be given to anyone's testimony who has been injured and who has thereby become vindictive.

Their opinions of Mr. Brandeis are entirely unfounded and their testimony as to his standing and reputation is entirely conjured up as the result of their bitter feeling against him. The young men practicing law in Boston have held him up as the ideal of what a lawyer should be—courageous, honest, faithful, and zealous in representing his clients, and in the performance of his duties as a citizen most unusual and unselfish. The accusation that he does not think honestly is to me so absurd, so unwarranted, in view of his public acts and of his splendid accomplishments in the public's behalf, that it seems incredible that men of any type can even give utterance to, let alone think, such things about Mr. Brandeis.

The accusation that the majority of the bar or of a very large number of the bar in Boston have no faith in him is to me the most astounding charge, in view of the fact that his office is now, and has been for years, one of the most prominent law offices in this city, and that Mr. Brandeis's firm is constantly coming in contact with numbers of members of the bar. I have yet to hear any lawyer call the conduct of Mr. Brandeis or his associates to account, except in

those instances which have already been made public and which have been known for years. As to these accusations it should be borne in mind that every lawyer's conduct is capable of being misinterpreted. A lawyer is frequently placed in a position where it is difficult for him to know what to do, and where his conscience is the sole test as to whether he has done his full duty to all concerned. This must necessarily be the situation in the cases in which Mr. Brandeis was called upon to represent the apparently harmonious, but to some extent, conflicting interests. Those who know Mr. Brandeis as I do feel that he has conscientiously fulfilled his duty as he saw it to all concerned. Unfriendly persons are likely to misinterpret his conduct in that regard. To my mind the lawyer who endeavors to reconcile the apparently conflicting interests, thus preventing wasteful and annoying litigation, serves all interests best and renders at the same time a great public service. There are many times when it is unwise for him to attempt such a course, but when all parties consent and the lawyer does his best for the time being, if all his foresight and sense of justice fail to accomplish this purpose, is he to be condemned for it?

The accusation that Mr. Brandeis is the sort of man who would betray his clients is not borne out by anything which I have ever heard of him from his numerous clients, many of whom I know intimately, who are substantial business men and have been his clients for years. They have to a man always spoken of him in the most praiseworthy way.

I feel certain that if any of the men who have testified before the committee had been present at any of the gatherings at which Mr. Brandeis was either a speaker or a guest and saw the wonderful receptions which he received from people of every walk in life, from the humblest to the most prominent, that not even their vindictiveness would have given them the courage to have given the testimony before the committee which they gave. I have never witnessed more genuine enthusiasm of a public man anywhere than I have witnessed at large gatherings at which Mr. Brandeis was either a speaker or a guest. I have heard men in every walk of life praise Mr. Brandeis in terms which, in his presence, I am sure frequently embarrassed him, and it is inconceivable that the man who has the "reputation" which has been testified to before the committee should be so lauded and praised.

I was attorney for one of the creditors in the Lennox case, and I was active in that matter. There was nothing in the Lennox case with which any creditor or any party interest could complain of as against Mr. Brandeis. If he purported to represent "the situation" (which is not uncommon practice), he and his associates did it in a masterful and an entirely proper way. This is attested by the fact that for months after Mr. Nutter was appointed common-law assignee, and months after the involuntary petition was filed, not a single creditor made a move to ask for the appointment of receivers to take the place of Mr. Nutter or to serve with him as receiver, which they had a right to do. It has been suggested that the filing of the involuntary petition by Mr. Brandeis's office was not proper. If an involuntary petition had not been filed by Mr. Brandeis's office I feel quite certain, from what I know, that others would have filed such a petition, and, as a matter of fact, the records will show that two other petitions were filed after the petition was filed by Mr. Brandeis's office.

It is my opinion that every attorney including those who have testified against him would trust Mr. Brandeis and his office to keep any agreement which he or any of his associates would make. I have heard judges of our courts speak of Mr. Brandeis and his associates in the very highest terms, and I have never heard any attorney outside of this small coterie say anything derogatory of Mr. Brandeis or speak of him in any terms except the highest. There is a feeling here in Boston that if you want to know what an attorney thinks of Mr. Brandeis you must first find out what his affiliations and associations are. If they are with the type of lawyers who testified against him the chances are that they will stand with Mr. Storey and Mr. Bailey. If on the other hand, they are with the every day lawyer who does not represent vested interests, large corporations, or predatory wealth or the so-called "Back Bay crowd," I am quite sure that to a man they will stand with Mr. Brandeis and urge his appointment. The latter class constitutes by far the great majority of the bar, and with them Mr. Brandeis's reputation is to be envied.

I have felt that the real issue before your committee is not Mr. Brandeis's character, his standing, his reputation, or his ability, but as to whether Mr. Brandeis's service to the people of the country shall be condemned and as to whether the powerful interests behind the opposition shall be condoned for their wrongful acts. Shall Mr. Brandeis, who has altruistically given his efforts for the welfare of the rank and file of the country, be crucified so that the opposition may say to men of his type, "there hangs the man who was broken on the wheel because he attacked us"? Shall the Senate of the United States say that dishonest business, those who violated trusts and who break laws, may continue in their course, and those who attempt to interfere with them are doomed to destruction?

Mr. Brandeis's works are milestones in the progress of the country. He has labored to make the law a living, vital force for the equitable benefit of all and he has tried to correct it as a force which serves only a few and makes the public subservient to their interests. His grasp of government, his understanding of the conflicting social and economic forces, his genuine sympathy for all mankind, his extraordinary experience, his prodigious capacity for work can not but help make him one of the greatest judges of all times. If the Senate rejects him, I am satisfied that the great majority of the bar and the public will feel that the Supreme Court will have lost the services of a great man, one of the greatest of our time.

Yours, very truly,

ARTHUR BERENSON.

CRAIG HALL,
Atlantic City, N. J., March 13, 1916.

DEAR SIR: The day you left Atlantic City I called at the Dennis to say a few words on the matters about which I am now writing.

I wanted to say that I hoped Mr. Brandeis would be confirmed, for I have had a casual acquaintance with him dating back 35 years. I attended a part of the hearings in Washington and heard the evidence in the New England Railroad, the Warren Will, and the United States Shoe Machinery cases. Judging the other allegations by these, I did not see any need to hear them. From what I heard in the above cases I rated the testimony as simply the whining of whipped dogs.

My brother, who has just retired from 40 years of law practice at Boston to our old plantation in Alabama, was in the Harvard Law School with Mr. Brandeis and knows his record in Boston. He has written an open letter strongly urging his confirmation.

The Boston & Maine and the New Haven Railroads were looted by a group of lawyers, bankers, and promoters in Boston with strong copartners in New York. It is these men who are the real opponents of Mr. Brandeis. I know personally a majority of the Boston lawyers who appeared before the Senate committee, and they were simply responding to their personal environment. The same may be said of President Lowell of Harvard, who, I have the strongest reasons for believing, did not represent the prevailing sentiment of Harvard alumni when he signed the protest of the Boston lawyers against the confirmation of Mr. Brandeis. The Harvard sentiment on that point is expressed in an editorial in the New Republic of February 26. A copy of this I have sent to the Senate committee.

If the Government shipping bill ever reaches the Senate I hope that will pass. The shipping question I have studied for a number of years, because I had an interest as a shipper in that direction. I do not believe under world conditions of to-day that we can build up a merchant marine without the aid of the Government's credit. Our private capitalists are nearly all associated with the foreign ship monopoly that is fighting the bill. That makes any new private shipping concern almost an impossibility. The plan of aid provided in this bill seems to me much better than that of granting subsidies. My reasons for that position you will find stated in my remarks before the House Committee on Merchant Marine.

Yours, truly,

THOMAS P. IVY.

To United States Senator OSCAR W. UNDERWOOD,
Washington, D. C.

BOSTON, *February 23, 1916.*

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: I write this letter to urge the confirmation of Louis D. Brandeis, who has been nominated as Associate Justice of the Supreme Court of the United States.

I feel it my duty to address you because I am a lawyer in practice in Boston for more than 30 years and am still in active practice here. I have known Mr. Brandeis during the entire period.

It may be proper for me to state that I was for some years connected with the district attorney's office in this county, and, after that, before entering into general practice, was for some years first assistant city solicitor of the city of Boston.

I have always considered and now regard Mr. Brandeis as a man of great intellectual attainment of the highest character, whose motives are pure and noble.

It would be impossible for a man who has taken such decided stands and expressed what in this conservative end of the world may be called "advanced views" not to be criticized by some large interests.

It is my belief that our people as a whole have confidence in him and wish to see his nomination followed by his confirmation.

Very respectfully, yours,

ROBERT W. NASON.

MARCH 1, 1916.

Hon. WILLIAM E. CHILTON,
Chairman of the Subcommittee on Judiciary Appointment,
Washington, D. C.

DEAR SIR: From reports of the testimony already submitted to your committee appointed to consider the appointment of Louis D. Brandeis to the Supreme Court of the United States. I have learned that certain unfavorable opinions have been placed before your committee regarding the reputation in this community of the man you are considering.

These opinions are, to my knowledge, not representative of the general opinions of the reputation of Mr. Brandeis.

During my experience as a practicing attorney in Boston I have had brought to my attention on numerous occasions the general reputation of Mr. Brandeis. On every occasion that I have heard mention made of Mr. Brandeis it has always been in commendation of Mr. Brandeis, praising him for his standards of honesty, trustworthiness, fidelity, and profound knowledge of the law. I know these opinions are shared by a substantial majority of the lawyers of this community.

I sincerely hope that Mr. Brandeis will be recommended by the committee for appointment to the Supreme Court of the United States, and I feel that the esteem in which the Supreme Court of the United States is held by the people will thereby be greatly increased.

Respectfully, yours,

LOUIS ABRAHAMS.

FEBRUARY 19, 1916.

Senator WILLIAM E. CHILTON,
Chairman Subcommittee, Washington, D. C.

MY DEAR SENATOR: The nomination by the President of Louis D. Brandeis, of the Boston bar, for the position of Associate Justice of the Supreme Court of the United States meets with my approval.

I have practiced law in Boston for 15 years. The senior member of our firm has practiced in Boston since 1872. Our firm has had frequent matters with Mr. Brandeis's firm. The senior member of our firm, who at present is ill and unable to address you, has many times been interested in matters in which Mr. Brandeis was interested, one side or the other.

Our relations have been cordial, and we have had great respect for Mr. Brandeis and his firm throughout all these years.

From what I hear of the talk of other lawyers, I wish to say to you that I do not believe that the recent protest by certain Boston lawyers in any way represents the feeling of the Boston bar in reference to this nomination.

Yours, truly,

JOSEPH W. BARTLETT.

[From the office of Maurice Bergman, attorney and counsellor at law, Old South Building, Boston, Mass.]

FEBRUARY 29, 1916.

Senator WILLIAM E. CHILTON,
Chairman Subcommittee, Washington, D. C.

MY DEAR SIR: I have been in practice in this State since August 31, 1909, and during this period have constantly had before me as an example of success in legal attainment the career of the illustrious Louis D. Brandeis, whom I believe to be a true champion of the people of these United States, and that he stands for honor and integrity and constantly strives to achieve equality for all and special privilege to none.

Having these sentiments in mind, I take the liberty of addressing this communication to you.

Very respectfully, yours,

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BOSTON, MASS., *March 4, 1916.*

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee on the Judiciary, Washington, D. C.

DEAR SIR: In re Louis D. Brandeis. Permit me as a humble member of the Boston bar to add my bit to the many other which you must have received indorsing the appointment of Mr. Brandeis to the Supreme Court.

I have met Mr. Brandeis personally on several occasions and have found him a man of high ideals. His reputation among the members of the Boston bar, notwithstanding the report given by the self-constituted committee of "State Street lawyers," is most excellent, both as to his personal character and to his legal ability.

I wish I could say as much of several of the remonstrants.

Very truly, yours,

HARRY BERGSON.

MARCH 1, 1916.

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate, Washington, D. C.

DEAR SIR: Permit me to add my indorsement to those of many others, which I am sure you have received in the matter of Mr. Louis D. Brandeis as Justice of the United States Supreme Court. I have had occasion to know Mr. Brandeis quite thoroughly, both as a lawyer and as a man, and though I could give many details of his worth and fitness for the high office to which he has been nominated, I will not encroach so unnecessarily upon your time.

Let me, then, merely summarize by saying that as a lawyer of almost 20 years' practice I would stake my reputation upon the prophecy that Mr. Brandeis will do honor and credit to his country as a Supreme Court Justice.

Respectfully, yours,

WM. M. BLATT.

BOSTON, MASS., *March 6, 1916.*

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: As a native and lifelong citizen of Boston and a practicing member of the Massachusetts bar for more than a dozen years, I can not too strongly urge the confirmation by your honorable committee of the nomination of Louis D Brandeis, Esq., as Associate Justice of the Supreme Court, as I know him to be admirably equipped with the very qualities requisite for such office.

Respectfully, yours,

ABRAHAM BLUMENTHAL.

FEBRUARY 29, 1916.

Senator WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

MY DEAR SENATOR: Permit me to express the hope that your committee will report favorably on the confirmation of Louis D. Brandeis as Associate Justice of the Supreme Court of the United States.

