

# ROLLINSFORD REVISITED: The Sacred and Profane Memories of Chief Justice Charles Doe

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By Jay Surdukowski

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*My past is small, uninteresting, insignificant. My present is calm and prosperous. My future is vague, shadowy, but hopeful. Now manhood is at hand, and the responsibilities of it are being developed. The curtain of years is rising and the drama of life is opening. The stage of the world's time appears and the scene of my destiny will be performed soon. . .*

-Opening diary entry of Chief Justice Charles Doe, age 22.  
July 15, 1852.

*Sometimes, I feel the past and the future pressing so hard on either side that there's no room for the present at all.*

-Evelyn Waugh, BRIDESHEAD REVISITED, THE SACRED & PROFANE  
MEMORIES OF CAPTAIN CHARLES RYDER.

## INTRODUCTION – A SECRET HISTORY

This article explores a secret diary penned by New Hampshire's greatest Chief Justice: Charles Cogswell Doe – a man to whom WIGMORE ON EVIDENCE is dedicated and whom Professor Roscoe Pound of Harvard called one of the ten greatest jurists in American history. The diary, written in the thick of Doe's coming of age at 22, upends some of the conventional legends about Doe – such as his scant reading or farm boy disposition in his younger years.<sup>1</sup> Neither proves to be true in this memoir penned 162 years ago.

The diary was quietly kept by descendants of Doe's third of nine children, Haven, until 2003 when it was donated to the library at the Woodman Institute in Dover, New Hampshire by Doe's great-granddaughter, Jessica Doe Terrill and her late-husband Robert. Ms. Terrill, 87 at the time of this writing, now resides in Pennsylvania.

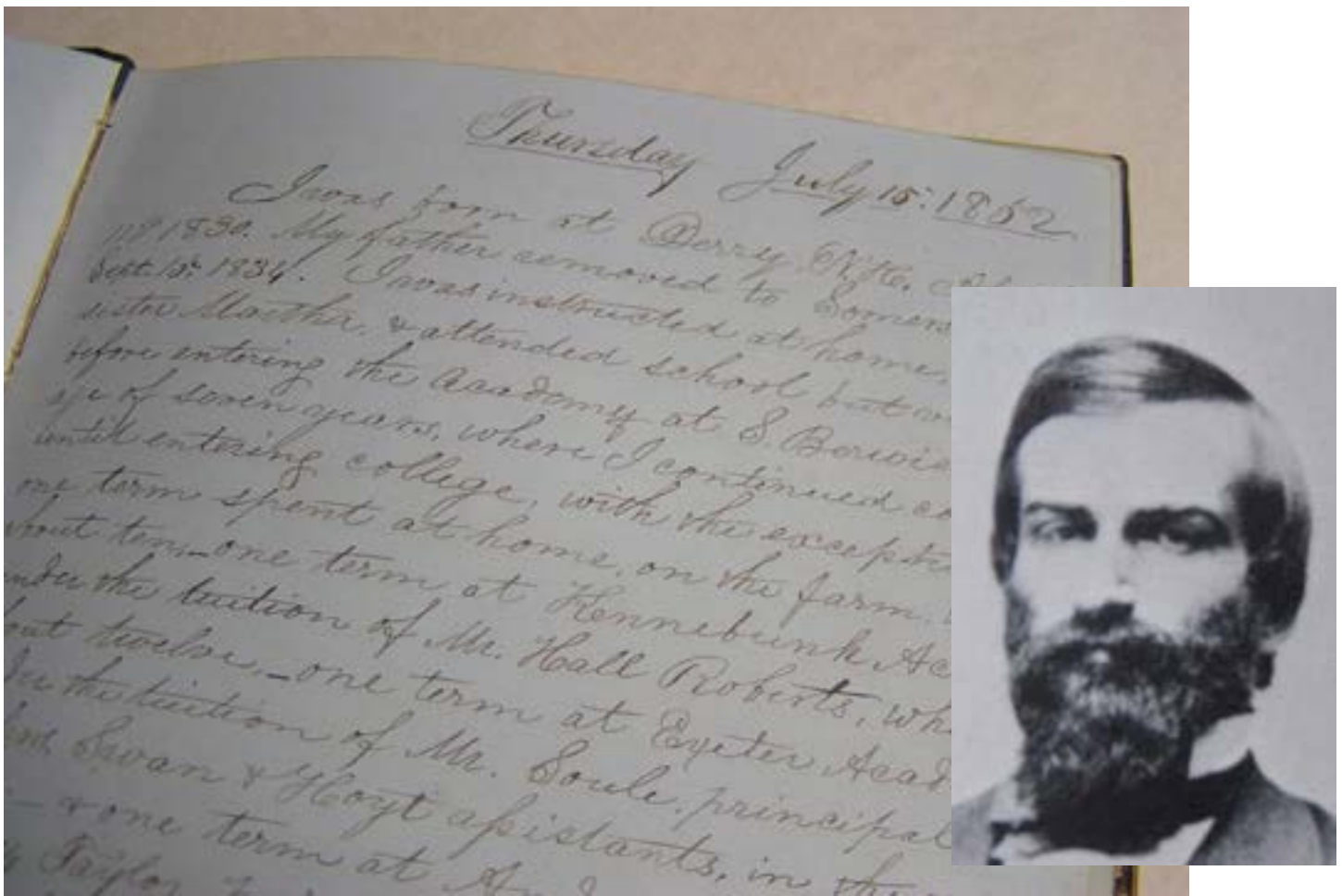
The 78-page diary neatly scrawled on pale blue paper and handsomely bound, covers eight months between July 1852 and late February of 1853. It opens a window on Doe as a young man, his

