

THE MYSTERY OF CHARLES KENNEDY POE

by Todd C. Peppers*

The life of Justice Oliver Wendell Holmes, Jr. is a familiar one to students of the Supreme Court, and two of the main themes of Holmes' long life are his ties to Harvard (then College, now University) and Massachusetts. The son of a Harvard College graduate (Oliver Wendell Holmes, Sr.) who himself enjoyed considerable fame as a poet, essayist and physician, and the grandson of an associate justice of the Supreme Judicial Court of Massachusetts (Charles Jackson), Oliver Wendell Holmes, Jr. grew up as a member of elite New England society, attended Harvard College and Harvard Law School, served with valor in the Twentieth Regiment of the Massachusetts Volunteer Infantry, married the daughter of local headmaster, practiced law in Boston, taught briefly at Harvard Law School, and sat on the Massachusetts Supreme Judicial Court before being appointed by President Theodore Roosevelt to the United States Supreme Court in 1902. In short, Justice Holmes was the quintessential "Boston Brahmin" who once remarked that he loved "every brick and shingle of the old Massachusetts towns where once they [his ancestors] worked and prayed."¹

Given Justice Holmes' academic and professional allegiances, it is hardly surprising that he looked to a single academic institution for the thirty men who served as his "private secretaries" (the term Justice Holmes used to describe his law clerks), namely, Harvard Law School. Handpicked by Harvard Law School professors (first by John Chipman Gray, and after his death by Felix Frankfurter), the elite group of Harvard men who clerked for Justice Holmes went onto prominent careers in business, politics, and law and included Attorney General Francis Biddle, Special Assistant to the Secretary of War Harvey Hollister Bundy, legendary Washington insider and New Dealer Tommy "the Cork" Corcoran, Harvard Law School Professor and Holmes biographer Mark De Wolfe Howe, U.S. Steel Chairman Irving S. Olds, New York Life Insurance Company President George H. Harrison, U.S. Congressman Laurence Curtis, New York Public Library Chairman John Lockwood, Undersecretary of the United States Treasury H. Chapman Rose, and convicted spy Alger Hiss. The fact that Justice Holmes only selected Harvard men to serve at his side is confirmed by such unimpeachable sources as former law clerks Francis Biddle, Harvey Hollister Bundy, Alger Hiss and Mark DeWolfe Howe² as well as Supreme Court Justice Felix Frankfurter,³ legal historians,⁴ Holmes enthusiasts,⁵ children's book authors,⁶ social scientists,⁷ journalists,⁸ playwrights⁹ and filmmakers.¹⁰ There is, alas, only one problem – the compelling tale of institutional fidelity is factually incorrect and does a grave injustice to Charles Kennedy "C.K." Poe, a graduate of Columbian University in Washington, DC and the first man to clerk for the legendary Justice Holmes.¹¹

Charles Kennedy Poe was born on August 25, 1878 in Baltimore, Maryland to Charles Poe and Ellen Eyre Conway Poe. By the time of C.K. Poe's birth, the Poe family had firmly established themselves in Baltimore high society.

His grandfather, Neilson Poe, was an attorney whose professional accomplishments (including a stint as the Judge of the Orphan's Court of Baltimore) have been eclipsed by the stormy and mysterious relationship he endured with his cousin, writer and poet Edgar Allan Poe.¹² C.K. Poe's father was Charles Poe, a prominent lawyer who practiced in the District of Columbia, and C.K. Poe's paternal uncle was John Prentiss Poe, who served as Attorney General of Maryland and dean of the University of Maryland Law School and was the proud father of six sons who all achieved fame on Princeton University's football gridiron.¹³

No information exists regarding C.K. Poe's childhood or teenager years. He enrolled in the two-year bachelor of laws program in Columbian University's Department of Law in October of 1903 (Columbian University's name was changed to George Washington University in 1904, and the Department of Law became the School of Law in 1914). Poe was 25 years old when he began his legal studies, and his admissions application indicates that he did not attend any other college or university prior to enrollment at Columbian University. A review of Poe's academic transcript reveals that he was a decent, but not exemplary law student, and during Poe's second year of study he earned decidedly average grades in such subjects as Contracts, Equity, and "Pleading & Practice" (now called Civil Procedure in modern law schools). Poe did, however, receive top marks in Constitutional Law.