I have known Mr. Brandeis for a number of years. I first met him when he appeared before some of the committees on which I had the honor to serve as a member of the Massachusetts Legislature, and I know that even in those days he was considered one of the shining lights of the Massachusetts bar and a man whose integrity and honor was above suspicion. Since then I have known Mr. Brandeis more intimately both as a member of the bar and in philanthropic work and learned to admire and appreciate his many great qualities.

I have no doubt that as a member of the chief tribunal of our great country he will fill the place with honor.

Very truly, yours,

SAMUEL H. BOROFSKY.

[Massachusetts Catholic Order of Foresters, Joseph T. Brennan, high chief ranger.]

17 WORCESTER STREET,
Boston, February 25, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

SIR: As the executive head of the largest fraternal insurance organization in this State, having an active membership of 42,000 adults; as an attorney practicing in the Federal and State courts for 12 years; as a citizen who has endeavored to keep in close touch with industrial, social, and legal, and political conditions. I have had an extraordinary opportunity to observe the sentiment of the people of this community for and against the confirmation of Louis D. Brandeis as Justice of the Supreme Judicial Court. Outside of a few individuals, with personal or biased motives, and irrespective of class, creed, or race, the unanimous opinion is that the nomination should be confirmed.

I therefore beg to add my name to the long list of those who have already indorsed Mr. Brandeis, and trust that the honorable committee of which you are chairman will report favorably.

Respectfully,

JOSEPH T. BRENNAN.

FEBRUARY 23, 1916.

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee of Senate Judiciary,
United States Senate, Washington, D. C.

DEAR SIR: In view of the fact that several of my associates at the bar have seen fit to protest against the appointment of Louis D. Brandeis, I wish to go on record in favor of his appointment.

I believe that Mr. Brandeis's presence as a member of the United States Supreme Court will greatly strengthen that body.

Yours, very truly,

LAWRENCE G. BROOKS.

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40 COURT STREET,
Boston, Mass., February 24, 1916.

Senator WILLIAM E. CHILTON,
Chairman Subcommittee United States Senate,
Washington, D. C.

DEAR SIR: This letter is intended as an indorsement of Louis D. Brandeis, who has been nominated as Associate Justice of the Supreme Court of the United States.

I have been practicing law in the city of Boston 12 years and have been a member of the city government of the city of Boston and of the Massachusetts Legislature, and I feel that the opposition that has been shown toward the confirmation of Mr. Brandeis comes from such a circle that opposes anything that

tends toward democracy. I assure you that the different lawyers who signed the petition opposing his confirmation are not the men that rub elbows with the everyday lawyer who practices in our Massachusetts courts.

I think that the addition of Mr. Brandeis to the Supreme Court of the United States would be a great step toward the advancement of ideas that have long had a place in the history of our country.

Very truly, yours,

A. M. Burroughs.

February 19, 1916.

Hon. William E. Chilton,
United States Senate, Washington, D. C.

Dear Sir: Referring to the matter pending before the Judiciary Committee of the United States Senate on the confirmation of Hon. Louis D. Brandeis as Associate Justice of the Supreme Court of the United States, permit me to say, in view of the report of the evidence which I have seen in the local newspapers, that in my opinion Mr. Brandeis has the respect and confidence of this community.

I am writing as an attorney admitted to the bar of Massachusetts and practicing at Boston since July, 1894, and now occupying the position of a special jusice of the municipal court of the city of Boston.

I know Mr. Brandeis and have met him professionally and in matters relating to civic and social welfare of this city.

I am in favor of the confirmation of the nomination.

Very respectfully, yours,

A. K. Cohen.

February 29, 1916.

Hon. William E. Chilton,
United States Senate, Washington, D. C.

Dear Sir: As a member of the Massachusetts bar and practicing attorney for the past four years, I beg the liberty of registering my heartiest and sincere approval of Louis D. Brandeis, Esq., as Associate Justice of the Supreme Court of the United States, earnestly believing in his sterling qualities, judicial temperament, and national demonstrative ability. I believe I am expressing the sentiments of impartial and unbiased thinkers of this community to whom he has endeared himself through his sympathetic knowledge and wide experience in the needs of our present financial and business organization, in its relation to social organization.

Respectfully, yours,

Emanuel Cohen.

February 29, 1916.

Hon. William E. Chilton,
United States Senate, Washington, D. C.

Honorable Sir: Having been born in Boston and educated in its public schools, and having received two degrees from Harvard University, I write you with a deep sense of my responsibility as an American citizen, indorsing Mr. Louis D. Brandeis for the position he has been recently named to by our President.

I realize that a man requires not only exceptional ability but unquestioned integrity in order, adequately, to fill a position in the United States Supreme Court.

I have known Mr. Brandeis for several years, and have met him socially and in a business way. Though of the opposite political party I indorse Mr. Brandeis most highly. I know him to be a man of absolute honesty, unquestioned integrity, and marked ability, and I am positive that he, if confirmed, will fill the position with dignity and to the entire satisfaction of all the people of the United States. I know that I reflect the concensus of opinion of the Boston bar in these statements.

In conclusion, I thank you for giving this letter your attention.

Respectfully, yours,

Franklin M. Cohen.

March 3, 1916.

Hon. William E. Chilton,
Chairman Subcommittee, United States Senate, Washington, D. C.

My Dear Sir: As a member of the Massachusetts bar and a member of the general court of this State for several years, I wish to attest as to the qualifications, ability, and character of Mr. Louis Brandeis, now under consideration by your committee, as the appointee of President Wilson to the Supreme Court of the United States.

While my professional associations with Mr. Brandeis have not been over an extended period of time, nevertheless whenever I have had occasion to transact business with him I have always found him to have been a man of the highest type, and, as a result of my observations of him, I take pleasure in saying that I have the utmost confidence in him and feel that he is thoroughly qualified in every particular to fill the high office to which he has been appointed by the President.

I am, sir, very truly, yours,

William N. Cronin.

Somerset Club,
Boston, March 21, 1916.

To Woodrow Wilson, *President,*
Washington, D. C.

Mr. President: In the thought that possibly an added word not idly said by one possessing personal knowledge in regard to a high nomination lately made by you may not prove superfluous, I write as an older Boston and Harvard man who has followed Mr. Brandeis's career with interest from its early stage, and who has known intimately his friends and those of greatest weight who now oppose him, to say that, with full knowledge of the aims of these, I know the best regard the nomination as a singularly happy one. Mr. Brandeis, if his appointment be confirmed, will bring to that high court strong human sympathies and a creative intelligence, as well as legal knowledge, courage of convictions, and clear, quick apprehension. And that he will be adequately conservative in the presence of that great responsibility I have no fear.

I trust accordingly, for the country's sake, that this appointment may, in despite of opposition, be confirmed, and with an expression of high personal respect, I remain,

Yours, truly,

George B. Dorr.

March 1, 1916.

Senator Chilton, *Chairman,*
Washington, D. C.

My Dear Senator: As an attorney practicing in Boston since 1912, and as a social worker of many years, I desire to take the opportunity of going on record in favor of the appointment of Louis D. Brandeis as Associate Justice of the Supreme Court of the United States.

Mr. Louis D. Brandeis is known in this community as a man of great ability and sterling character. His reputation for honesty and uprightness is a matter of common knowledge among all the members of the bar, who have had occasion, disinterestedly, to watch his conduct in the many important causes with which he has been connected. Words of reproach against the reputation of Louis D. Brandeis as a member of the bar can come only from those persons who represent the vested interests and have had occasion very frequently to feel the force of his attacks.

Our country will indeed be fortunate if this learned jurist is placed upon the highest legal tribunal of this land, and that august and majestic body will be increased in strength by his membership.

Very truly, yours,

Harry E. Dubinsky.

February 16, 1916.

Hon. William E. Chilton,
United States Senate, Washington, D. C.

Dear Sir: I take the liberty of writing the following letter in support of the nomination of Louis D. Brandeis as Associate Justice of the Supreme Court of the United States.

My practice has been in the State as well as the United States court the last 16 years, and in 1914 and 1915 served as assistant attorney general of the Commonwealth of Massachusetts, and since has returned to private practice, and have been more or less active in public affairs and public questions.

Mr. Brandeis has been known to me personally and professionally during the last 16 years, and ever since I first met him he has appealed to me as the ideal lawyer and public man. I have been with him in many cases, and notably a large bankruptcy case in 1904, where his conduct with reference to fairness, wisdom, and integrity has ever remained with me as one of the pleasant memories of a lawyer whose practices were far higher than what one is wont to expect. I have differed from him in many questions of public policy, but even in those cases had a feeling that he represented more of the right attitude than I did.

His confirmation to the bench of the United States Supreme Court will be a distinct accession in dignity, force, and learning, and I prophesy that the time will come when his opinions and influence will be regarded as one of the influences of the early twentieth century in the decisions of that tribunal.

I have read of the opposition to his confirmation; I know it comes from a class in our community which, like the old Boston mob, so wonderfully described by Wendell Phillips, were the proponents of slavery, which mob was constituted of the best citizens, so called, of Boston, because of their fear that some tradition of conservatism might be affected, and yet that very class, as you will remember, became the heroes in the war which followed. This class feels—and it is a very small minority of the community, both at the bar and out of it—that unless a man is of the bone and sinew of Massachusetts he should not have high place, however useful, sincere, and effective his career has been. Privately they will admit the almost incomparable attainments of Mr. Brandeis, but they fear the things he seeks to criticize; but they will be the first to realize 10 years later that his criticisms and work are the foundations of a new and better order. Their opposition therefore ought not be regarded too seriously. Their fears discolor their better judgment. The great voice of the country wish the confirmation to be made.

Very respectfully, yours,

L. R. Eyges.

March 9, 1916.

Hon. William E. Chilton,
Chairman Subcommittee, United States Senate,
Washington, D. C.

Dear Sir: I have been an assistant corporation counsel of the city of Boston for the last 11 years and during that time have had several cases with the office of Mr. Brandeis. He is, to my knowledge, well known at the bar as a lawyer of great learning who has given very largely of his time and abilities to public questions.

I have never heard anyone question his great ability and his capacity for public service. I am of opinion that the real sentiment of the community favors his confirmation as a member of the Supreme Court of the United States, and believe that Mr. Brandeis is a lawyer of great ability whose presence on the Supreme Bench would greatly strengthen it with the people as well as with members of the bar.

I am, very respectfully, yours,

Geo. Flynn,
Assistant Corporation Counsel.

[Crigler & Frank, attorneys at law, suit 1117, Third National Bank Building, St. Louis.]

March 16, 1916.

Chairman of the Senate Judiciary Subcommittee,
Washington, D. C.

Dear Sir: I had occasion to notice yesterday in the press dispatches that a letter has been written to you by some of the leading men of this country, among whom were Elihu Root and William H. Taft, the letter in substance stating that it was their painful duty to say that they did not believe Mr. Louis D. Brandeis a fit person for membership in the Supreme Court of the United States.

I wish to call your attention to the fact that during the Glavis-Ballinger investigation Mr. Brandeis was counsel for Glavis; that in the course of the investigation he made Attorney General Wickersham admit that certain papers submitted by the White House to the Senate, at their request, had been antedated by him; that the White House, after denying the antedating, admitted the truth of this fact; that the White House again admitted later certain misrepresentations that it had made with reference to Lawler, a subordinate of Ballinger, and Kerby, Lawler's stenographer.

These decisions plainly show that the White House in response to the Senate's request had sent to Congress an important paper not relied on by the White House, and omitted to send another important paper on which the White House's previous decision relied, but from which only portions were copied. I have as my authority for this a preface, by Ernest Poole, to the book Business a Profession, by Louis D. Brandeis, and published by Small, Maynard & Co., Boston, page xxxix et seq. In connection with Ballinger's grilling examination by Brandeis, Mr. Root intervened with certain questions, showing his interest in the affair.

I have no doubt but that the Senate records of this investigation will bear out these assertions. A President is primarily responsible for the conduct of members of his administration, and perhaps this incident will throw a little light upon why Mr. Taft and Mr. Root are so "pained" to write the above letter to you.

If you doubt the truth of any of my statements above, I believe a little investigation on your part will reveal the fact that they are true. I am sending a copy of this letter to President Wilson.

Trusting that you will give the above due consideration, and that the real motive behind the letter written will be seen by you, I beg to remain,

Yours, very truly,

MALCOLM I. FRANK.

[Max M. Fritz, attorney and counselor at law, 40 Court Street.]

BOSTON, MASS., *March 1, 1916.*

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee, Washington, D. C.

DEAR SIR: I have been a member of the Massachusetts bar for the past nine years, and have always looked upon Louis D. Brandeis as the ideal type of a lawyer. I have always heard none but the highest comment concerning his practice at the bar and his willingness to offer his services to the people at all times.

I respectfully urge you and your committee to submit a favorable report in the matter of the appointment by the President of Louis D. Brandeis as Associate Justice to the Supreme Court of the United States.

Very truly, yours,

——— ———.

MARCH 1, 1916.

Hon. WILLIAM E. CHILTON,
Chairman of Subcommittee, Washington, D. C.