thoughts and his experiences as he was studying law by night and apprenticing with a prominent Dover attorney by day. Doe left little by way of personal memoir, frustrating historians and his biographer.<sup>2</sup> Doe eschewed the limelight, even refusing to be photographed more than several times in his lifetime because, among other reasons, he refused to sit still.<sup>3</sup> Ironically, this diary with its precious revelations, is virtually unknown to historians of the law, unaware that a transcription was quietly published in the Strafford County Genealogical Record in three parts.

The diary is grandly entitled: "Biography. Journal. Common-Book, et *Omnium Gatherum* of Chas. Doe. Commenced July 15, 1852."<sup>4</sup> Doe took pen to paper and committed to keeping this diary in a guest room at abolitionist and Free Soil candidate for President Senator John Parker Hale's mansion in Dover, concluding the maiden entry with a *carpe diem* sentiment: "The time is short, life is to be lived, destiny to be fulfilled, and the word is 'Forward.'"<sup>5</sup> The pages that follow can be read alternatively as a "fever chart for melancholy," as the poet Anne Sexton once wrote, or as a description of the sometimes raucous life of a young lawyer-in-the-making -- dating, smoking, drinking, and party-going.

The diary captures early glimmers of the fierce independence of Doe as he grapples with coming of age. Details of an early romance,





At left, the John Parker Hale House in Dover where Doe, as an unmarried law student, was living at the time he began writing the diary in 1852.

Doe's first substantial legal job, politics, religion, and recreation are interspersed with accounts of court cases, interminable Baptist revival meetings and icy riverside baptisms. The diary records his graveside musings where he pined for lost love, beach days in Maine, and steamboat hijinks on the Isles of Shoals. Legendary Senator Daniel Webster, a freshly-elected President Franklin Pierce, abolitionist Senator Hale, and Ralph Waldo Emerson, among other personages known and unknown, make frequent cameos. Perhaps most of note and most controversial, dark questions of race and class in the zenith of slavery also creep into the diary written in the tense decade leading up to the Civil War. Doe's view on slavery in his youth may surprise contemporary readers.

At the time of the diary's writing, Doe was apprenticed to Dover lawyer Daniel Christie, the preeminent legal teacher of the period, who at one time could boast of having trained half the New Hampshire Supreme Court.<sup>6</sup> Doe had lived exactly one third of his life at this point and would soon enter Harvard for further legal education following an erratic academic career including stints at Berwick, Exeter, Andover, and Kennebunk Academies, then Harvard and Dartmouth (what he calls in the diary a "rude and clownish education"). To put his age further in context, Doe would shortly be elected Clerk of the New

Hampshire State Senate<sup>1</sup> (after a few years of giving stump speeches for the Democrats) and go into partnership with Charles Woodman – and – within seven years, at the age of 29, hold a seat on the New Hampshire Supreme Court -- a seat he would occupy until his death, with the exception of two years when Doe's political party fell out of favor.<sup>6</sup> Thus, for 20 of Doe's 42 years as a lawyer, he served as Chief Justice; a record hard to match.

Five years ago I wrote on the Jenatos family's discovery of 1,764 books that constituted Charles Doe's personal library; a library that had been uncovered remarkably intact from a Rollinsford, New Hampshire barn – volumes that now reside at Harvard Law School for scholars to study.<sup>7</sup> Doe's marginalia, poems, and drawings laid bare personal details of a man that shaped New Hampshire jurisprudence more than any other. This new diary discovery is even more of a dramatic pulling back of the curtain on the coming of age of this great figure, a man whose portrait even today the Justices of the New Hampshire Supreme Court face on the opposite wall when they entertain oral argument.

I call this article "Rollinsford Revisited" because it serves as an even deeper excavation into Doe's past than my prior effort, an excava-

<sup>1</sup> The office of Senate Clerk survives today and is still elected by the twenty-four members of the State Senate.

tion that reveals a hopeful youth struggling to come into his own in a tumultuous time.