Regrettably, history has not recorded how Poe came to meet and work for Justice Holmes or the length of his tenure of service. What information we have regarding Poe's clerkship is spotty, but it strongly suggests that the clerkship overlapped with Poe's legal studies and lasted several terms of Court. Many of the pieces of this historical puzzle can be found in letters that Justice Holmes wrote to Anna Sophia Lyman "Nina" Gray, the wife of the aforementioned John Chipman Gray. Holmes Biographer G. Edward White describes Nina Gray and Justice Holmes as "intimate friends," adding that "[s]he was one of the women to whom he [Holmes] would 'talk straight' – talk about his aspirations and disappointments as well as about his taste in literature or other women."¹⁴ Thanks to the passing references in their correspondence to Justice Holmes' legal secretaries, we are able to roughly construct the dim outlines of Poe's clerkship.

In a February 15, 1903 letter to Nina Gray, Justice Holmes observes that "[v]arious young men hereabout have applied" for the position of secretary, but confesses that "I don't quite see what I should do with him in a legal way. My way of writing a case is to get into a spasm over it – and by the time I am ready to talk I have written it."¹⁵ Justice Holmes' hesitation, however, may have had more to do with his reticence in offending those old friends who were championing particular candidates. "Returning to the secretary – I am rather wavering over a youth who has called on me here – but I am just declining one recommended by Causten Browne¹⁶ and I hardly dare think of another," writes

Holmes to Gray. “I should hate to hurt his feelings.”¹⁷

Justice Holmes’ concerns about Mr. Browne’s feelings soon faded, however, and by March of 1903 he had hired a secretary. “I have got a little secretary so I shan’t bother John for the present,” Holmes writes in a subsequent letter to Gray. “I took him because he wanted to study law and had no other chance. He knows business and will be useful to me in that way. I don’t see how anyone could help me much with my ways of work in law.”¹⁸ Justice Holmes never identifies the new secretary by name, but the limited historical evidence strongly suggests that the young man in question was Poe. As for how Poe convinced Justice Holmes to hire him, Poe’s step grandson, former University of Washington law professor Meade Emory, believes that personality played a role. Describing his step-grandfather as a charming and warm man, Emory opines that “this same charm was undoubtedly a factor in C.K. being able to convince Holmes to take a chance on this non-Ivy League lawyer to be his first ‘secretary.’”¹⁹ Finally, C.K. Poe’s familial ties to Edgar Allan Poe may have intrigued Justice Holmes, a voracious reader whose personal library contained over twenty volumes of Edgar Allan Poe’s collected works.²⁰

While the historical record is also muddled concerning the *length* of Poe’s tenure with Justice Holmes, he likely clerked for close to four years. A 1931 *Time* magazine article reports that Poe spent four years toiling at the side of the Great Dissenter,²¹ and the first Harvard graduate selected to be Justice Holmes’ law clerk - Augustin Derby - began clerking in September of 1906.²² Thus, Poe would have clerked for Justice Holmes from March of 1903 to September of 1906 before being replaced by Derby. The conclusion that Poe served as Justice Holmes’ private secretary while simultaneously completing his legal studies is strengthened by a Poe family heirloom, namely, an 1881 edition of Justice Holmes’ *The Common Law* which bears a November 25, 1903 inscription to Poe in Holmes’ distinctive hand. While it is possible that Justice Holmes signed the book before Poe became his private secretary, it is more likely that the book was inscribed after Poe began working for the Justice.