DEAR SENATOR CHILTON: As a member of the Massachusetts bar practicing in Boston for nearly 16 years, and familiar with the reputation of all our big lawyers and the nature of their practice, I desire, in the interest of justice, to write to your committee strongly urging the confirmation of Louis D. Brandeis as a member of the Supreme Court of the United States.

The criticisms of Mr. Brandeis, of which I have read in the daily papers, all come from business men whose methods and interests have been attacked by Mr. Brandeis or from lawyers who represent the so-called "vested interests," whose methods have been so ably exposed by Mr. Brandeis in the public interest. I have looked in vain among the names of the men who are opposing Mr. Brandeis for a single one whose interest it has been to promote the public welfare, and in the last analysis it seems to me that the objection to Mr. Brandeis on the part of his opponents is that he would not be very friendly to illegal combinations in restraint of trade. So far from being an objection this strikes me as being a splendid recommendation for an appointee to the Supreme Court of the United States.

Neither Mr. Bailey nor any of the attorneys representing the large corporations, who have appeared before your committee to oppose the confirmation of Mr. Brandeis, represents the opinion of the Massachusetts bar as to the reputation of Mr. Brandeis for "straightforwardness" and "fair dealing." The rank and file of the bar who know anything about Mr. Brandeis, either by reputation or from business relations with him, believe him to be a high-minded, conscientious, honorable lawyer, and I believe it would be for the best interests of the country that Mr. Brandeis should be confirmed.

Very truly, yours,

FRANCIS P. GARLAND.

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18 TREMONT STREET,
Boston, March 1, 1916.

United States Senator WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: As an active member of the Boston bar for the last 10 years, I have been in close touch with many matters in which Louis D. Brandeis, Esq., of Boston, has been interested. I feel it my duty, therefore, to call the attention of your honorable committee and the Members of the United States Senate that it is my belief that there is no more honorable member of the Massachusetts bar. He has the highest respect of all those with whom I have come in contact, not only for his ability but for his honesty and integrity.

I most heartily approve that his nomination by President Wilson as a Justice of the United States Supreme Court be confirmed.

Respectfully, yours,

EDWARD E. GINSBURG.

[Nathaniel Golden, counselor-at-law, 40 Court Street, Boston.]

FEBRUARY 29, 1916.

Senator WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: As a graduate of Harvard College, 1912, and of Harvard Law School, 1914, and as a member of the Suffolk bar of the Commonwealth of Massachusetts, I beg to add my hearty approval of the confirmation of the appointment of Louis D. Brandeis, Esq., as a justice of the United States Supreme Court.

Though my personal acquaintance with Mr. Brandeis is but a recent thing, my knowledge of his unselfish and illy recompensed devotion and service to the cause of the mass of people extends back for many years. When I recall a conversation that I had with President Lowell some three years ago anent Mr. Brandeis who had a few days previously delivered a lecture in Cambridge on one of the many humane things to which he has so long given of his time and money, I can not help but form the conclusion that the sincerity and purity of motives of the signers of the petition of protest, of whom President Lowell was one, must be impugned, and that it is predicated upon some ulterior purpose.

The general public has long recognized and admired Mr. Brandeis's profound mentality and his courageous love for the truth, and I am certain that the general sentiment is overwhelmingly in favor of his confirmation.

Yours, very truly,

——— ———.

FEBRUARY 28, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: I am writing you this letter as an indorsement of Louis D. Brandeis, who has been nominated as Associate Justice of the Supreme Court of the United States.

I am a member of the bar, and, although I am a former member of the Republican city committee of Chelsea, I would not permit politics to enter into my indorsement of Mr. Brandeis.

I have been personally acquainted with Mr. Brandeis for several years and he has impressed me as a possessor of keen intellect. He engages both in pub-

lic and private activities with sincerity of purpose, and I have always considered him a rare man.

I believe that the opposition to his confirmation comes from sources that may be classified under the category of special privilege, and it would indeed be lamentable for the progress of this Government if the moneyed interests should influence the appointment of any man to the greatest court in the world.

Permit me to assure you that I am heartily in favor of the confirmation of Mr. Brandeis. I am,

Very respectfully,

GEO. E. GORDON.

FEBRUARY 23, 1916.

Senator WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

HONORABLE SIR: I take the liberty of indorsing the appointment of Louis D. Brandeis, Esq., as Associate Justice of the United States Supreme Court.

I have discussed this appointment with a large number of lawyers and people in this community, and can unhesitatingly say that this appointment meets with the approval of a great majority of the legal profession in this city and the people of our community.

From my observation and study of this controversy I am led to the conclusion that no small part of the opposition is due to racial prejudice, and that the rest of the opposition can be attributed to hostile corporation or privileged interests.

I have been a member of the Massachusetts bar for over 10 years and have practiced in the United States courts for several years. I have served my community in our city government and the Massachusetts Legislature, and by reason of such service and in the course of my practice I have had occasion to meet Mr. Brandeis and consider his attitude on many important public questions.

I know Mr. Brandeis to be a man of sterling character, of excellent standing in the legal profession and our community, possessed of a profound knowledge of the law, and one of the leading lawyers of our State. By reason of his knowledge of the law, ability to regard weighty and vital problems with keen and sagacious discernment, his experience with and knowledge acquired in important labor controversies, and participation in so-called "people's conflict with railroads, gas companies, and monopolies," and other questions and matters vitally affecting the people of our country, he is as thoroughly equipped for that honorable body as any man in the public eye to-day, if not more so.

I feel that failure on the part of the United States Senate to confirm this appointment would almost amount to a public calamity, and I strongly urge your honorable committee to make a favorable report in his behalf.

You are at liberty to make as much use of this letter as you deem advisable or necessary.

Respectfully, yours,

ISAAC GORDON.

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17 MILK STREET,
Boston, Mass., March 3, 1916.

Hon. WILLIAM CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: In view of the so-called "Boston petition," and the wholly unexpected quarter from which the voice of the people appears to have emanated, possibly the opinion of an inconspicuous member of the Boston bar, but one who has had many dealings with Mr. Brandeis, may be of some interest.

During the past 13 or 14 years I have been general counsel for the Boot and Shoe Workers' Union, an organization composed of 40,000 men and women shoe operatives throughout the United States and Canada. In many important matters affecting the shoe industry Mr. Brandeis represented the shoe manufacturers, and in conference serious difficulties were often averted by the sound judgment, the keen insight, and the absolute fairness of Mr. Brandeis. In several controversies affecting the union where the interests of Mr. Brandeis's clients were not involved I retained him as senior counsel, notwithstanding the fact that this gave him information which had he been unscrupulous or untrustworthy could have been used to our disadvantage. My selection of Mr. Brandeis as senior counsel in these matters was always approved by the

general officers of the union, and our implicit confidence in his integrity remains unshaken.

I have known Mr. Brandeis for 20 years. Until the New York, New Haven & Hartford Railroad inquiry I never heard from professional or business men any expression but of the highest admiration. I know many of his clients, men of high standing in business, who have been advised and guided by him for years, and who, I am confident, would intrust their entire personal fortunes and their business honor in his keeping.

I believe that Mr. Brandeis has the complete confidence of this community excepting only those whose enmity he has incurred in his efforts to correct abuses, and I trust the nomination of the President will be confirmed.

Respectfully, yours,

EDWARD S. GOULSTON.

MARCH 1, 1916.

Mr. WILLIAM E. CHILTON,
Chairman of Subcommittee, Washington, D. C.

DEAR SIR: As a member of the Massachusetts bar I feel it my duty to express my views relative to the confirmation of the appointment of Louis D. Brandeis as Associate Justice of the Supreme Court of the United States.

I have known Mr. Brandeis for the past 20 years, and I feel justified in saying that his reputation as to honesty and integrity is above reproach and that the attempts to stain his trustworthiness are the result of unfairness and undue prejudice.

I am fully convinced that Mr. Brandeis is especially qualified for the position, as I know him to be a man of high ideals, one who will exercise his own best judgment regardless of fear or favor, one who can not erroneously be influenced even for personal gain, but will, if necessary, sacrifice his own interests for those of the public.

I am fully confident that the confirmation of Mr. Brandeis's appointment will add an important link to the chain of the administration of justice of our judicial department. He will be a protection not only to the prestige and honor of the Supreme Court itself but a protection also to the people and the great masses of the country.

Very truly, yours,

ISAAC H. GREENBERG.

[Elisha Greenhood, attorney at law, 604–5 Pemberton Building.]

BOSTON, *March 1, 1916.*

Hon. W. E. CHILTON,
Chairman Subcommittee of Judiciary Committee,
Washington, D. C.

DEAR SIR: Having been in very active practice at the Boston bar for the past 31 years, I feel I should furnish your committee with whatever light I may have respecting the confirmation matter now pending before it.

I do not suppose there is a practioner at our bar who knows and has come in contact with a greater percentage of all possible subdivisions of our bar of 3,200 members than I, and I suppose it is obvious to every lawyer of any substantial experience—

First. That the individual constituents of no class of men are so thoroughly dissected within its own ranks as those of the legal profession.

Second. That, particularly if successful and originating in other than the prevailing nationality or creed, they are very likely to be the victims of jealousy, mistrust, and misunderstanding, with the usual concomitants of prejudice and enmity.

Having these two important facts in mind, along with my lengthy experience and unusually extensive professional acquaintance, I desire to say that, notwithstanding Mr. Brandeis's long and highly successful professional activities here, his prominence as a publicist in many necessarily friction-making movements, and his nationality, it is true that never before the nomination which you are considering did I hear, even in a whisper, a single word tending to indicate the slightest variation on his part from the highest standard of pro-

fessional honor and ethics, and that the attacks now made upon him are to me as thunder out of a clear sky.

I must admit that my professional experiences with him have not been very many, but I do flatter myself with knowing the general reputation of the members of our bar; and I must express the opinion that the supposed general reputation which his opponents are presenting to your committee must be simply the prejudiced opinion of a comparatively small and very localized section of our bar, which honestly believes itself to be the bar, and that its sentiments—usually originating in and propagated by one of its small circle—are those of the entire community.

You will pardon me if, in closing, I add that some 30 years ago I was for over a year editor in chief of the Central Law Journal, and that about that time I wrote the treatise "Greenhood on Public Policy in the Law of Contracts," besides editing two columns of Federal decisions in constitutional law, and being a rather extensive contributor otherwise to legal literature in my early law days.

I have the honor to remain, yours, very truly,

——— ———.

FEBRUARY 18, 1916.

Senator WILLIAM E. CHILTON,
Chairman of Subcommittee, Washington, D. C.

DEAR SIR: In the interest of fair play, I do not think that the testimony of Hollis R. Bailey, Esq., and others as to Mr. Brandeis's reputation in Boston should remain uncontradicted. I have been practicing law here for 12 years or more and during that time I have never heard Mr. Brandeis's fair-mindedness or integrity attacked except by those representing "special interests" who were engaged in a controversy with him or by newspapers known to be controlled by those "special interests" or suspected to be under their influence.

He has here the reputation of being ever ready to see the right irrespective of the person it is attached to, and of being able to demonstrate that right in the face of overwhelming opposition, but most conspicuously I think he stands in our community as a man who, after his great ability has been proved, has continued to be willing to serve, and who has served with remarkable success, those who needed service, but who were not strong financially nor powerful otherwise.

Respectfully, yours,

LOUIS E. GUILLOW.

MARCH 2, 1916.

Senator WILLIAM E. CHILTON,
Chairman Subcommittee on Judiciary,
United States Senate, Washington, D. C.

DEAR SIR: I beg to register my name as being in favor of the confirmation of the appointment of Louis D. Brandeis to the Supreme Court of the United States.

From 1905 to September, 1908, I was secretary and assistant to the late Prof. Frank Parsons, who, as an eminent lawyer, law text writer, sociologist, and economist, is undoubtedly known to you and your committee. As an expert for the National Civic Federation and head of the National Municipal Ownership League, and in many other capacities, Prof. Parsons was very closely connected with Mr. Brandeis in his work. I learned from Prof. Parsons to regard Louis D. Brandeis as a lawyer of exceptional ability, as a man of the highest integrity, and as a public-spirited citizen of the finest type.

Since 1908 I have watched Mr. Brandeis's work, particularly his public work, and I desire to say that I know of no man who is more honest or public-spirited or who has greater ability as a lawyer. I believe that Mr. Brandeis as a member of the Supreme Court of the United States would be a great addition to that already great tribunal.

It is my opinion that there are two reasons for the strong opposition which has developed against Mr. Brandeis's confirmation.

First, the fact that he has always stood for the public against the vested interests, even when to do so meant great loss to himself.

Secondly, and I consider this to be the stronger reason for this opposition, that Mr. Brandeis is a Jew.

I desire most earnestly to urge upon your committee the recommendation that Mr. Brandeis's appointment be confirmed.

Very respectfully, yours,

HARRY N. GUTERMAN.

[Hall & Hagerty, attorneys and counsellors at law, Taunton, Mass. Frederick S. Hall, Charles C. Hagerty.]

TAUNTON, MASS., *February 21, 1916.*

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee,
Washington, D. C.