This article, in four parts, introduces the diary and reports on the major themes found in young Doe's entries. Part One examines on his view of slavery — this Part is given special emphasis as it was *the* issue of the day when Doe was a young man, in the decade before the Civil War broke the nation in half — including Doe's own family. Several heretofore unknown letters written by Doe in his youth round out the ambiguous picture of Doe's thoughts on slavery when he was a young man. Part Two recounts Doe's struggle with organized religion and his hearty embrace of Yankee transcendentalist thought. Part Three explores lost love — perhaps Doe's first — and his reflections on fundamental questions of life and death. Part Four is a brief tour of Doe's recreational world — on the coasts of Maine and New Hampshire — a world that is not unrecognizable to attorneys in New Hampshire today who still frequent some of the same seacoast havens.

The full transcript of the diary as prepared by William E. Wentworth, is available at the New Hampshire Law Library. It is possible to view the original pages by contacting William Wentworth at the Woodman Institute, an eclectic museum in Dover which includes among its holdings the John Parker Hale mansion where Doe began this diary.

It is well worth a read if for nothing else to get an unvarnished glimpse of the preeminent civil saint of our Bench and Bar—a man like many others before and after him—who had his faults and virtues in mixed measure — a measure that proves the common humanity of an uncommon man: Doe of New Hampshire.<sup>8</sup>

## PART I: THE DEVIL AND CHARLES DOE – DOE'S SUPPORT OF THE COLONIZATION MOVEMENT

*But these young people have such an intelligent, knowledgeable surface, and then the crust suddenly breaks and you look down into the depths of confusion you didn't know existed.*

—Evelyn Waugh, BRIDESHEAD REVISITED.

Like Daniel Webster, Doe was a sensitive New Englander morally and politically opposed to slavery. At age 22, Doe considered himself a “strict disciple” of a variant of abolitionism that many contemporary historians have adjudged less-than-favorably: the “Colonization” movement.<sup>9</sup> Colonizationists believed slaves should be sent back to Africa once freed. Several unpublished letters contemporaneous to the diary also show Doe expressing both derogatory and positive comments about black slaves, painting an ambiguous picture of Doe's sensibilities on the subject of slavery, abolitionism and racial differences in antebellum America.

The historical backdrop of the diary reveals a nation roiling with political and racial tension. The Compromise of 1850 — in which the United States Congress punted on the issue of slavery by allowing a roughly even number of new slave and free states to enter the Union — fueled all the major political debates and elections in every state, North or South. In 1852, there were 16 free states and 15 slave states. When

Doe starts the diary in a guest room in Hale's house, not one but two men from New Hampshire would be on the ballot for the presidency: Franklin Pierce of Concord who supported the slavery-appeasing Compromise of 1850, and the first abolitionist Senator, John P. Hale of Dover — a third-party presidential candidate who was on temporary hiatus from the U.S. Senate, having failed to be reappointed by the Hampshire legislature during a brief period of Democratic ascendancy. Pierce would defeat General Winfield Scott in the popular vote by about 300,000 votes — with Hale garnering 156,149 votes as the Free Soil candidate — a party that opposed the Compromise of 1850 and slavery.<sup>10</sup> Harriet Beecher Stowe's *Uncle Tom's Cabin* was published in 1852 and within a year had sold 300,000 copies;<sup>11</sup> indeed, Doe mentions the book in his third diary entry.<sup>12</sup>

Slavery does not escape Doe's thoughts. In a telling passage, Doe reveals his view of slavery in the course of criticizing his minister. Doe is an abolitionist and a Democrat and would eventually part ways with the Democratic party over its support for slavery and the advent of the *Dred Scott* decision—the United States Supreme Court case that ruled African Americans were ineligible for federal citizenship.<sup>13</sup> Yet Doe believed that freed slaves should be returned to Africa, a view which many white elites of the day held (and for a time, some African Americans championed in the early 20<sup>th</sup> century, most notably Marcus Garvey). Doe himself notes in the diary that “most of the greatest, wisest and best of the land” subscribed to his views, including Senators Daniel Webster and Lewis Cass, and Speaker of the House Henry Clay. Indeed, in addition to these luminaries, other supporters included Presidents James Madison and James Monroe and the pioneering American Chief Justice, John Marshall, not to mention Supreme Court Justice Bushrod Washington — President Washington's nephew, Francis Scott Key (the composer of the national anthem), and various prominent attorneys, congressmen, and civic leaders throughout the young nation.<sup>14</sup>