For the next two years, there is nary a mention of Justice Holmes’ private secretary in the correspondence between Justice Holmes and Nina Gray. In October of 1905, however, Justice Holmes writes that “[n]ext year I expect to ask John to get me a Sec. from the law school and to follow the example of H.G. [former Justice Horace Gray].”²³ Several weeks later Justice Holmes confirms that he will be looking to Harvard Law School for his next clerk, writing Gray that [i]t is definitely settled that my secretary leaves me at the end of this year. So will you tell John that I should be much obliged if he would have me in mind as he used to have his brother.”²⁴ Adds Holmes:

I presume that we should want the same kind of man – presentable, clever, not unwilling or unable to make out my checks for me at the beginning of the month, etc. and up in the latest fashions of law school law. I think it is rather a good thing to have the place regarded as a sort of yearly prize in the law school.²⁵

Scant historical evidence exists as to Poe’s job duties as Justice Holmes’ private secretary. Upon learning that Professor Gray had selected a replacement for Poe, Holmes confesses to Nina Gray that “I shall be glad to have a lad breathing the self satisfied learning of a Cambridge student about me, and may find him useful in looking up law. I have not attempted to use my present man for that except a very little.”²⁶ The limited legal research assignments given to Poe may have been partially due to Poe’s incomplete legal education, but Justice Holmes did not depend upon his subsequent Harvard-trained law clerks for much substantive legal work either. While the secretaries “read briefs, motion papers, petitions for certiorari, and reported on them,” former law clerk Augustin Derby writes that the Justice “really needed no secretary” and that his young assistants “went through the form of rendering him legal aid.”²⁷ Of greater importance to Justice Holmes was a revolving cast of starry-eyed disciples who could listen to the Justice’s tales of the Civil War and who, in turn, would report back on the latest Washington gossip.

After leaving his clerkship, Poe briefly practiced in the District of Columbia before serving as counsel for Standard Oil in the Oklahoma territory. In approximately 1908, Poe moved to Seattle, Washington and established his law practice. Poe eventually became a senior partner in the Seattle firm of Poe, Falknor, Emory & Howe, and in 1934 he returned to the Supreme Court to represent one of the firm’s largest clients – the Seattle Gas Company – in litigation.²⁸ Poe later served as a vice president of both the Seattle Gas Company and the Washington Title Insurance Company as well as president of the Seattle Bar Association. It was in Seattle that Poe met his wife, Josephine Sloan DeWolfe Emory, who had been widowed after the murder of her husband. Together C.K. and Josephine Poe raised three children and six step-children. Of his step-grandfather, Professor Meade recalls a loving man who effortlessly blended together his large brood of children and step-children.

While subsequent law clerks found it challenging to get close to “God’s grandfather,” namely, an elderly and increasingly infirm Justice Holmes, Professor Emory recalls that “there developed an affection between Holmes and C.K. that lasted throughout C.K.’s life.” In a June 4, 1909 letter to Poe, Justice Holmes expresses how delighted he and Mrs. Holmes are to hear “how well things are going with you” and tells his former clerk “[n]ow you have got your teeth in you won’t let go” (likely referring to Poe’s new legal practice in Seattle).²⁹ The letter closes with Justice Holmes remarking “And now, having wished you good morning and sent you the love of both of us I resume my studies.”³⁰ In one humorous instance, the “Great Dissenter” himself appears to be doing legal research for his former law clerk. In an August 6, 1916 letter to then Harvard Law School Professor Felix Frankfurter, Holmes asks: “Do you know any good book discussing the adjustment of industrial disputes, compulsory arbitration, etc - those dealing with concrete legislation preferred? I pass on to you a question sent to me by my secretary, Charley Poe of Seattle, which I can’t answer.”³¹

Poe’s letters to Justice Holmes are equally warm, with Poe

keeping the Justice up to date on the birth of his daughters, the health of his wife, and his professional accomplishments. In a February 29, 1912 letter to Justice Holmes, Poe movingly writes of the important role that Justice Holmes played in his life. After recounting a conversation with one of Justice Holmes' former Harvard College classmates, a discussion in which the classmate recounted tales of a young Oliver Wendell Holmes, Jr. and his service in the Civil War, Poe writes that "I remember you when you were helping me in the only fight I really ever had to fight."³² While the letter does not provide any details on Poe's cryptic references to this "fight," the letter reveals the deep affection that he felt towards the Justice. "You helped me more than you will ever know and if I [unintelligible word] it too often it is only because I can't forget."