MY DEAR SIR: I notice from the papers and from other sources that the nomination by the President of Louis D. Brandeis, of Boston, for a seat on the bench of the Supreme Court of the United States has created quite a widespread discussion.

Being interested in the man, having watched his movements, and having had a number of years' experience with his office in connection with large interests, I think I can truthfully say that personally I have never known him to do or say anything which was not in strict accordance with strict legal propriety, and until this nomination came up I have never heard him critized. A man of such wide knowledge and legal attainments would naturally make enemies, but it seems to me, from what I have observed, that there is nothing which would in any way disqualify him from filling this most important position to which he has been nominated.

Respectfully, yours,

CHARLES C. HAGERTY.

FEBRUARY 21, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate Subcommittee of Judiciary,
Washington, D. C.

DEAR SIR: It gives me great pleasure to write in regard to Louis D. Brandeis, I understand that a number of prominent Boston lawyers have said that Mr. Brandeis is not respected by the Boston bar. I think you will find upon investigation that almost all of these men have been bitterly opposed to Mr. Brandeis on some financial or public question. He has naturally tread on the toes of a great many conservative men and men tied up in large interests, such as the New Haven Railroad. I think, therefore, that their statements must be taken with a grain of salt.

It seems to me that Mr. Brandeis's chief qualities for a position on the Supreme Court Bench are his broad point of view in regard to present-day economic questions and his very great knowledge of the facts and conditions of our modern economic industrial world.

There are many other lawyers in Boston who feel as I do about this matter, and I hope that you will not consider the opinions expressed by Mr. Moorfield Storey as binding upon the rest of us.

Very sincerely,

MATTHEW HALE.

BOSTON, *February 9, 1916.*

Hon. LEE F. OVERMAN,
Acting Chairman Judiciary Committee, Washington, D. C.

DEAR SIR: It has been my great privilege to have known Louis D. Brandeis intimately for 15 years, during which time he has been my personal and business counsellor. I never knew him to advise or suggest anything that was not founded on the highest ethical grounds. I have no doubt of his confirmation, as it is inconceivable to me that any objection worthy to be seriously considered can be offered or that would weigh in the balance against the great addition he would be as an Associate Justice of the Supreme Court.

In my judgment there is no man living who is more the perfect embodiment of what he will be sworn to administer—justice.

Very truly, yours,

C. B. HALL.

WAUKESHA, WIS., *March 14, 1916.*

Senator GEORGE W. NORRIS.

DEAR GEORGE: Without intending or wishing in any way to influence your judgment but only to give you a little facts as they have come to me, I will say that you, of course, remember that Lois's mother had something of an estate left her in Boston by her father.

This was, as I think I explained to you at the time, left in quite a complicated condition. I have never seen any of the firm, but I wrote to Brandeis, Dunbar & Nutter and asked them to look after Lois's interests, which they did. They got very good results, and they are still looking after this estate. Their charges were very modest, considering the work and the results they got, and in view of the attack on Mr. Brandeis I thought that in justice to him I would give you these facts.

Very truly, yours,

H. H. HARRINGTON.

MARCH 1, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: Believing the appointment of Louis D. Brandeis to the United States Supreme Court to be most fitting and proper, I respectfully request that you add my name to the multitude indorsing the appointment.

I assert, resolutely, from my long acquaintanceship with Mr. Brandeis professionally and publicly that there is no higher type of citizen or public servant in our country, notwithstanding the attacks his candidacy has evoked. I know of no man in our city who is held in higher esteem or regarded with greater reverence and respect than the appointee.

I am aware of the importance, influence, and standing of the United States Supreme Court, the highest court in the world, and I believe that Mr. Brandeis would adorn this venerable body.

Respectfully, yours,

ISAAC HARRIS.

JOSEPH M. HERMAN SHOE CO.,
159 Lincoln Street, Boston, Mass., February 25, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SENATOR: I have known Mr. Louis Brandeis since he entered upon the practice of law. I have come into close contact with him in his personal and social life, in his professional career, and in his public civic activities. It is because of a long and intimate knowledge of the man that I, a member of an opposing political party, heartily indorse President Wilson's selection of him to be an Associate Justice of the Supreme Court of the United States and earnestly urge the Senate to confirm his appointment.

Mr. Brandeis is one of the few lawyers of our time in this country who has willingly sacrificed lucrative pecuniary returns to an ideal conception of public service. His ability as a lawyer, his luminous and keenly trained intellect, his untiring industry and abnormal capacity for work, would have brought to him permanent retainers from all the great corporate interests in New England had he not voluntarily chosen to forego such retainers in the interest of his own independence of thought and action.

The Nation has always needed the services of men of the Brandeis type, and the confidence of the people in the Nation's highest tribunal can not help but be strengthened by the selection of such a man for a place on its bench.

Of Mr. Brandeis's private life I need not speak, for it has never needed commendation. In temperament he is dignified, calm, and dispassionate; and unless fearlessness in announcing the right as he sees the right can be said to deprive a man of what is called judicial temperament, then Mr. Brandeis possesses that temperament to the highest degree.

Yours, very respectfully,

JOSEPH M. HERMAN.

FEBRUARY 16, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: May I add a word in favor of confirmation of the nomination of Louis D. Brandeis?

I am a Democrat, and have been president of the National Democratic League of College Clubs and vice chairman of the State committee of Massachusetts, In 1911 I was a member of the State senate, and declined renomination. In 1914 and 1915 I was second, and then first, assistant attorney general of the Commnwealth, retiring with the change of administration. I am now engaged in private practice. I am a director of the Massachusetts Farmland Bank and of several manufacturing corporations. I am member of the National Council of the American Judicature Association.

For two years I served in the office of Brandeis, Dunbar & Nutter, and came into personal contact with Mr. Brandeis on legislative matters while in the senate. I do not believe that I am prejudiced in his favor, but I do know from personal experience that his office maintains an unusually high standard of legal ethics. Mr. Brandeis has not been content with being merely personally incorruptible, but he and his associates have insisted that the subordinates in their office adhere to the same high standard.

With the exception of a few lawyers in the certain restricted district, I believe the sentiment of the Boston bar to be distinctly in favor of the Brandeis appointment.

Yours, very truly,

ROGER SHERMAN HOAR.

BOSTON, *March 2, 1916.*

Hon. WILLIAM E. CHILTON,
Chairman of the Subcommittee on Judiciary, Washington, D. C.

DEAR SIR: From reports of the testimony already submitted to your committee appointed to consider the appointment of Louis D. Brandeis to the Supreme Court of the United States, I have learned that certain unfavorable opinions have been placed before your committee regarding the reputation in this community of the man you are considering.

These opinions are to my knowledge not representative of the general opinion of the reputation of Mr. Brandeis, and it is for that reason that I take time to write to you to inform you of my knowledge regarding the reputation of this candidate.

I am a practicing attorney, having offices in Boston and vicinity. I have had brought to my attention on many different occasions the general reputation of Mr. Louis D Brandeis. On every occasion that I have heard mention of him it has always been a recommendation of Mr. Brandeis, praising him for the standard of honesty, trustworthiness, fidelity, and profound knowledge of the law to which he adheres. All these opinions have been expressed by lawyers, members of the same club to which I belong, and who I had reason to believe had personal knowledge and acquaintance with Mr. Brandeis.

I sincerely hope that Mr. Brandeis will be recommended by the committee for appointment to the Supreme Court of the United States.

Respectfully, yours,

M. H. HORBLITT.

FEBRUARY 25, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: I take the liberty of addressing this communication to you for the purpose of indorsing Louis D. Brandeis, who has been nominated by President Wilson as Associate Justice of the Supreme Court of the United States.

I am a lawyer with offices in Boston, and I have been in active practice for eight years.

I am president of the Associated Young Men's Hebrew Associations of New England, an organization comprising 45 young men's Hebrew associations scattered throughout the New England States, with a total membership of over 15,000 men. In my capacity as president of this organization, for the past two years, I have had occasion to travel throughout the district, coming in contact with large numbers of our citizens, and I can say that everywhere I have heard only the highest words of praise and commendation of Mr. Brandeis.

At a number of large public meetings that I have been present, addressed by Mr. Brandeis, the reception accorded him far surpassed any that I have ever witnessed received by any private citizen.

Ever since his nomination I have talked to many members of the Massachusetts bar, and I have heard the appointment generally discussed. In no instance have I heard anything but approval, and in no instance have I heard anything unfavorable.

There is no question in my mind but that the opposition to his appointment comes from a very small and narrow circle, and that the opinions that they express are their own and not those of the general public or of the large majority of the members of the Massachusetts bar.

I heard of Mr. Brandeis even before I became a member of the bar, and for the past two years I have come in contact with him personally. He has always impressed me as being a man of high ideals and principles, possessing a keen and analytical mind and a close student of social and economic problems. He unquestionably possesses all of the qualifications that should go to make of him a great jurist.

I am, very respectfully, yours,

ALBERT HURWITZ.

FEBRUARY 24, 1916.

Hon. C. S. THOMAS.

MY DEAR SENATOR: I have known and contacted with Brandeis for over 25 years and have never known or heard of his being guilty of unprofessional conduct.

As his ability is conceded, it is merely a matter of judicial temperament, and that is another term for viewpoint and perspective. He possesses it as much as Milburn or Cromwell or men who would be named by them, and very much more than A. L. Lowell, president of Harvard University, who, having selected a Jewish holy day for examinations last summer, refused to allow Jewish students another day for taking the examinations and advised them to dictate the work to hired stenographers.

We need men on the bench who will not measure and limit rights and liberties of this century by precedents and opinions of the mediaeval ages.

Very respectfully,

H. J. JAQUITH, LL. B.

FEBRUARY 19, 1916.

Hon. WILLIAM E. CHILTON,
Chairman Senate Subcommittee, Washington, D. C.

DEAR SIR: In view of the suggestion made to your committee, that an unfavorable opinion of Mr. Brandeis held by a portion of this community should in itself prevent his confirmation, I take the liberty of stating my dissent from this opinion of him and from the position so suggested. Mr. Brandeis's talents and legal learning are undisputed. These, with his wide experience, his study of public questions, and especially his readiness and resourcefulness in recognizing and meeting changing industrial conditions, enable him to make a contribution to public service as a Justice of the Supreme Court which possibly no other man in the country could make. I have been in the practice of law in Boston since 1898, have known Mr. Brandeis during most of that time, and have heard his character frequently discussed. While I have known of the unfavorable opinion of him entertained by a considerable number of lawyers, including men of character and standing, nevertheless, I have not heard from lawyers any specific charges of unprofessional or dishonorable conduct made with personal knowledge, and I think I have not heard from lawyers specific reference to cases, upon which an unfavorable opinion was based, outside of those which have been mentioned before your committee. Considering the many heated controversies, private and public, in which Mr. Brandeis has been engaged, testimony as to his reputation can have little weight except so far as it is shown to rest upon facts. My own acquaintance with Mr. Brandeis for some 15 years leads me to believe him to be a man honorably and sincerely devoted to the public interest.

Respectfully, yours,

ELIOT N. JONES.

WORCESTER, MASS., *March 4, 1916.*

Senator WILLIAM CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: During the 12 years I have been in business it has been my good fortune to come in personal contact with the Hon. Louis D. Brandeis, whose appointment to the Supreme Court is being considered by your committee, and it gives me pleasure to state that I have always found him to be a man of the highest integrity and ideals. My contact with him and knowledge of him gives me every reason to believe him absolutely honest and straightforward in business dealings and in his public life.

Whatever opposition to his confirmation may develop must, it seems to me, come either from a very narrow circle of attorneys or else from the interests which Mr. Brandeis has necessarily (and not unworthily) antagonized during his public career.

Such opposition certainly does not represent the sound sentiment of the community, which, to the best of my belief, is strongly in favor of Mr. Brandeis's confirmation.

For all these reasons, and for the best interests of the commonweal, I trust you may speedily report in favor of Mr. Brandeis's confirmation.

Very truly, yours,

MAURICE L. KATZ.

801–805 TREMONT BUILDING,
Boston, February 18, 1916.

DEAR SENATOR CHILTON: Respecting the appointment of Hon. Louis D. Brandeis to the Supreme Court of the United States, I want to say as a lawyer, 47 years old, as a member of the bar association of the city of Boston, and as a member of the American Bar Association, that I consider Mr. Brandeis not only an able attorney, but a man above reproach, who will add ability, integrity, grace, and dignity to the great bench to which he has been appointed. He is an honest man, conscientious to a marked degree, who has raised himself above the sordidness and show of mere wealth, and looks to the character and worth of the individual as the better elements of our citizenship aside from mere accumulation of cash. Louis D. Brandeis is a man with a vision of the American people and the Nation's possibilities. He will hew to the line for the future of the great Republic and the rights of all of its citizens.

Perhaps I should add as a means of identifying myself, that I served three years as a member of the Boston school committee, a board of five; and I am now a member of the Boston Finance Commission, a board of five, appointed by the governor of our Commonwealth to supervise the finances of the city of Boston.

I am, respectfully, yours,

JAMES P. MAGENIS.

Hon. WILLIAM E. CHILTON.
Chairman Subcommittee, Washington, D. C.