The American Colonization Society (ACS) was founded in Virginia in 1817 by whites and was supported by well-intentioned philanthropists on the one hand, and white slave owners who feared freed slaves, and their potential for rebellion, on the other. As the historians George Brown Tindall and David E. Shi write, some backed the ACS “as an antislavery group, while others saw it as a way to bolster slavery by getting rid of potentially troublesome” freed slaves.<sup>15</sup> Tindall and Shi observe that free blacks denounced the movement from the start, with Philadelphia freemen writing bluntly as far back as 1817 that they “had no wish to separate from our present homes for any purpose whatever.”<sup>16</sup>

The core aspect of the movement—implied if not explicit—was the racist belief that whites and free blacks could not coexist in the United States and that it would be better for all concerned if blacks returned to their native Africa and, in the patronizing sentiment of the day, put to use the skills and Christian grace they had obtained in North America in their native continent. To achieve this, the ACS proposed gradual freeing of slaves which included compensation to white owners.<sup>17</sup> For a time, in addition to private donations, the United States Congress and the legislatures of Maryland and Virginia appropriated funds to the ACS cause.<sup>18</sup> Professor David Brion Davis is quoted in an article on his 2006 Tanner lecture at Stanford as stating that

while history has condemned the “inherent racism” of the movement, “colonizationists believed—with good reason, it would turn out—that ‘white racial prejudice would remain intractable for generations, that progress would depend on black solidarity and collective effort, and that emancipation could not be divorced from the crucial need for a social and economic climate in which freed people could exercise their full capacities for human development.’”<sup>19</sup> Although Liberia—a small country on the west coast of Africa (modern-day pop. 4.1 million) is a direct legacy of the ACS—by its own terms, the ACS movement was a failure. By 1860 approximately 15,000 blacks had returned to Africa with 12,000 aided by ACS.<sup>20</sup> This was less than the number of children born into slavery in a *given month* in the run-up to Emancipation in 1863.<sup>21</sup>

The colonization movement frequently expressed itself in an Exodus narrative—meaning that the once-enslaved in America, like the Jews of Egypt in the Old Testament, would someday leave *en masse* and settle in a new land, a “City on the Hill.” ACS had purchased the land for what would become Liberia from West African Chiefs in 1830.<sup>22</sup> Liberia had become an independent, constitutional Republic just six years before Doe’s diary, in 1846. In the entry from July 18, 1852, Doe’s minister, Reverend Allen, gives a sermon and seeks donations supporting Liberian colonization, though Doe notes he is not “ardent enough to walk over to church this afternoon, and put something in the box.”<sup>23</sup>

Doe then recounts succinctly in his diary the religious and “civilizing” underpinnings of colonizationist thought, a movement later condemned for smacking too much of the “white man’s burden”—the idea that white, Christian culture is a civilizing and divinely-sanctioned force:

Mr. Allen’s text was the mysteriousness of the divine government in making the wrath of man to praise God. . . . he made a long and powerful argument to prove that it was the will of heaven that negro slaves should be brought to this country to be civilized and enlightened, and to return, in due time, to their fatherland, bearing the principles of reform and Christianity, and establishing in the native home of the black race, the arts of civilization and the banner of the Cross.<sup>24</sup>

In this entry, Doe does not disagree with this philosophy but he is uncomfortable with his minister’s distaste for other kinds of abolition-

ists and notes that though he agrees with his minister in principle, he dissents from the practice of reviling “pure” abolitionists like the Beechers:

[Reverend Allen] has been at the South this summer and from his own observations, gave a description of their condition, which must have annoyed those who claim to be the exclusive enemies of Southern slavery. He could not help firing a little small shot into *Uncle Tom’s Cabin*, and thereby give vent to his aversion to the whole family of Beechers. It is a pity he is so severe in his denunciations of abolitionism. I am a strict disciple of his school of abolitionists, to which belong Clay, Cass, Webster, and most of the greatest, wisest and best of the land. But in regard to Parson Allen’s violent and reproachable reviling which he heaps upon those who follow not with us, I am a dissenter.<sup>25</sup>

Doe explicitly notes the Exodus theme in the course of offering a critique of the “finely written” but badly delivered sermon: “The only thing new in it was the passage referring to the four hundred years of Hebrew servitude in Egypt and the Exodus, as an instance of the divine dispensation, fully as wonderful and incomprehensible before their accomplishments, the introduction of slaves into this country, and that exodus in which they will return to their ancestral home. They have been here now half the time of the Egyptian bondage.”<sup>26</sup>

Interestingly, Doe’s biographer, Professor John Philip Reid, gives short shrift to the slavery question. Professor Reid simply states that Doe abhorred slavery and found it distasteful to be served at the “children’s table” by child slaves when visiting his brother in Danville, Virginia, a memory that left an indelible hatred of slavery upon him.<sup>27</sup> Reid also records that the Dred Scott decision drove Doe out of the Democratic Party.<sup>28</sup> However, in two heretofore unpublished letters, the young Doe ambiguously expresses sympathy for the secession of the American South and uses the slur “nigger” several times, a word that in 1850 carried as much derision as it does in 2013, according to Professor Randall Kennedy of Harvard Law School who has studied the word in American life, most notably in his book, *NIGGER: THE STRANGE CAREER OF A TROUBLESOME WORD* (2002). Kennedy notes in an essay penned for *Harpers* that the precise point at which the term became hateful is unknown, but it was certainly so by the first third of the nineteenth century:

Precisely when the term became a slur is unknown. We do know,



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however, that by early in the 19th century “nigger” had already become a familiar insult. In 1837, in *The Condition of the Colored People of the United States*; and the Prejudice Exercised Towards Them, Hosea Easton observed that “nigger” “is an opprobrious term, employed to impose contempt upon [blacks] as an inferior race. . . . The term itself would be perfectly harmless were it used only to distinguish one class from another; but it is not used with that intent. . . . it flows from the fountain of purpose to injure.”<sup>29</sup>

For context on the continuing taboo it holds, this word—frequently referred to as the “N word”—has appeared in the *New Hampshire Reports* but once, in the case *State v. Etienne*, 163 N.H. 57 (2011).

On the one hand, Doe freely uses the “N word” several times in a letter written while visiting his brother in Danville, Virginia on January 8, 1850. The 20-year-old Doe states in a discussion of Southern dialect: “Then again the children learn many of the nigger pronunciations, from which the men do not escape. They laugh at Yankees for killing the King’s English, but they generally speak worse than we.”<sup>30</sup> Later in the letter, Doe contrasts the large stoves of Southern whites with the cooking that slaves do in fireplaces:

I have never seen a stove big enough to cook such big joints & hams as they cook here. Then beside being to[o] small, the blacks are used to a fireplace & nothing else, & you might as well try to convince a Doweaster that loans at 25 percent in Wis[consin]<sup>31</sup> are safe investments as to make a nigger believe that anything but a fireplace is fit to cook by.<sup>32</sup>

Due to the paucity of personal Doe writings that have survived, it is unknown to what extent Doe used the “N word” in other contexts, and if and when he stopped employing the epithet in casual writing. The word does not appear anywhere in his diary, for instance.

On the other hand, perhaps further shedding light on Doe’s conflicted moral attitude toward slavery, the University of Virginia has transcribed another rare letter from Doe dating from his twentieth year when Doe was visiting Danville. This letter is written to Doe’s brother and sister in New Hampshire a month-and-a-half after the letter quoted above. This time the letter refers to slaves as “blacks” or “negroes.”<sup>33</sup> He does not use the “N” word. In the letter, Doe remarks upon the final illness, death, and funeral of a much-beloved slave and that the cemetery is divided in a white section and a black section, but that “there are but a very few monumental stones in the part of the whites, & none in the other, but the grass grows as green in one as in the other.”<sup>34</sup> Doe reflects, “this separation in death would probably suggest to an abolitionist, or any one searching for unpleasant things connected with slavery, that the fence might not be so hereafter.”<sup>35</sup>

Doe also attends a slave auction and writes about slaves who fear being bought by Deep South slaveholders. Carefully and positively, he notes aspects of black church habits and singing.<sup>36</sup> However, Doe is also a creature of his times and impersonally notes in clinical tones of a departed slave, “This one was a valuable one, Worth \$800 or \$900, aged 30. . . .”<sup>37</sup> Doe also ambiguously comments on a sermon in a Methodist church attended by 300–400 blacks and six whites sitting

in the balcony:

The minister preached a good sermon, with a few ideas peculiarly adapted & addressed to the special condition & duties of the congregation. Their advantages were contra[sted] with those of heathen millions in a very good manner. If he had gone into particulars, & shown how much better morally, mentally, & physically, they are than the free blacks in Africa at this day, & also shown how much superior their prospects are, supposing they remain slaves forever, to any natural expectations that can be formed of their native brothers in Africa, he would have done no more than his duty.<sup>38</sup>

Doe appears to express some complicity — or perhaps — understanding, that the preacher is doing his best to uplift a shackled congregation. Both reads are plausible, but neither sits well especially, 163 years later.