Poe's enduring adoration for Justice Holmes is further reflected in a letter sent by Poe in honor of the Justice's ninetieth birthday.

The zeal displayed by my many successors in an attempt to celebrate your 90th birthday and the same time protect you from themselves as well as from outsiders affects me as deeply as it can possibly affect you – for I was the first to know and love you. You taught me that "words are flexible" and in that knowledge I think I am entitled to conclude that the undoubted admiration and affection which we all have for you upsets the idea that no man is a hero to his valet.

I had arranged to be with you all in Washington, but my plans were overturned and I was compelled to send Tom to present a case which I had hoped to argue before you sometime this week. You have done much more than most men and can rest on your laurels knowing this and knowing that you have twenty five sons who love you.³³

The bonds between Justice and law clerk extended to other members of the Poe family. Justice Holmes served as the godfather to C.K. Poe's eldest daughter, Josephine, and in honor of her birth Justice and Mrs. Holmes sent a silver platter to the proud parents and a porridge bowl to the new baby. A thirteen year-old Josephine Poe would subsequently take the porridge bowl, along with a newspaper clipping about Holmes, to school "in order to convince her teacher that she was in close contact with the great one." "She seemed to get quite a thrill out of the reflected glory," writes C.K. Poe to Justice Holmes, "and exacted a promise that I take her to

see you the next time I went East."³⁴ Justice Holmes took an interest in the health and welfare of Poe's family, and he expressed a paternal pride in the accomplishments of Poe's step son, DeWolfe Emory. "[I] am very glad about what you say about the boy and yourself [likely the decision to practice law together]. I am very proud of his interest and send him my blessing."³⁵

Justice Holmes' personal papers contain one final communication from Poe, a telegram sent the day after Justice Holmes retired from the Supreme Court bench on January 12, 1932. In the telegram, Poe expresses his relief that Justice Holmes' long service has come to an end.

No man has contributed as much to the worlds [sic] jurisprudence as you. Therefore the news of your resignation makes me more glad than sorry. You have finally discarded the extra weight which the bench imposed and are at last free to give the world at large of your unhampered best. Feeling that the power and spirit to work are still in you I expect what you call the finishing canter to become a real horse race yielding new honors and achievements as a fitting climax to all you have done before. The entire family joins in best.³⁶

If there was any subsequent correspondence between the two men, it no longer exists.

Justice Holmes died on March 6, 1935 and is buried in Arlington National Cemetery. His large headstone bears witness to his service in the Civil War and on the United States Supreme Court. C.K. Poe practiced law until 1945, and he died in October of 1962 at age of 82. Poe is buried in the DeWolfe family plot in Seattle's Lakeview Cemetery. His simple stone marker lies flush with the ground and records only the years of his birth and death. No mention is made of his own role in the history of the United States Supreme Court. While the identity of Justice Oliver Wendell Holmes' first law clerk is perhaps not a mystery worthy of C.K. Poe's more famous kinsman, his is a story worthy of a proper epitaph.

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¹Oliver Wendell Holmes, Jr., "Ipswich – At the Unveiling of Memorial Tablets," July 31, 1902, *Speeches* (1913).

²Francis Biddle, *Mr. Justice Holmes* (New York: Charles Scribner's Sons, 1943): 11-12; "The Reminiscences of Harvey H. Bundy" (Oral History Research Office, Columbia University, 1961): 60; Mark DeWolfe Howe, "Mr. Justice Holmes and His Secretaries," *The New York Times*, April 8, 1951; Alger Hiss, "Clerks of the Court on Justice Holmes," in *The Making of the New Deal: The Insiders Speak* (Katie Louchheim, ed.) (Cambridge: Harvard University Press, 1983): 25.