FEBRUARY 18, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: I venture to write to you on behalf of Louis D. Brandeis and express the hope that his appointment may be confirmed.

I have been a member of the Massachusetts bar since 1902 and am a member of the Boston Bar Association and the Massachusetts Bar Association. For the last 10 years I have been prominently identified with labor interests, and have represented labor unions and the American Federation of Labor officially as their attorney during practically all that time. In the course of my practice I have had occasion to meet Mr. Brandeis professionally many times, and from the standpoint of labor I do not hesitate to say that his conduct has been admirable. He has been fearless in his championship of the people's rights and has never hesitated to take up the cause of a labor union or even of unorganized workers when he thought that cause was just. He stands very high in the estimation of the labor men of New England, and I know of nothing which would afford them greater satisfaction than his confirmation as a judge of the United States Supreme Court.

I venture to say that most of his enemies have been made by his championship of the people's rights, and I know of no instance where a whisper has been raised against him by the "people" themselves. I am very sure that he will make a strong, able, fearless, and impartial judge, and that, high and august as the United States Supreme Bench is, Louis D. Brandeis would grace it.

Yours, very truly,

FREDERICK W. MANSFIELD.

MARCH 2, 1916.

Hon. W. E. CHILTON,
Chairman Subcommittee, United States Senate, Washington, D. C.

DEAR SIR: As a member of the Massachusetts bar of many years' standing, I consider it my duty to express my opinion regarding the appointment of Louis D. Brandeis to the Supreme Court of the United States. That I am not influenced by political motives or partisan considerations is evidenced by the fact that I am and always have been a Republican.

It is, however, a pleasure to advocate the confirmation of a lawyer who possesses not only legal ability of the highest order but also a judicial mind and foresight such as was possessed by the framers of the Constitution of our country. His untiring efforts in behalf of the rights of his fellow citizens and indomitable courage in opposing wrong has won him hosts of ardent friends, and, naturally, bitter enemies.

The general sentiment of the public in Massachusetts is unquestionably with Mr. Brandeis, and with the exception of the interests which have reason to fear his unflinching and unswerving fidelity to the public welfare, it is the desire of Massachusetts that he be confirmed. The confirmation of Mr. Brandeis as a justice of the United States Supreme Court would be a distinct addition in character, legal knowledge, and judicial ability, and will surely add to the respect and esteem in which this highest judicial body of the Nation is held by the great masses of its citizens.

Respectfully, yours,

HENRY I. MORRISON.

FEBRUARY 23, 1916.

Hon. WILLIAM E. CHILTON,
Chairman of Subcommittee on Judiciary,
United States Senate, Washington, D. C.

DEAR SIR: I wish to record my earnest desire that the appointment of Mr. Brandeis as a judge of the Supreme Judicial Court be confirmed.

I am not and never have been a Democrat, but write because from some personal knowledge of what Mr. Brandeis has done I think he is inevitably qualified for the position.

Respectfully, yours,

FRANK H. NOYES,
73 Tremont Street, Boston, Mass.

MARCH 1, 1916.

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: I am sending this letter as an indorsement of Louis D. Brandeis, who has been nominated as a Justice of the United States Supreme Court. I have practiced in Boston for about eight years and have always been identified as a member of the Republican Party.

The general opinion concerning Mr. Brandeis which has come to my attention and knowledge has been that he is one of the ablest attorneys practicing in this country. I have never heard his character assailed or integrity questioned by any except a few of the financial interests who may have suffered somewhat by Mr. Brandeis's activity as a friend and counsel of the general public.

I sincerely trust that Mr. Brandeis will receive the confirmation of the United States Senate which he justly deserves.

Yours, respectfully,

MAX L. LEVENSON.

MARCH 2, 1916.

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: I wish to record my indorsement of Louis D. Brandeis, recently nominated as a Justice of the United States Supreme Court. As a member of the Massachusetts bar for about 14 years I have had some opportunity of judging Mr. Brandeis, both from a professional and personal standpoint, and I wish to say that I have nothing but the highest regard for his integrity, honesty, and ability. I feel sure that his many years of activity and practice before all courts and commissions of this country have given him a vast experience and unquestioned judicial temperament.

My residence is in Chelsea, Mass., the home city of Congressman Ernest W. Roberts. I have always been identified as a member of the Republican Party, having had the privilege of being a member of the Republican city committee and a member of the school board of the city of Chelsea for several years. I am now representing the fifth Suffolk district as a member of the Massachusetts Legislature.

I am sure that any opposition which may be brought to your attention against the confirmation of Mr. Brandeis comes from a small circle of people who are biased either because of narrowmindedness or because they may have suffered financially from Mr. Brandeis's activity in the public welfare.

Trusting that Mr. Brandeis will receive the confirmation of the United States Senate, I am,

Yours, very respectfully,

JOSEPH M. LEVENSON.

BOSTON, *March 3, 1916.*

Senator WILLIAM E. CHILTON,
Washington, D. C.

DEAR SIR: I graduated from Harvard College in 1903 and from the Harvard Law School in 1906. I passed the Massachusetts bar examination in 1905 and have been practicing at the Suffolk bar ever since.

While at the law school I heard of the fame of Louis D. Brandeis, Esq., and from the time I left the law school to this date I have had considerable opportunity to watch Mr. Brandeis grow in reputation as a lawyer and as a man. I am happy to be able to say that his growth in both respects in the estimation of the community has simply been marvelous. He certainly has been one wonderful example and inspiration for all members of the bar and all other persons in the community. I have never heard any criticisms derogatory to his character or reputation. His wonderful and repeated successes in the most complicated cases and his untiring efforts in behalf of the people at the sacrifice of considerable time and expense to himself have endeared him to the country at large.

It is no wonder that our honorable President of these United States has seen fit to appoint him as the one man fit and able to occupy the exalted position of Associate Justice of the Supreme Court of the United States.

Can it be said that our beloved President has been influenced by anything outside of the highest motive for the welfare of all the people in his appointment of Mr. Brandeis? The whole record of Mr. Brandeis's career must certainly have been reviewed by the President before he exercised the privilege and right under the Constitution to fill the vacancy on the Supreme Bench.

It seems to me that the opposition to Mr. Brandeis's confirmation comes from persons who are envious or jealous of his remarkable rise in the world or to the fact that Mr. Brandeis has so often and so successfully championed the cause of the common people against encroachments by monopolists and monopolistic combinations.

I humbly join in the almost universal desire that our President's appointee be unanimously confirmed.

I have the honor to be, respectfully, yours,

ABRAHAM LEVENTALL.

MARCH 7, 1916.

Hon. WILLIAM CHILTON,
Chairman of the Senate Subcommittee, Washington, D. C.

DEAR SIR: As a member of the Women Lawyers' Association of the State of Massachusetts and as a practicing attorney before the bar of this State I earnestly advocate the confirmation of the nomination of Louis D. Brandeis for the United States Supreme Judicial Court.

Trusting that you will recognize his entire fitness for that great and honorable position, I am,

Yours, truly,

ROSAMOND H. LEVY.

MARCH 1, 1916.

Senator WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: Having made a specialty of the patent laws of this country and foreign countries, for the past five years our office has been doing a great deal of associate work on patent matters with the general-law practitioners in and about this city.

We are personally acquainted with Mr. Louis D. Brandeis, the President's nominee for the vacancy in the Supreme Court of the United States of America, and have, since the question of his confirmation has arisen, discussed his qualifications for that office with many of our clients, who are prominent members of the Massachusetts bar. We find their opinions to be absolutely in his favor and are satisfied that the opinions expressed before your honorable committee, as we understand them, by a few attorneys from Boston, to the end that the reputation of Mr. Brandeis is questioned throughout the Massachusetts bar, are positively without foundation.

We sincerely urge the confirmation of Mr. Louis D. Brandeis as Associate Justice of the Supreme Court of the United States.

Very respectfully,

DAVID LICHTENSTEIN.
BENJAMIN H. CHERTOK.

MARCH 8, 1916.

Senator WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

MY DEAR SENATOR: May I express my sincere hope that your committee will report favorably on the confirmation of Louis D. Brandeis as associate justice of the Supreme Court of the United States.

As a member of the Massachusetts bar and as president of the Associated Young Women's Hebrew Associations of New England I have had occasion to meet Mr. Brandeis frequently and have found him to be a man of the highest integrity.

I am certain that as a member of the Supreme Bench of the United States Mr. Brandeis will fill the office honorably.

Yours, very truly,

S. M. LIPNER.

BOSTON, MASS., *March 3, 1916.*

JACOB J. KAPLAN, Esq.,
161 Devonshire Street, Boston, Mass.

DEAR MR. KAPLAN: Inclosed herewith find copies of letters in the Brandeis matter, which I received from Harry H. Guterman, Henry I. Morrison, David Lichtenstein, Benjamin H. Chertok, Harry Silverman, Joseph H. Samuel, Florence F. Sullivan, Israel Ruby, Isaac Harris, Elisha Greenhood, Max M. Fritz, A. E. Pinanski, Louis Abrahams, William E. Blatt, Isaac H. Greenburg, Harry E. Dubinsky, Edward E. Ginsburg, Albert Hurwitz, Eugene M. Schwarzenberg, Adolphus M. Burroughs, Samuel L. Silverman, George E. Gordon, Samuel H. Borofsky, Nathaniel Golden, Maurice Bergman, Emmanuel Cohen, Samuel L. Wolfson, Franklin M. Cohen.

Very truly, yours,

DAVID A. LOURIE.

FEBRUARY 18, 1916.

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: As a member of the Massachusetts bar for 26 years, 23 of which have been spent in general practice, and 3 years as assistant corporation counsel for the city of Boston, and having known and had professional dealings with the firm of Brandeis, Dunbar & Nutter, of which Louis D. Brandeis is the senior member, I indorse his appointment for confirmation as an Associate Justice of the Supreme Court of the United States. I believe that Mr. Brandeis will bring to the high office to which he has been nominated ability, learning, and that sense of unswerving and impartial justice which has ever been the keystone in the arch of our Government.

Yours, respectfully,

JOSEPH P. LYONS,
Assistant Corporation Counsel.

BOSTON, MASS., *March 3, 1916.*

Hon. WILLIAM E. CHILTON,
Chairman Judiciary Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: By way of introducing myself, I have been in the general practice of law for about 10 years, and have been identified with the Democratic Party since 1896; have also been a delegate to the Democratic National Convention at Denver and an alternate delegate to the Baltimore convention. I am at present connected with the law department of the city of Boston, having charge of the "Workmen's compensation" cases.

My practice and connections have brought me in contact with a very large majority of the practicing lawyers of Boston and Massachusetts, generally, and I am delighted to say that I find the reputation of Louis Brandeis to be excellent, as far as honesty and ability are concerned.

I most heartily approve of his confirmation as a member of the United States Supreme Court.

Respectfully, yours,

H. MURRAY PATSUKKI.

FEBRUARY 28, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: I should like to add my indorsement to the nomination of Louis D. Brandeis, Esq., as Associate Justice of the Supreme Court of the United States.

I am a graduate of Harvard College, 1908, and Harvard Law School, 1910, and have been a member of the Masschusetts bar since January, 1910. For two years after leaving the law school I was in the legal department of the Boston Elevated Railway Co. and for the past three years have been assistant to the general attorney of that company and engaged in the general practice of the law. I have known Mr. Brandeis personally for the past seven or eight years and I believe that I am familiar with at least his public career of the past 20 years. Although I have been intimately interested in the opposite side of many public, particularly franchise questions in which Mr. Brandeis has taken an important part. I have always felt and do still feel tht he is a man of absolute integrty, exceptional ability and mentality, and unusual fairness.

I believe that I voice the general sentiment of the younger members of the bar when I say that Mr. Brandeis is a shining example of the unselfish, public-spirited citizen, earnest advocate, and profound scholar.

Very truly, yours,

W. E. PINANSKI,
Assistant to the General Attorney.

FEBRUARY 16, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: I trust that there is no impropriety in the liberty I am taking in writing you this letter indorsing Louis D. Brandeis as an Associate Justice of the Supreme Court of the United States.

I am now and have been practicing law in Boston for 16 years. I was assistant district attorney in Suffolk County in 1909, and in 1906 was appointed a special justice of the Boston juvenile court, a life appointment.

I have known Mr. Brandeis, or of him, since I commenced the practice of the law. I have had matters connected with his office, although I have not dealt with him personally therein.

It is not unnatural that many should differ with Mr. Brandeis. His career has been exceedingly active and fruitful, and it would be impossible to expect that his acts should meet with the commendation of all. I can not believe, however, that the present opposition is viewed with favor by the great mass of our community. To them Mr. Brandeis towers as a man of great intellect and energy, who has unselfishly served the people, and who has accomplished large constructive good in their behalf.

I believe that Mr. Brandeis is preeminently fitted for the position, and, as far as one can foresee, will add genuine strength to the Supreme Court. The President has assumed the responsibility of making the appointment, and I believe he has exercised sound judgment. I hope the United States Senate will see fit to sustain the President in the matter.

Yours, very truly,

PHILIP RUBENSTEIN.

