SUM UP THE CASE AGAINST BRANDEIS

Opposing Counsel Say Testimony Proved Nominee's Violation of Professional Ethics.

ACCUSE HIM OF DUPLICITY

Senate Sub-Committee Likely to Report Next Week on Brandeis's Fitness for the Bench.

Special to The New York Times.

WASHINGTON, March 28.—The brief of counsel in opposition to the appointment of Louis D. Brandeis of Boston to the bench of the Supreme Court of the United States was made public today. It is signed by Austen G. Fox and Kenneth M. Spence of New York, representing a committee largely composed of Boston lawyers, and summarizes the evidence given to the Senate's sub-committee which is considering Mr. Brandeis's fitness for the appointment. The sub-committee, which since the close of the hearings has been studying the evidence, sometimes in consultation with Mr. McClennen, Mr. Brandeis's law partner, will report to the Committee on the Judiciary on Monday next, when the report may be given out.

The brief, after pointing out that the President of the American Bar Association and seven former Presidents had opposed Mr. Brandeis's confirmation because he was not, in their opinion, "fit to be a member of the Supreme Court of the United States," has this to say of the witnesses for and against Mr. Brandeis's character:

"None of the witnesses called to testify as to Mr. Brandeis's reputation were volunteers; they were all summoned by the sub-committee. The witnesses appearing in opposition to the nomination testified unqualifiedly to the effect that the nominee is considered, at his home bar, as a man lacking in straightforwardness, unscrupulous, and not trustworthy, while even the witnesses appearing in support of the nomination, except Mr. Gregory, (Stephen S. Gregory of Chicago, former President of the American Bar Association,) who is not a Boston man, were compelled to concede that this conception of his character is held by a considerable portion of the Boston bar.

"There are two questions involved in the present investigation," the brief continues. "The first is a question of principle, and plainly admits of only one answer. It may be stated as follows: Shall the nomination of Louis D. Brandeis to be an Associate Justice of the Supreme Court of the United States be confirmed if the evidence shows that he has a defective standard of professional ethics? Indeed, some may well say that the answer is the same whether the evidence establishes this conclusively, or does no more than leave in doubt what his standard of professional ethics really is."

Charges Violation of Ethics.

The brief's summary of the evidence is as follows:

"The proof shows that:

"I. The nominee has violated well-established canons of professional ethics in the following instances:

"Mr. Brandeis was retained and accepted the retainer of James T. Lennox. Mr. Brandeis advised Lennox to make an assignment for the benefit of creditors without informing him that the assignment constituted an act of bankruptcy, and two and a half months thereafter, at the instance of three creditors of Lennox, Mr. Brandeis filed a petition in bankruptcy against Lennox, who thereafter was adjudged an involuntary bankrupt. Mr. Brandeis's law firm's fees from this bankruptcy proceeding arose in part from fees of his partner, Mr. Nutter, as assignee for the benefit of creditors; in part of Mr. Brandeis's fees as counsel for the assignee, in part from Mr. Nutter's fees as trustee in bankruptcy, and in part from Mr. Brandeis's fees as counsel for the trustee, and for the firm's services in bankruptcy proceeding. These fees amounted in all to $43,852.88. Mr. Lennox did not know that Mr. Brandeis was acting otherwise than as his counsel until after the petition in bankruptcy had been filed.

"Mr. Brandeis, while acting as counsel to Edward P. Warren, failed for thirteen years to disclose to his client the essential features of a plan for operating the Warren Paper Mill, in which Edward P. Warren had an equal share with his brother, Samuel D. Warren, Jr., the partner of Mr. Brandeis. The plan was formulated and consummated by Mr. Brandeis. Under this plan Samuel D. Warren, Jr., one of the trustees, leased to himself, as one of the lessees, the trust property. The result of the plan was that Mr. Brandeis's partner, S. D. Warren, Jr., trustee, profited personally to an unconscionable amount. Mr. Brandeis subsequently appeared as attorney for S. D. Warren, Jr., as against his former client, Edward P. Warren, in respect to the very matter in which Edward P. Warren had reposed confidence in Mr. Brandeis.

"Mr. Brandeis participated in the organization of the United Shoe Machinery Company. As active Director from 1899 to 1906, and as counsel from 1899 to 1907, he approved and defended, before the Massachusetts Legislature and elsewhere, the policy and leases of the company. Soon after his employment as counsel had ceased Mr. Brandeis became counsel for the company's assailants, and promulgated opinions to the effect that the company and its leases were monopolistic and unlawful. Before committees of Congress and elsewhere he made against the company the very charges against which he had defended it prior to 1909.