Finally, a letter to Doe’s Southern brother that was never delivered in 1861 due to hostilities seems to welcome the advent of the Union’s split—though perhaps in a joking fashion—it is hard to divine tone so many years later. Doe writes to his brother in Danville:

As to politics & War, I have nothing to say, except that I thank God there is a North at last. The fact that there is a North is realized much sooner than I expected, but not as soon as I had hoped. You are equally grateful for secession & independence. It is a pleasing circumstance that we are both satisfied with the present state of things.<sup>39</sup>

Doe reflects it will take several wars to settle the score between North and South before sympathizing with the Southern cause by expressing skepticism about tales of Southern violence: “You need not trouble yourself about our believing the stories of terrorism, insurrections, etc, at the South. Those stories are got up to make a sale for newspapers, & for another purpose which is very apparent.”<sup>40</sup> Despite this message, Doe seems to reverse course and makes a playful dig in his closing against secessionism: “. . . hoping that in good time Providence will bring you to see the evil of your secession ways & that Old Virginia may repent before she dies.”<sup>41</sup>

Doe is plainly, as his diary and these letters reveal, a young man coming of age in an era where an insidious moral evil divided a nation and tainted the humanity of those who lived under its shadow. Doe struggles with the best response to the evil, but his 22-year-old self espoused a questionable orthodoxy on what should happen to a slave once he or she was set free and used a term several times, at least on one occasion, that even in 1850 was employed to denigrate. Perhaps still-to-be-discovered documents will shed further light on the young Doe’s complex attitude towards slavery.

## PART II: JACOB AND THE ANGEL – DOE’S STRUGGLES WITH ORGANIZED RELIGION

*Church AM. . . . Cigar and book P.M.-P.M. more profitable than A.M.*<sup>42</sup>

-Charles Doe, October 10, 1852

*When the waterholes were dry, people sought to drink at the mirage.*

-Evelyn Waugh, BRIDESHEAD REVISITED.

The Book of Genesis recounts the tale of Jacob wrestling with the angel. The struggle lasts the night and the angel knocks Jacob's hip out of its socket before blessing him with a return to peace in the dawn of a new day.<sup>43</sup> Like Jacob, the 22-year-old Charles Doe struggles mightily with faith in his diary. But ultimately, the reader gets the sense that Doe has found a spiritual peace – but one that is found in the “in the broad aisle of forest scenery, or on the pleasant bank of lake or stream,” as he writes in one of many passages questioning the pomp and circumstance of organized religion and the rarity of truly pious men.

What is known about Doe's religious leanings is that he was a Baptist in youth, and later a Unitarian Universalist. In adulthood, Doe begged off of attending church services on Sundays, ostensibly for the purposes of “mental rest.” Doe's biography makes mention about Doe perhaps being a “free thinker” but the issue is not probed other than an anecdote in which a committee of Universalist women sought financial support because they had heard that Doe, like the Universalists, did not believe in hell. Doe assured them that hell was the one thing he in fact did believe in, to their astonishment – a story he relished telling.<sup>44</sup>

What is remarkable about the numerous skeptical religious entries is that one of Doe's legacies to American jurisprudence is his titanic 143-page dissent in defense of religious freedom in the case of *Hale v. Everett*, 53 N.H. 9 (1868), a case in which one faction of a congregation sought to enjoin the hiring of a minister who had renounced the centrality of Christ, and announced that he was, therefore, not strictly Christian. The minister also had praised writings by individuals still living as being on par with the Holy Bible, expressing heady, early progressive Unitarianism which turned Dover upside down and provoked a petition for an injunction seeking to block “doctrines subversive to the fundamental principles of Christianity.” The diary gives a new insight into why Doe may have sided with the pastor whom the majority of the Supreme Court, as his biographer John Philip Reid writes, had, “like an ecclesiastical court of old, found . . . a heretic.”<sup>45</sup>

Doe's diary brims with discussion of religion – his debate about the proper use of the Sabbath day, ambivalence and outright mockery of droning sermons, river baptisms, and marathon revival meetings full of “testimony” of a different sort than his day job; testimony he is no less critical of than might fall flat in a court case. The sense one gets is that Doe is a deeply spiritual young man who simultaneously expresses a sharp skepticism of organized religion. The excerpts that follow are some of the most eloquent and perhaps controversial of the whole diary. Doe comes off as a homegrown, New Hampshire version of a skeptical Lexington or Concord transcendentalist. A Rollinsford Thoreau.

Doe attended a Baptist Church led by the aforementioned Reverend Allen. For one so skeptical of organized religion, Doe seems to have

attended often – sometimes twice a day – frequently church in the morning and a revival meeting lasting upwards of three hours in the evening. Doe's account of a November, 1852 river baptism in which “25 or 30 girls & boys took a Baptist bath,” lays bare his skepticism of religion and what people derive from it.<sup>46</sup> Doe's thesis is that the drama of the icy cold baptism works on the “superficial” mind.<sup>47</sup> He notes the boys being dunked first, then as the backlog of dunkees grew, the parishioners “stood in the chilling tide some time, contemplating their fate. Yet none of them recanted or abjured their faith.”<sup>48</sup> Doe notes that, “one who had never heard of such ceremonies would naturally suppose that the Inquisition was revived & that these unfortunates were suffering the penalty of heresy. But these fantastic tricks are called the ‘ordinances of religion’ & are no doubt very profitable to those who believe in them.”<sup>49</sup> He crudely states that “like the more stately rites of the Roman Church” such theatrical stations of devotion “impress the vulgar & ignorant with forms.”<sup>50</sup> He explains:

The sprinkling of a few drops of water does not much excite the sensibilities of a neophyte spectator. It is a very trivial affair. Drenching showers of rain are a very frequent occurrence, noteless incidents in the lives of all.