BOSTON, *March 2, 1916.*

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

MY DEAR SIR: Permit me to express my approval of the nomination of Louis D. Brandeis, Esq., as a member of the Supreme Court Bench of the United States. I sincerely trust that your committee will see fit to report favorably on the nomination to the honorable Senate.

I have been engaged in the practice of law for three years, and during that time I have had occasion to discuss the honesty, integrity, and ability of Louis D. Brandeis, Esq., at various times, and the sentiment of opinion always expressed was that he was a credit to our profession, and it is my sincere belief that his appointment to the Supreme Court Bench will add to the same a man who had not only himself at heart but his country and people.

Sincerely, yours,

ISRAEL RUBY.

BOSTON, *March 2, 1916.*

Senator WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: In reference to the confirmation of Louis D. Brandeis as a member of the Supreme Court of the United States, now pending before your committee for its consideration, I desire to be placed on record as follows:

I might say at the outset that I am in my fifth year at the bar, active in practice, and of the large number of lawyers with whom I have come in contact, a very large majority are in favor of confirmation of the nominee.

I do not personally know him, but so far as I can ascertain—and I have discussed the matter with a number—his reputation at the bar for ability, efficiency, and integrity is good.

I desire to be recorded in favor of confirmation.

Very truly, yours, JOSEPH H. SAMUEL.

[Law offices of Eugene M. Schwarzenberg and Edwin F. Schwarzenberg.]

BOSTON, MASS., *February 25, 1916.*

Senator WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: As a member of the bar of 12 years' standing and one who has participated somewhat in civic life, having been chairman of the good government association of the town in which I lived for several years, as well as a member of the Republican town committee and town council, I feel it my duty to write to express my position on the treatment being accorded to Mr. Louis D. Brandeis.

I have known Mr. Brandeis, both socially and professionally, for upward of 20 years, and have had a great many dealings with him personally and with his office, and have always found him conscientious, upright, and a man of highest integrity, high ideals, and fine ethics, besides which his ability can not in the least degree be impugned.

I wish to express my unqualified approval of his appointment as a member of the United States Supreme Court, believing that his appointment will add dignity and strength to that body. It is my belief, from what conversations I have had with other attorneys, that the only opposition to him in this section comes from a very narrow circle who are allowing selfish motives to warp their judgment.

With the sincere wish that the action of the committee will be favorable to Mr. Brandeis, I am,

Yours, respectfully,

——— ———.

March 3, 1916.

Senator William E. Chilton,
Chairman of the Subcommittee, United States Senate,
Washington, D. C.

Dear Sir: It is with a great deal of regret that I note the opposition against the confirmation of Louis D. Brandeis as Associate Judge of the Supreme Court of the United States. Personally, I think it is a misfortune to harass and malign a man who, to my judgment, in the words of Shakespeare, "is above suspicion."

I have practiced law since 1904, and have had more or less to do with the office of Brandeis, Dunbar & Nutter, and there never came a time that I could find any fault with the treatment I received from that office.

Mr. Brandeis has been generally regarded as a man of great legal ability. Not only is he recognized as a leader at the bar, but is known as a man who has given a great deal of his time to work for the public good, and is, in a sense, accepted as a leader of men.

His honesty, character, ability, and his general and judicial temperament has never, to my mind, been questioned. Personally, I believe that those who oppose him do so not because he lacks ability or honesty, but because they recognize the superior man.

I believe that this country needs the service of a man of this type, and I am sure that time will make those who now oppose him ashamed of their conduct.

I sincerely hope that the committee will report favorably upon his confirmation.

Respectfully, yours,

Samuel Seligman.

March 2, 1916.

Hon. William E. Chilton,
Washington, D. C.

Sir: I most respectfully urge the confirmation of Louis D. Brandeis, Esq., as an Associate Justice of the United States Supreme Court. His sterling character, unquestioned ability, fearlessness when fighting for a just cause, and sincerety of purpose in protecting the weak and oppressed are a few of his qualifications which make him eminently fit for this position which he will hold with credit to himself and honor to his country.

Respectfully, yours,

Harry Silverman.

[Samuel L. Silverman, 40 Court Street, Boston.]

February 25, 1916.

Senator William E. Chilton,
Chairman Subcommittee, United States Senate,
Washington, D. C.

Dear Sir: The nomination of Louis D. Brandeis, Esq., of Boston, as Associate Justice of the Supreme Court of the United States is, in my opinion, one of the best nominations that could be made.

I have been a member of the Massachusetts bar since 1899, and I have yet to hear any objection to Mr. Brandeis. It may be that I do not come in contact

with that class of attorneys who object to him. The feeling among the everyday members of the bar is that the nomination is a good one and will be a great credit to the United States.

I have had some business with Mr. Brandeis's office, and have found them fair and square.

I have served as a member of the Republican State Committee of Massachusetts for two years, and I have in past years actively participated in politics.

If you know anything about conditions in Boston you will know that the attorneys who oppose Mr. Brandeis are of a certain class who oppose everybody unless they come within their circle.

Very truly, yours,

SAMUEL L. SILVERMAN.

BOSTON, *March 2, 1916.*

Senator WILLIAM E. CHILTON,
United States Senate,
Washington, D. C.

DEAR SIR: I am interested in the confirmation of Louis D. Brandeis for the office of Associate Justice of the Supreme Court of the United States.

In the outset let me state that I am a practicing lawyer and have been in active practice for 22 years, and during that time have had daily business relations with a great many lawyers, business men, and a representative element of the general public of this community. From my experience and personal knowledge I find the bar of this city has among its members several men that seem to possess very deep-seated prejudices along certain lines, that are the result of views expressed between themselves and within a somewhat limited circle. For reasons satisfactory to themselves, Mr. Brandeis has incurred the active opposition and personal ill-will of these men.

The standard that seems to have been set by these men for the general bar is of their own creation, unwritten, and, to my mind, very artificial and wholly out of sympathy with the rank and file of the 3,000 lawyers that practice before the courts of this city.

I do not claim to know the candidate, but can state for the information of your committee that the reputation and common speech of other lawyers and business men of this city consider Mr. Brandeis as a man who has elevated his character by his lofty and upright principles, according to a standard of honesty and reasonable application and who as a lawyer and practicing attorney has distinguished his profession by the result of his achievements.

I believe such a man to be fully capable of calmly weighing matters that might come before him for judicial interpretation, and a man that would do full credit to the high office to which he has been appointed.

Very truly, yours,

F. F. SULLIVAN.

FEBRUARY 24, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: I want to indorse President Wilson's nomination of Louis D. Brandeis for Associate Justice of the Supreme Court of the United States. I was a member of the Massachusetts Senate in 1907 and 1908 and was the Democratic candidate for governor in 1908 and 1909 and was also a delegate to the Democratic national convention in 1904.

I have been practicing law for 23 years, have always been a Democrat, and have known Mr. Brandeis for 15 years. I have never been associated with him in legal matters or causes, but have frequently been opposed professionally to his firm. While in the senate I was actively interested with him in the establishment of savings-bank insurance and voted for the bill which finally became a law.

I think that he is peculiarly well fitted and qualified for the position of Associate Justice of the United States Supreme Court. His knowledge of law and his breadth and grasp of great public and social questions remarkably fit him for such a high place. I think he has been very much misunderstood by some members of the bar here.

I earnestly hope that his nomination will be confirmed.

Yours, very truly,

JAMES H. VAHEY.

BOSTON, MASS., *March 3, 1916.*

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: In the matter of the appointment of Louis D. Brandeis I wish, as a member of the bar of Massachusetts, to express my confidence and trust in Mr. Brandeis's high character and great ability.

In the city of Revere, where I have my residence, I mix in politics and belong to a number of social clubs and political organizations. Discussing Mr. Brandeis's appointment, the unanimous opinion seems to be that the gentlemen from Boston who are opposing him belong to a class who are known as "blue bloods." The people hark back to a time in Massachusetts, not so very long ago, when Catholics of Irish descent met with similar opposition from the same class who are now opposing Mr. Brandeis. They believe that Mr. Brandeis and men of his race and religion are now facing the same kind of prejudice in their fight for recognition, not of "blue blood" but red blood, courage, ability, and character.

The people, and especially the young lawyers of Boston, who are perhaps more familiar with Mr. Brandeis's career and attainments, are waiting with confidence for the confirmation of Mr. Brandeis as a demonstration that the test for high public office in Washington is the test applied by Mr. Wilson and is not influenced by class, race, or religion, but is determined entirely by character and ability for the office.

Very truly, yours,

P. A. WALSH.

FEBRUARY 16, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: In view of the present discussion as to Mr. Louis D. Brandeis, will you permit me, as one who has known Mr. Brandeis ever since we were together in the Harvard Law School, to say in brief that, although I have not for many years been in active practice, I have had an opportunity to know something of Mr. Brandeis's work in public matters, and that he has shown, in my judgment, not only brilliant ability but public spirit, breadth of view, and generosity both in the matter of time and money in helping on the public work which he has undertaken. As to his integrity, I have entire confidence in it, and would intrust my own affairs to him without hesitation.

Respectfully, yours,

GEORGE WIGGLESWORTH.

MARCH 4, 1916.

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate, Washington, D. C.

DEAR SIR: I desire as a practicing attorney of this city, and in the interest of the community, to add my voice in commendation of the character and ability of Mr. Louis D. Brandeis, whose appointment as Justice to the Supreme Court is now awaiting the consideration of the Senate.

I sincerely trust he will be confirmed. I have followed Mr. Louis D. Brandeis's career with great interest, his professional and public activities are known by all men the country over, and I believe there is no one in point of ability or in character more fitted than he to strengthen the great court to which he has been appointed.

The reported sentiment of the Boston bar as unfavorable to Mr. Louis D. Brandeis is, I think, a great perversion of the truth, and it is limited almost wholly to those who have clients identified with vested interests and who are opposed to the measures advocated by Mr. Louis D. Brandeis. The disinterested members of the bar by an overwhelming majority respect him as a man of sterling worth and splendid ability.

Volumes might be written of his worth, but the main facts have already appeared in evidence, and I believe they should be conclusive to his remarkable worth and ability. It is certain that the great masses of the people, both lawyers and laity, will rejoice his confirmation, which is confidently expected.

I have the honor to remain,

Very respectfully, yours,

SAMUEL J. WITKIN.

[Law offices of Samuel L. Wolfson, 40 Court Street, Boston, Mass.]

FEBRUARY 29, 1916.

Senator WILLIAM E. CHILTON,
Chairman subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: I am an A. B., Harvard University, and LL. B., Boston University, and have been a member of the Massachusetts bar, Suffolk County, since 1913 and United States district court bar since 1915.

I have been for a great many years an ardent admirer of Mr. Louis D. Brandeis, because I believe him to be one of the foremost Americans of to-day and typical of American principles and democracy. I heartily approve his appointment to the United States Supreme Bench because I feel that he will stand up for what is equitable and just at all times and will make an excellent interpreter of the laws because of his vast legal experience.

I am of the opinion that the opposition to his confirmation is confined to a very small sphere, composed only of those who bear him a personal grudge and see a possible opportunity at hand to satisfy themselves, and it does not represent the voice of the people.

Respectfully, yours,

——— ———.

A few miscellaneous letters from lawyers outside of Boston or from nonlawyers:

MARCH 30, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: I am taking the liberty of mailing you under another cover copy of an article concerning Louis D. Brandeis, whom I have had the honor of knowing a great many years.

As a citizen of Massachusetts and a former candidate for the nomination of governor and former chairman of the commission of efficiency and economy, I beg to say that in my opinion there is no living American who is more honest and more fearless, and no man that I know has better judgment or is more patriotic.

There are many people in Massachusetts and elsewhere throughout the country who believe that Brandeis resembles Abraham Lincoln in appearance and in character.

Yours, sincerely,

NORMAN H. WHITE.

FEBRUARY 9, 1916.

Hon. GEORGE E. CHAMBERLAIN,
Senate Chamber, Washington, D. C.:

Urge the confirmation of Brandeis because he is able, just, and progressive. One of the best appointments President could have made. No one opposing here but reactionaries, special-privilege beneficiaries, and big-business representatives. Opponents here include all who were applauding in advance nomination of Taft as the graceful thing to do.

WILLIAM U'REN.

FEBRUARY 19, 1916.

Hon. WILLIAM E. CHILTON,
Chairman Senate Subcommittee.

DEAR SIR: The newspapers report that certain gentlemen from this vicinity have given your committee an unfavorable estimate of the character of Mr. Louis D. Brandeis and of his standing in the community.

I think it is fair to say that the hostile estimates attributed to these gentlemen are not unexpected and occasion little surprise in his locality. We are accustomed to having honorable men, of strong convictions and divergent interests, differ painfully in their estimates of one another. But I think it is also fair to say that these critics of Mr. Brandeis can not speak for the community at large.

I, for example, have known both Mr. Brandeis and some of his critics for many years. Part of this time I was a member of the faculty of Harvard University, as teacher of political economy and sociology; subsequently colleague and successor of the late Edward Everett Hale as minister of the South Congregational Society of Boston. The longer I have known Mr. Brandeis the more I have admired him, not only for his personal qualities but also for his knowledge of economic conditions; his insight and impartiality in regard to the relations of capital and labor; his public spirit and devotion to the general welfare.