³Felix Frankfurter, "October Days," *Today* 3 (March 9, 1935): 5, 19.

⁴Gary J. Aichele (*Oliver Wendell Holmes, Jr.: Soldier, Scholar, Judge*) (Boston: Twayne Publishers, 1989): 138-139; Liva Baker, *The Justice From Beacon Hill: The Life and Times of Oliver Wendell Holmes* (New York: HarperCollins, 1991); Silas Bent, *Justice Oliver Wendell Holmes: A Biography* (New York: The Vanguard Press, 1932): 305-306; G. Edward White, *Justice Oliver Wendell Holmes: Law and the Inner Self* (New York: Oxford University Press, 1993): 311-313.

⁵Harry C. Shriver, *What Gusto: Stories and Anecdotes About Justice Oliver Wendell Holmes* (Potomac: The Fox Hills Press, 1970): 3.

⁶Clare Ingram Judson, *Mr. Justice Holmes* (Chicago: Follett Publishing Company, 1956): 180-182; Edith Patterson Meyer, *That Remarkable Man: Justice Oliver Wendell Holmes* (Boston: Little, Brown & Company, 1967): 113-114.

⁷Chester A. Newland, "Personal Assistants to Supreme Court Justices: The Law Clerks," *Oregon Law Review* 40 (1961): 299.

⁸"Justice Holmes Succumbs to Pneumonia at Age of 93," *The New York Times*, March 6, 1935.

⁹Emmet Lavery, *The Magnificent Yankee: A Play in Three Acts* (New York: Samuel French, 1946).

¹⁰*The Magnificent Yankee* (Metro-Goldwyn-Mayer, 1950).

¹¹A handful of historians, however, have not forgotten Poe. See I. Scott Messinger, "The Judge as Mentor: Oliver Wendell Holmes, Jr. and His Law Clerks," *Yale Journal of Law & the Humanities* 11 (1999): 119; John S. Monagan, *The Grand Panjandrum: Mellow Years of Justice Holmes* (Lanham: University Press of America, 1988): 133; Sheldon M. Novick, *The Honorable Justice: The Life of Oliver Wendell Holmes* (Boston: Little, Brown, 1989): 282, 288.

¹²"Ex-Judge Neilson Poe," *The New York Times*, January 4, 1884.

¹³"Charles Poe, Relative of Poet, Dies at 72," *The Washington Post*, March 24, 1924; "John Prentiss Poe Dead: Leader of Maryland Bar and Dean of University Law School," *The Washington Post*, October 15, 1909.

¹⁴G. Edward White, *Justice Oliver Wendell Holmes: Law and the Inner Self* (New York: Oxford University Press, 1993): 302.

¹⁵February 15, 1903 letter from Oliver Wendell Holmes, Jr. to Nina Gray, The Collected Papers of Oliver Wendell Holmes, Jr., Harvard Law School Library, Box 31, Folder 11.

¹⁶A graduate of Columbian University, Browne was a Boston attorney and author of *Treatise on the Construction of the Statute of Frauds. Proceedings of the Suffolk Bar and of the United States Circuit Court of Appeals for the First Circuit in Memory of Causten Browne* (June 3, 1909).

¹⁷February 15, 1903 letter from Oliver Wendell Holmes, Jr. to Nina Gray, The Collected Papers of Oliver Wendell Holmes, Jr., Harvard Law School Library, Box 31, Folder 11.

¹⁸March 2, 1903 letter from Oliver Wendell Holmes, Jr. to Nina Gray, The Collected Papers of Oliver Wendell Holmes, Jr., Harvard Law School Library, Box 31, Folder 12.

¹⁹Author's correspondence with Meade Emory.