"In 1905 Mr. Brandeis, in a public address, charged the Directors of the Equitable Life Assurance Society with fraud and dishonesty in the handling of the funds of the society, and shortly thereafter he became counsel for a Protective Committee of Equitable policy holders. At the same time his firm was acting as counsel for the Equitable Society in certain pending litigations. About a year after Mr. Brandeis had become counsel for this Protective Committee his firm appeared as counsel for the Equitable Society in a suit brought against it by a policy holder, alleging fraud and mismanagement upon the part of the Directors, and for several years Mr. Branedis's firm conducted this litigation on behalf of the Equitable Society, although the complaint was largely a reassertion of the very language which Mr. Brandeis himself had used in his attack against the Equitable.

"In suits brought by a stockholder against four Directors of the Gillette Safety Razor Company Mr. Brandeis appeared as attorney for all four Directors. While acting as attorney for all four Directors in these suits Mr. Brandeis devised a plan whereby two of them might secure control of the Gillette Safety Razor Company and oust the other two. Mr. Brandeis continued to appear as attorney for the other two until the plan to oust them was effected, and they were ousted from control, meanwhile concealing the plan from them.

Accused of Duplicity.

"2. In the course of the performance of his professional duties the nominee has made false and misleading statements and has been guilty of duplicity:

"In the Congressional investigation of the charges of Glavis against Secretary Ballinger, Mr. Brandeis, though retained and paid by Collier's Weekly, appeared ostensibly for Glavis, and sought to conceal his relations with Collier's Weekly.

"Mr. Brandeis in the Ballinger investigation encouraged Kerby, Mr. Ballinger's secretary, to publish confidential information.

"At the same time that Mr. Brandeis was attacking a railroad consolidation in the East, in the form of a merger of the Boston & Maine with the New Haven, because it tended to create a monopoly, he and his firm, by personally soliciting proxies in Harriman's behalf in the Illinois Central contest, were assisting E. H. Harriman in maintaining Harriman's domination over Western competing railroads. When Mr. Brandeis was charged with being in the employ of Harriman he emphatically denied it, and sought to make it appear that it was only Mr. Nutter, his partner, who had acted in the interests of Harriman. This statement was not in accord with the truth.

"In Mr. Brandeis's attack upon the New Haven Railroad before the Massachusetts legislative committee, during the course of the campaign conducted by him to prevent the merger of the Boston & Maine with the New Haven, Mr. Brandeis made definite and specific statements of fact which were false. The truth of these statements he could readily have verified. The statements seriously affected the value of the investments of the small as well as the large stockholders.

"In 1892 Mr. Brandeis, in the name of Goldsmith, a Boston saloon keeper, but really at the instance of William J. Kelly, counsel for Austin Corbin, former President of the New York & New England Railroad, and concealing his real client, brought a series of suits against that railroad, which actually prevented it, and must necessarily have been intended to prevent it, from obtaining the capital to make it a strong competitor of the New Haven Railroad. These suits resulted in a receivership of the New England Road and its subsequent acquisition by the New Haven Road, thus effectually suppressing competition. Subsequently Mr. Brandeis, while concealing his relation to the situation, publicly attacked the New Haven Road for the acquisition of the New England Road, a result to which, through the litigation instituted in Goldsmith's name, Mr. Brandeis had contributed.

"3. The nominee has represented interests opposed to the public welfare and been guilty of sharp practice:

"Mr. Brandeis was employed by the Interstate Commerce Commission in the 5 per cent. advance rate case of 1913 to present the side adverse to the railroads, and ostensibly co-operated with counsel for shippers and consumers, but exhibited lack of good faith when, in the closing argument before the commission, after concealing his position from other counsel who represented shippers and consumers, he conceded the inadequacy of the revenues of the carriers in official classification territory.

"Mr. Brandeis has appeared as registered lobbyist before the Massachusetts Legislature for the liquor interests.

"Old Dominion Case.—1. Mr. Brandeis advocated improper issue of stock of company. 2. Mr. Brandeis's method of securing compensation for the Bigelow litigation.

"Other instances of Mr. Brandeis's sudden and unexpected change of position: A—The Consolidated Gas incident; B—The price maintenance incident."

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