I regard him as one of the most conscientious members of his great profession; as one of the sanest, wisest, and most trustworthy citizens of this Commonwealth.

I was glad when the President nominated him to the Supreme Court; first, because I, like many others, am persuaded that he measures up to the highest standards of moral character, of professional equipment, of judicial temper, of patriotic devotion; second, because I believe he will bring to his high office a statesmanlike grasp of the fundamental principles and problems of our social, political, and industrial life.

Sincerely, yours,

EDWARD CUMMINGS.

P. S.—I think I am not identified with Mr. Brandeis either in race, religion, or political party.

ANDOVER THEOLOGICAL SEMINARY,
Cambridge, Mass., February 17, 1916.

Senator WILLIAM E. CHILTON,
Chairman Subcommittee of the Senate.

DEAR SIR: May I be allowed the privilege of expressing to you my appreciation of the character and service of Mr. L. D. Brandeis and my judgment of his eminent fitness for the great position for which our honored President has chosen him. I have known Mr. Brandeis for more than 20 years; I have heard him speak on many occasions on large questions, and have been brought into personal relations with him from our mutual interest in the welfare of workingmen. He has impressed me profoundly as a man of sterling character, absolutely devoted to the common welfare, thoroughly convinced that righteousness alone exalteth a nation, and so eager that good be accomplished that he willingly works in the background while others receive the commendation.

In view of the fact that great social problems are coming more and more to the Supreme Court, it seems to me that he is eminently fitted for wise and humane judgment on these and other matters. From my contact with various classes of men in the community, I judge that his selection strikes others, with the exception of a small minority, as favorably as it does me.

Yours, respectfully,

DANIEL EVANS.

BOSTON, MASS., *February 25, 1916.*

Senator WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: I am writing you to throw what light I can upon the qualifications of Mr. Louis D. Brandeis for service in the Supreme Court. I have never had any business relations with Mr. Brandeis, but have been a close observer of his activities, both locally and nationally.

While I have no authority to speak for any organization with which I am connected, I think it fair to say that because I am connected with various public organizations in this vicinity I have come to know what kind of a man Mr. Brandeis is. As one of the organizers and president of the United Improvement Association, an affiliation of the various local associations of citizens throughout Boston, I have been associated with Mr. Brandeis and have seen his breadth of view and self-sacrificing contributions of time and money in the interests of the best civil development. As superintendent of the Wells Memorial Institute, I have become acquainted with his energetic and again self-sacrificing work in the upbuilding of our Masssachusetts Savings Bank

Life Insurance system. As director of the Boston Chamber of Commerce and an active member of various of its committees, I have had an opportunity to know of Mr. Brandeis's activities in connection with the New York, New Haven & Hartford Railroad. He has received much censure for his actions in this connection, and I believe that much of the opposition to him now is based upon that. Let me assure you that such opposition is confined to a very small group of people, though the members of that group are wealthy men whose voices are heard afar. Because Mr. Brandeis discovered the evil financial and managerial situation of the New Haven Railroad and warned the public of it and of the need of an early and drastic remedy, he has been blamed as only the authors of the situation deserve. He is charged with the wrecking of the New Haven Railroad when what he really did was the very useful service of warning us that the railroad would be wrecked unless we took effective means to prevent such a catastrophe. One of our most prominent business men said to me very recently that he believed the opposition to Mr. Brandeis regarding the New Haven activities, which comes largely from the banking interest, is due to the fact that he discovered and made public the real situation of affairs before the bankers themselves had discovered it. It is my deliberate opinion that had Mr. Brandeis not made public the facts regarding the New Haven situation that debacle might have been even more serious than it is.

Finally, may I say that I believe the personal charges against Mr. Brandeis are due to the fact that he refuses to continue as counsel for a company after he becomes convinced that that company is working contrary to the public interest and demands his assistance in securing results which work against essential justice? Such a position is not in keeping with the general practice in the legal profession and is not required by legal ethics. In my opinion, however, it is a step in advance of what is absolutely required by the ethics of the profession; and I believe that in taking such a position he is standing for the higher morality rather than the lower ethics of the particular group. Not being a lawyer, I can not express any opinion of value as to Mr. Brandeis's purely legal contribution to the Supreme Court, but I do know that his intimate knowledge of the actual living conditions and problems of a great majority of the inhabitants of this country will be of inestimable value in giving a human and humanitarian balance to the views of the Supreme Court.

Respectfully, yours,

William C. Ewing.

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60 State Street, Boston, Mass.,
February 17, 1916.

Hon. William E. Chilton,
Chairman of Subcommittee,
United States Senate, Washington, D. C.

Dear Senator: I write to urge the pending confirmation of Louis D. Brandeis. I am one of those citizens of Massachusetts who conceive Mr. Brandeis to be a great civic asset and potentially a distinct national asset. To many minds he stands as the embodiment of popular intelligence and courage striving for popular rights against selfish corporate aggression. He has a definite record of public achievement unequaled, I believe, by any other member of the bar in this State.

He is essentially a constructive and conservative element in the community, in that he believes in and assists orderly and evolutionary social progress. He is a man with a social vision, but never visionary; a useful servant of the public, but never servile; a profound and brilliant lawyer, who knows that historically the best law is ever expressive of the noblest social aspirations.

Faithfully,

William Lloyd Garrison, Jr.

February 17, 1916.

Hon. William E. Chilton,
Chairman Subcommittee,
United States Senate, Washington, D. C.

Dear Sir: Louis D. Brandeis is, in my opinion, absolutely devoid of all selfish interests. I do not intend to presume upon his dignity by defending

his character, but wish to say that during the last 10 years in which he has served as our counsel we have found him to be both conservative and constructive in his advice.

There are embodied in Mr. Brandeis so many of the essential elements that fit him for the Associate Justice of the Supreme Court it is inconceivable that any testimony presented should influence your committee to the extent of robbing this country of the power and quality of justice that Mr. Brandeis will administer.

It is my belief that we voice the opinion of the conservative element of the country.

Yours, very truly,

E. G. HOWES.

FEBRUARY 15, 1916.

MY DEAR SIR: Inasmuch as so many allegations by petition or personal statement have been presented to the subcommittee to consider the fitness of Mr. Brandeis for the Supreme Court, many of which allege that he is temperamentally unfit to act in a judicial capacity, may I take the liberty of contributing an opinion on the other side. My professional work at Harvard has for many years required that I keep in close touch with transportation and labor matters, and quite aside from personal acquaintance with Mr. Brandeis, it has been in the true line of my work to follow every detail of his career. Two particular events, in my judgment, prove that Mr. Brandeis, far from lacking the judicial habit of mind, is preeminently fitted to exercise it. The first of these is his attitude on the rate advance cases, wherein, as your committee has already been so fully informed, he was willing to so far do justice to both sides as to concede the need of revenue for the carriers while still fully comprehending the interest of the public, which he represented, in low transportation rates. As a warrant for this judgment, and merely in order to give it weight technically before your committee, I am taking the liberty of inclosing a few citations from reviews of certain books on railroads which I have published during the last few years.

The second instance of marked judicial capacity on the part of Mr. Brandeis is his record in the New York protocol, covering 50,000 or more garment workers, and, substituting standardized and orderly conduct of a great business for chaos and incessant strife. The fact that Brandeis should have been chosen as the third member of the arbitration board, which was the capstone of the system, and should in that difficult position have continued to promote orderly intercourse between capital and labor, is no mean achievement. It could by no possibility have been performed by one who did not possess the qualities of fairness and nice discrimination as to human rights in the highest degree. On this subject also my warrant for expression of opinion is based upon a quarter of a century of instruction and writing on labor problems in connection with my work at Harvard.

You will pardon the length of this communication, but it is difficult more briefly to substantiate the claim which the friends of Mr. Brandeis bring forward in behalf of this candidacy.

Believe me, very truly, yours,

WILLIAM L. RIPLEY.

Hon. T. H. WALSH.

FEBRUARY 21, 1916.

Hon. WILLIAM E. CHILTON,
Chairman Committee on Brandeis Nomination, Washington D. C.

DEAR SIR: I take the liberty of placing before you copy of telegram which I sent to President Wilson immediately after the announcement of his nomination of Mr. Louis D. Brandeis to vacancy on the bench of the Supreme Court of the United States:

"The PRESIDENT,
"*Washington, D. C.:*

"Your nomination of Louis D. Brandeis affords renewed evidence of your sagacity, is a fine tribute to his spendid qualifications, and a gratifying recognition of the confidence in which he is held by the masses of the American people."

I may add that for several years I have been in position to gauge with some accuracy the views of the people of Boston as a whole and to contrast them with

those of a much more circumscribed local group mistakenly disposed to regard its own sentiments as those of the entire community.

Four men chanced to lunch together to-day at one table at one of our principal clubs. One is president of a prominent Boston savings bank, the second is a well-known lawyer occupying a high elective office, the third is one of the leading dry-goods merchants of Boston, the fourth (myself) is president of two flour milling companies. Among other matters the nomination of Mr. Brandeis was discussed. One suggested that those who favor his nomination hold up their hands and all four men held their hands aloft.

This is, I believe, much nearer a correct illustration of the views of the people of Boston—not to go farther from home—than was the petition recently signed here and forwarded for presentation to your committee.

If the matter were submitted to a vote of our citizens, among whom Mr. Brandeis has lived and worked the greater part of his lifetime, I believe the majority in his favor would be overwhelming.

Very respectfully, yours,

BERNARD J. ROTHWELL.

[J. Russel Marble & Co., Worchester, Mass., also 77 Pearl Street, Boston, Mass. J. Russel Marble, Rufus S. Woodward, Charles E. Eager, Arthur E. Nye.]

WORCESTER, *February 23, 1916.*

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee Judiciary Committee,
United States Senate, Washington, D. C.

DEAR SIR: As a merchant of Boston and Worcester, Mass., and doing a very considerable business with the principal paper, woolen, cotton, and other manufacturers of New England, I want to state that I believe that a large proportion of the people of New England approve of the nomination of Louis D. Brandeis for Justice of the Supreme Court.

I have met Mr. Brandeis frequently in lines of work which are for the uplift and benefit of the people. His ability is recognized and I believe that he has a large degree of judiciary temperament. He is the only lawyer, so far as I know, of any particular prominence who has appeared before the Legislature of Massachusetts in the last 10 years in the interests of the people as a whole. The other lawyers have been there, chiefly representing the interests of corporations, whose interests are sometimes inimitable to those of the people. The Hon. Robert M. Washburn, a Republican, and more than five years a member of the Massachusetts House of Representatives, now a member of the Massachusetts Senate, himself a lawyer, has approved publicly of Mr. Brandeis's confirmation, as per inclosed interview in the Worcester Evening Gazette.

Knowing Mr. Brandeis as I do, and the sentiment of the New England people, I believe the court would be strengthened by his confirmation, and the respect for the court, if possible, increased among a large part of the community.

Very truly, yours,

J. RUSSELL MARBLE.

MARCH 3, 1916.

Mr. A. LAWRENCE LOWELL,
President Harvard University, Cambridge, Mass.

DEAR SIR: As a one-time member of the undergraduate body of the university, I feel that I owe it both to the traditions of that institution and to my own sense of duty to add my protest to that of the undergraduates who have challenged your opinion as stated to the Senate committee of the fitness of Mr. Louis D. Brandeis for service on the Supreme Court of the United States.

I have some personal acquaintance with Mr. Brandeis. I have a good working knowledge of his activities in the public behalf during the past 10 years. There is no man of his time, in my opinion, who has rendered as valuable service to the cause of humanity and progress. He is of Supreme Court stature at all times. Under the conditions that prevail to-day in the United States, I believe him to be peculiarly fitted for services on that bench. President Wilson has made no appointment in his career that so honored him as that of Mr. Brandeis. In such a situation, it shocks me that the head of our most illustrious educational institution should join the clamor of the privileged and predatory in-

terests of the country in defaming the reputation of this great lawyer and citizen.

Again I protest—for myself, for the old university ideals of truth seeking and service to humanity.

Truly, yours,

STILES P. JONES,
Class of '88.

HOT SPRINGS, ARK., *March 12, 1916.*

Hon. JOSEPH T. ROBINSON,
United States Senator from Arkansas, Washington, D. C.

MY DEAR SIR: Mr. Malheny, a brother attorney and old schoolmate of yours, informed me that I might use his name as reference in writing to you relative to the confirmation of the Hon. Louis D. Brandeis for Supreme Court Judge, who was indorsed by our local painters' union, No. 401, and a copy of the resolutions sent to you and Senator James P. Clarke on February 22 by special delivery. I wrote Senator Clarke the second time, but have never received a reply to our resolutions nor my letters, and as I am originally from New England and also know ex-Secretary of the Interior Ballinger and many of the ring that attempted to hold up Uncle Sam in Alaska and know Mr. Brandeis did his whole duty in that case and rendered invaluable services to the United States Government and the people of our country and in that and other cases, and that a large majority of the laboring men and law-abiding citizens are in favor of your early action and confirming the President's appointment, I hereby again ask you and your colleagues to stay by us and we will stay by you.