²⁰According to the Library of Congress, which took possession of Justice Holmes' personal library upon his death, the Justice's collection of Edgar Allan Poe's works included the following: Rufus Wilmot Griswold, eds., *The Works of the Late Edgar Allan Poe* (4 vol.) (New York: J.S. Redfield, 1850-1856); Ernest Rhys, ed., *The Fall of the House of Usher, and Other Tales and Prose Writings of Edgar Poe* (London: Walter Scott, 1889); Edmund Clarence Stedman and George Edward Woodberry, eds., *The works of Edgar Allan Poe : Newly Collected and Edited, with a Memoir, Critical Introductions, and Notes* (10 v.) (Chicago : Stone & Kimball, 1894-95); Edgar Allan Poe, *The Works of Edgar Allan Poe* (8 vol.) (London: Gibbings and Co., 1895).

²¹"Young Fellows," *Time*, June 1, 1931. Poe's obituary, however, reports that he spent two years clerking for Justice Holmes. "Poe, Retired Lawyer, Dies," *Seattle Times*, October 14, 1960. The obituary erroneously adds, however, that the two-year clerkship took place AFTER Poe graduated from law school, which cannot be correct because Poe graduated in the spring of 1905 and Holmes' second law clerk began working in September of 1906.

²²Augustin Derby, "Recollections of Mr. Justice Holmes," *New York University Law Quarterly Review* 12 (March 1936): 345-353. While Derby wrote a fascinating account of his clerkship, unfortunately he makes no mention of C.K. Poe (or that fact that Holmes even had a previous secretary).

²³October 19, 1905 Letter from Oliver Wendell Holmes, Jr. to Nina Gray, The Collected Papers of Oliver Wendell Holmes, Jr., Harvard Law School Library, Box 31, Folder 18.

²⁴November 5, 1905 Letter from Oliver Wendell Holmes, Jr. to Nina Gray, The Collected Papers of Oliver Wendell Holmes, Jr., Harvard Law School Library, Box 31, Folder 18.

²⁵Id.

²⁶March 21, 1906 Letter from Oliver Wendell Holmes, Jr. to Nina Gray, The Collected Papers of Oliver Wendell Holmes, Jr., Harvard Law School Library, Box 31, Folder 18.

²⁷Id. at 346.

²⁸*Seattle Gas Co. v. City of Seattle, Wash.*, 291 U.S. 638 (1934). Poe also appeared "on brief" in *Washington Securities Co. v. United States*, 234 U.S. 76 (1914).

²⁹June 4, 1909 Letter from Oliver Wendell Holmes, Jr. to C.K. Poe, The Collected Papers of Oliver Wendell Holmes, Jr., Harvard Law School Library, Box 48, Folder 13.

³⁰Id.

³¹Robert M. Mennel and Christine L. Compston, eds., *Holmes and Frankfurter, Their Correspondence: 1912-1934* (Hanover: University Press of New England, 1996).

³²February 29, 1912 Letter from C.K. Poe to Oliver Wendell Holmes, Jr., The Collected Papers of Oliver Wendell Holmes, Jr., Harvard Law School Library, Box 48, Folder 13.

³³March 4, 1931 Letter from C.K. Poe to Oliver Wendell Holmes, Jr., The Collected Papers of Oliver Wendell Holmes, Jr., Harvard Law School Library, Box 48, Folder 13.

³⁴March 9, 1926 Letter from C.K. Poe to Oliver Wendell Holmes, Jr., The Collected Papers of Oliver Wendell Holmes, Jr., Harvard Law School Library, Box 48, Folder 13.

³⁵February 1, 1922 Letter from Oliver Wendell Holmes, Jr. to C.K. Poe., The Collected Papers of Oliver Wendell Holmes, Jr., Harvard Law School Library, Box 48, Folder 13.

³⁶January 13, 1932 Western Union Telegram from C.K. Poe to Oliver Wendell Holmes, Jr., The Collected Papers of Oliver Wendell Holmes, Jr., Harvard Law School Library, Box 48, Folder 13.