Kindly acknowledge the receipt of this and let me know if you duly received a copy of our resolutions, and oblige your humble friend and servant.

E. E. NEAL,
Box No. 28, Hot Springs, Ark.

JOHN P. HERRMANN, JR., REAL ESTATE CO.,
St. Louis, Mo., March 15, 1916.

To the MEMBERS SENATE JUDICIARY SUBCOMMITTEE,
Washington, D. C.

HONORABLE SIRS: The inclosed copy of my letter to Senator Elihu Root, a copy of which was mailed to Mr. Barnes, of New York City, explains itself.

With all due respect to the Hon. William Taft, the ex-President of the United States, I beg to call your attention to the fact that he was not above accepting the nomination at the hands of the 1912 so-called Republican convention, and that notwithstanding that the platform on which he was previously elected as President called for a revision of the tariff downward, that in place of that the people who had voted for him on that platform were given Canadian reciprocity instead of a revised tariff.

If the other gentlemen who are so strenuously opposing the confirmation of Mr. Louis D. Brandeis are in the same class, it might be well not to lay too much stress on their opinions as to his fitness for that high office. See inclosed editorial from Globe Democrat.

Trusting that you will receive this letter in the friendly spirit in which it is sent and will confirm Mr. Brandeis's appointment, I remain,

Very truly, yours,

A. F. HERRMANN, *1011 Market Street,*
Delegate to the 1912 Progressive Party Convention,
And Chairman Twelfth Congressional District of Missouri.

ST. LOUIS, *February 18, 1916.*

Hon. ELIHU ROOT,
New York City, N. Y.

HONORABLE SIR: You will in all probability recognize the following matter as having been printed on postal cards which were received by various representative men of the so-called Republican National Convention held in Chicago in 1912.

"Rather than stain the nomination for the high office of President with fraud and theft, organize a Progressive Party with the Hon. Theodore Roosevelt as its head."

Now that your State, the Empire State, and your party, the Republican Party of your State, has spoken and given you to understand that they did not consider you fit timber to fill the position of President, the most honorable within the gift of the American people, I sincerely trust that the exalted opinion you had of yourself so dogmatically expressed and displayed while chairman of the national Republican Party convention held in Chicago in 1912 has somewhat diminished.

Might does not always make right, and in this case the lesson has been driven home to you by your own people in your own State.

While your nomination for the highest office was a possibility, your election to same is an absolute impossibility, as we, the Progressives in the western section of the United States, have always resented, nor will we ever forget and few of us ever forgive, the treatment you accorded to us while acting as chairman.

Trusting that your forced retirement to private life may be of a pleasant nature, I am,

Very respectfully, yours,

A. F. HERRMANN, *1011 Market Street,*
Delegate to the 1912 Progressive Party Convention,
And Chairman Twelfth Congressional District of Missouri.

FEBRUARY 18, 1916.

Hon. WILLIAM E. CHILTON,
Chairman of Senate Subcommittee, Washington, D. C.

DEAR SIR: Kindly allow me to express my approval of the nomination of Mr. Louis D. Brandeis to the Supreme Court.

It has been my privilege to have had somewhat of an intimate acquaintance with Mr. Brandeis for more than a dozen years, during which time I have observed his work at close range, both in public and private affairs. I have found him to be a man who is keenly active in getting after exact and fundamental facts before making a statement regarding any matter in hand, and subsequent events have usually proved that his judgment has been sound.

I feel sure that his activities have been misinterpreted sometimes as involving a radicalism which he did not feel or express, but, on the other hand, his utterances and actions have been of great value to the community in which he has lived.

Yours, very respectfully,

CHAS. M. COX.

FEBRUARY 3, 1916.

Hon. JOHN W. WEEKS,
Washington, D. C.

MY DEAR SENATOR WEEKS: Permit me to express the hope that you will not hinder the confirmation of Louis D. Brandeis even if you should find that you could not vote for him, which I sincerely hope will not be the case.

Yours, respectfully,

GEORGE W. COLEMAN.

FEBRUARY 3, 1916.

Hon. HENRY CABOT LODGE,
Washington, D. C.

DEAR SENATOR LODGE: With all my heart I hope you will not find it necessary to oppose the confirmation of the appointment of Louis D. Brandeis. Nothing would please me more than to see you voting for him.

Yours, sincerely,

GEORGE W. COLEMAN.

MARCH 10, 1916.

Mr. ELLERY SEDGWICK,
Editor Atlantic Monthly, 4 Park Street, Boston, Mass.

MY DEAR MR. SEDGWICK: The report in this morning's Herald of your suggestion to President Wilson of the social importance of Mr. Brandeis's appointment

is most encouraging. With other Harvard men I was mortified by President Lowell's part in a stupid and unfair protest. Such action as yours is welcome, for it sets us right in the eyes of people throughout the country who have been criticizing Bostonians in general, rather unjustly, for the sad showing we made when one of our greatest citizens was given the recognition due him, and recognition is something Mr. Brandeis has never sought. Over the long-distance telephone some of the foremost social workers in New York told me of their indignation at the character of the protest emanating from this city. Fortunately we got every social worker in Boston to sign a petition showing how Mr. Brandeis really stands with the people and with those who are close to the people in this city. Those of us who regard the Atlantic Monthly as an expression of the best in democratic thinking find in your action a new satisfaction in our allegiance.

Sincerely, yours,

MEYER BLOOMFIELD.

CAMBRIDGE, MASS., *February 18, 1916.*

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee of Judiciary,
United States Senate, Washington, D. C.

DEAR SIR: The writer of this letter is a clergyman of the Congregational denomination of over 25 years' standing, most of it in actual service in the Commonwealth of Massachusetts; a graduate of Harvard College and most of his ministry spent within the limits of the city of Boston. From the ministry he went to the professorship of Applied Christianity at Tufts College, and for several years now has been engaged purely in private literary and educational activities. You will find his history in Who's Who for 1914–15, up to my resignation as professor at Tufts, since which I have engaged in writing educational books. I am personally known to Senator Hollis, Senator Gallinger, and Senator Weeks. Any of these gentlemen can give you light as to my standing. I think this is also true of Senator Clapp, whom I knew early in my career.

In these many years in Massachusetts I have also been something of a publicist and have engaged in many public activities of the nature of social and political reform, the results of which are embodied in my book on "Christianity and the Social Rage." My views on present movements, as they respect courts and judges, will be found in that volume very fully set forth in the chapter entitled "Social Justice on the Curbstone." I think this is sufficient for identification.

I am writing concerning Mr. Louis D. Brandeis. I have known Mr. Brandeis for nearly 16 years, being first attracted to him because of his activities as they related to sociological reforms in which I was interested. I became more closely acquainted with him in the campaign for savings-bank insurance for poor people in this Commonwealth and have kept more or less in touch with him and his activities during this entire period.

In the last 10 years I have lectured extensively in this State, and often speak in the course of a season to between 5,000 and 10,000 people of all kinds and types throughout the Commonwealth. I think I am in a position to know the public estimation of the man as well as almost any man in the State, and perhaps better than most, and I am writing to say that I am myself in favor of his confirmation as a Justice of the Supreme Court, and believe that the vast mass of the people of this Commonwealth, if they were permitted to express an opinion, would be found equally desirous of such action on the part of the Senate. I believe that more than any other man in the State Mr. Brandeis represents the feeling of liberal-conservative men as being a true and honorable embodiment of what has come to be known as "sociological jurisprudence." I believe that confidence in him is general, and perhaps even greater, because of some of the enemies which he has made, some of whom have appeared before your committee. The confirmation of Mr. Brandeis would reassure the people of this State and, as I believe, of the United States that a public man devoted to the popular interest—meaning thereby the public interest as against private and privileged interests—will not debar him from the highest service of the country. His rejection would be a distress signal which would, in my judgment, be damaging to the courts of the land already under fire in all parts of the land.

I think I am in position to understand and properly characterize the opposition to him from Boston and vicinity. It would not be fair to say that it was

racial. It would be fair to say that if any man bearing an old New England name and practicing at the bar in Boston had everything which is alleged against Mr. Brandeis—alleged against him—and were nominated for the Supreme Court, nobody would dream of raising these questions. Many of the interests represented by the protesting gentlemen are now, and have been ever since I have resided in this Commonwealth, against any emergence into public influence and power of anybody not of their number and clan. This is the simple truth.

Long and unchallenged control of everything in the Commonwealth has given many of these gentlemen the perfectly natural feeling that whoever is not approved by them is ipso facto a person who is either "dangerous" or lacking in "judicial temperament." I have met this in almost every form at public hearings of the legislature, of which I have attended a great many. It appears not merely in matters like this, but hardly less in philanthropies, the administration of public institutions, and many other forms of public activity. They simply can not realize, and do not, that a long New England ancestry is not prima facie a trusteeship for everything in New England. That is, in my judgment, the real spring of most of the opposition, though it must be recognized that it is entirely sincere, and the more sincere because never brought to the bar of critical review.

Doubtless your attention has been called to a recent editorial in the Boston Post entitled "A close petition," showing the comparatively narrow range of this opposition. I desire to affirm to your committee that if most of these people were brought into any public relation, as most of them have not, where a popular estimate of them could be registered the verdict would be so overwhelmingly against them as to leave no doubt in the mind of any reasonable person of the restricted area in which they operate. I believe the real feeling of this community is one of high regard, amounting in some cases to idolized devotion to Mr. Brandeis as a type of man who will bring both honor and justice to the Supreme Court of the United States. They love him for the enemies he has made.

In my personal associations with Mr. Brandeis I have always been impressed with his sincerity, his uprightness of view, and his devotion to his cause. I believe that as a Justice of the Supreme Court of the United States he would adorn the bench and add to the glory and renown of the greatest court in the world.

Respectfully, yours,

A. A. BERLE.

To the SUBCOMMITTEE OF THE JUDICIARY COMMITTEE
OF THE UNITED STATES SENATE.
Washington, D. C.

GENTLEMEN: We, the undersigned ministers of Congregational churches in Greater Boston, as public-spirited citizens, hereby express to you the esteem in which we hold Mr. Louis D. Brandeis for his great service in behalf of the workers of the country and for the valiant fight which he has so successfully made for civic and corporate righteousness. We wish to bear witness that Mr. Brandeis was bitterly attacked several years ago for an address which he delivered before the Boston ministers' meeting. At that time, in the interests of fairness, we opened our platform to his opponents, that they might reply to his address and answer any questions which might be asked. This offer was declined. In view of the facts, we are glad that time has vindicated Mr. Brandeis in the position which he maintained before our body.

We sincerely trust that attacks from prejudiced quarters will not be allowed to defeat his confirmation as Associate Justice of the Supreme Court of the United States, and that unless evidence of unfitness not now known is produced, he will be so confirmed.

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We, the undersigned social workers in Greater Boston, desire personally to go on record in favor of the appointment of Mr. Louis D. Brandeis to the United States Supreme Court.

In the field of social progress—wherein we have had an opportunity to observe and measure Mr. Brandeis's usefulness—we know that his interest and untiring service in connection with the adjustment of labor differences, his so-

cial insight, breadth of mind, and unselfish devotion have won him the confidence and respect of hosts of people in this community and elsewhere. To our thinking, he has given evidence of possessing a knowledge and point of view in regard to present-day social conditions which should make him a most useful member of the Supreme Court.

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[The Pilgrim Congregational Church, Magazine Street.]

CAMBRIDGE, MASS., *February 22, 1916.*

Senator CHILTON,
Washington, D. C.

HONORED SIR: Pardon a few words on the Brandeis appointment now before you for hearing and report.

Many of us hereabout are delighted that the President has done the exceptionally good thing in his appointment of Mr. Brandeis, and we earnestly hope that your honorable committee will recommend that the Senate confirm the same.

At the time of the country-wide discussion of the New Haven Railroad matter, and when the public mind was agitated by it, our Boston ministers' meeting heard Mr. Brandeis, who presented the subject from his point of view with great fairness, abundant evidence, and brimful and overflowing thoroughness. His presentation was not answered openly, though his opponents were urgently invited to reply before our meeting. The only reply was a printed attack on the man, which was sent to all our ministers. Being cognizant of these facts I fear that some of those now attacking Mr. Brandeis, were they and their methods under investigation, would hardly stand the light of day. Big business is surely more fully represented on the bench of the Supreme Court already; why should not the common people have on that bench such an eminent example of love for the public weal?

I have the honor to be, cordially and sincerely, yours,

RICHARD WRIGHT,
Pastor Pilgrim Church.

BRUNSWICK, ME., *March 6, 1916.*

Hon. CHARLES F. JOHNSON.

DEAR SIR: I concede that a Senator's conscience should, and in your case will, determine his official act.

I am aware that the sentiment of a single constituent may not be entitled to much consideration and I have hesitated to address you on the subject of this letter; but I have reflected that my sentiment may perhaps offset that of another.

I hope that you will vote for the confirmation of Mr. Brandeis. I think the definition of "a judicial mind" in our political dictionary should not be "one that stands between corporate rascality and the dispensation of justice."

I hope that in future years you may have the satisfaction to reflect that you have helped to make one of the greatest and purest judges of that great court.

Sincerely, yours,

HENRY F. THOMPSON.

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