But to lie down under floods to let the currents of rivers pass over the body, especially for women to do this, in the open air, in the gaze of gaping rabble who would as eagerly gather round a horse-race, a bull-fight, a menagerie or a gallows, for women, too, often timid, delicate or feeble, to do this even when the path of duty must

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be cut through the ice of January—these scenes are not theatrical performances.

People will believe that there is some reality, meaning, truth, religion, at the bottom of all this. They must think religionists sincere, & perceiving also that they are in general, the most honest and the end of theology of the mass. So superficial is human reason.<sup>51</sup>

Doe than harkens to religious history which is full of such pomp and circumstance, noting “this frailty of our nature is neither strange, nor new.”<sup>52</sup> He excoriates the Puritans, and, on the other side of the coin, the “strongest props of the Popish throne”<sup>53</sup> in equal measure — neither Protestant nor Catholic is spared his skepticism:

Men would believe that they who scourged themselves, for trifling or imaginary sins, till the blood came, were governed by supernatural powers, that their life must be the right one & their creed the true. It was not considered that defective humanity could be as sincere a follower of error as of truth, & that sincerity is no test of right doctrine. Yet in the opinion of almost every man, nine-tenths of the human race have been from the beginning heretics doomed to everlasting misery for their sincere unbelief of his particular dogmas. So inconsistent is human reason.<sup>54</sup>

Doe concludes this entry by wondering at the meaning the crowd on the bank ascribes to the baptism. He concludes the worship is mindless and unfounded. “How many of them could give sufficient reason”<sup>55</sup> for the belief that the baptismal waters bestow eternal salvation.

Doe shows a lighter tone in his attitude towards revival meetings. In part, he seems to enjoy the pageantry — the testimonial aspect if you will — and in one entry laments the lack of fireworks at one revival meeting “where the crowd was very great, the singing excellent, but the exhortations cold, no shouting or weeping.”<sup>56</sup> As with the baptism scene, another diary entry takes up a blow-by-blow of a Revival meeting, complete with witty remarks about those testifying to their faith. He remarks that the parson attempts to create competition by bestowing a loud “amen” upon particularly moving remarks, first to a young man named Odell.<sup>57</sup> About another such sign of approval by the parson, Doe writes, a “bright girl followed & said she had served the d---l faithfully 18 years (I should think more than that), had read novels, romances &c, & was not going to do so any more, whereat the parson gave an emphatic ‘amen.’”<sup>58</sup> Doe also takes down a gentleman named Frank Parks, who “felt it his duty to testify next.”<sup>59</sup>

Should have respected his sincerity, if I had not, at divers times, seen him very tight<sup>2</sup>, & behaving very much like the world’s people, & if had not conclusive evidence that he is no better than I am. But he may be very religious for a’ that.<sup>60</sup>

Sincerity of conversion is again a theme of interest to Doe, as with the baptisms in the river. He writes that “Frank Whitehouse made a confession, that though he had been a Christian many years, he had been very wicked a large part of the time, & now wanted to be converted again.

He sobbed so he could scarcely be heard.”<sup>61</sup> Doe wonders:

If any curious body should ask any of these religionists how their so called conversions make men heirs of heaven & secure the soul’s salvation, when men like Frank have to be converted every time a revival comes round, they would talk about “falling from grace”, & call the questioner a scoffer. . . . I believe what they call “a conversion” is nothing but a resolution to reform the life, & when carried into execution is the most desirable thing in the world, & when such resolution is fixed & strong, the result of reason & not of enthusiasm & passion & actually produces a better life it may be called a conversion. But that young, weak or sensitive minds catching the contagion of mental fever from an excited crowd, & fermenting a week or two with violent spasms of grief & joy, should immediately be declared by the church to be true saints, purified of earthly dross, & very safe beacon in darkness & storm, is to me a matter of wonder and amazement.<sup>62</sup>

It perhaps is no surprise to the reader at this point that Doe would likely rather be elsewhere on Sundays. Doe preferred to keep his own brand of Sabbath, a repose where he could contemplate the mysteries of the universe at his own pace, and in his own venue — his library — or a walk in the woods:

Sunday, July 25 1852 — This has been, to me, literally & emphatically, a day of rest. Have not been to church, nor away from home, nor away from myself. Have neither been engaged in the concerns of this life, nor of that to come, as I do not believe with the multitude that it is our absolute, necessary, & commanded duty to refrain, on this day, only from temporal & worldly affairs, & instead of refraining from eternal spiritual affairs, to be busy about them. I believe it is peremptory only that we observe the day as a day of rest. To observe it as a day of spiritual & religious activity & industry, is merely expedient, because no other day is devoted to those interests which should occupy more than a seventh of our time. It is politic & wise to set apart this day for that purpose, for another reason too—it might be an occasion of rest from care & business, but of indulgence in gayety & common pleasure. But that it is wrong & irreligious not to work for the soul, on this day, & a sin per se. I don’t believe I am always serious & often mindful of eternity, & have no sense of guilt when I enjoy a complete Sabbath repose.<sup>63</sup>

On another Sunday, Doe notes that many go to church out of mere habit, and do not consider where else they may find spiritual sustenance. Doe writes: “28 Sunday fine day, rode horseback some. Did not attend church. It is seldom interesting or profitable to listen to the long Phara-saical prayers, bad music & dull sermons which are usually performed as religious observances of the spiritual holiday.”<sup>64</sup> He concludes, “I am convinced that the majority do not throw away a whole day every week, for the sake of the prayers, psalms, & sermons in the temples, but because it has become the fashion & habit of their lives, just as it is the custom with many to wash on Monday.”<sup>65</sup>

These entries begins to prefigure the longing for faith in the natural world or the interior life of thought and reading which crops up in later

2 Intoxicated.

entries. He writes, “when I spend the Sabbath in my room, thinking, or roam through the woods thinking, I certainly enjoy the day more, & I believe use the time more beneficially, than when I attend on the ministrations of Parson Allen.”<sup>66</sup> Doe condemns the concerns of the “priests of this vicinity” who “preach many things I do not believe, & generally dwell upon subjects in which I have no interest.”<sup>67</sup> For example,

Richardson devotes whole sermons to the crusade against pedobaptism.<sup>3</sup> Allen arrays all his learning & skill in defense of the harmless ceremony of sprinkling an infant. The mother, if she does her duty, will have the little one thoroughly washed in cold water every morning, and still the high priests stand up before the people and squander the time with controversies about bringing the little one to church and frightening him with a few drops of water. Does such a burlesque advance the true theology & make men better?<sup>68</sup>

Doe craves a different kind of religious person than his minister. “I want to hear from divine messengers worthy of the name, good counsel for the direction of conduct life, strong words of wisdom for every day’s work, elevating thoughts that raise us from the work of time to the work of eternity, bright flashes of soul-fire that disclose the vastness of the soul’s destiny, the final happy fulfillment of its aspirations & its hopes. I hear very little of these things from those who now instruct the people in spiritual affairs.”<sup>69</sup> He states, “for this reason I have not attended church much of late.”<sup>70</sup>

Doe, like a true transcendentalist decides that, “A man who thinks, must be religious. When we consider the wonderful mechanism of the heavens, the earth, vegetables, minerals, animals, especially when we study ourselves, our wonderful anatomy & physiology, our mental powers and moral sensibilities, we cannot help believing in some system of divine government.”<sup>71</sup> So he is not without faith after all.

Doe resolves his struggle thus:

When I recognize a true priest I listen to him as the oracle of divinity. But I cannot think that the true priests are as numerous as the ministers of the quiet study-chamber, or in the broad aisle of forest scenery, or on the pleasant bank of lake or stream. I can search more deeply the hidden springs of the here, can commune more intimately with the guardian of life and gain nearer views of the spirit world, than when listening to discourses from men of small capacity. . . .<sup>72</sup>

It is perhaps fitting that the last line in the diary is a note of boredom après church: “This evening have been three hours to the Baptist revival meeting, a great deal said but a very dull time.”<sup>73</sup>

Could Doe’s apparent transcendentalism and “free thinking” at age 22 have influenced, at least in part, his dissent in *Hale* in which he proclaimed “to sneer at free-thinkers or free thought is to make a thoughtless use of free speech.” It seems likely. It is also poignant to read this line, holding in mind Doe’s early struggle—a line that begins a passage Doe’s biographer calls “the most memorable and ringing defenses of religious liberty ever penned by an American jurist”:

When an infidel does not stand as well in law before the tribunals of

justice as a Christian, in any sense of the word, our free institutions are a failure.<sup>74</sup>

### PART III: LIEBESTOD – DOE IN MOURNING

*I love to visit graveyards, even in winter, when the trees are leafless, the grass withered, the flowers dead. The landscape now is a picture of those times when friends are buried.*

—Charles Doe, February 27, 1853

*... for we possess nothing certainly except the past. . .*

—Evelyn Waugh, BRIDESHEAD REVISITED.

Richard Wagner’s bleak but powerful romantic opera *Tristan und Isolde* was completed in 1859, seven years after Doe’s diary. The climactic Liebestod aria — the “death-love” song where the ill-fated medieval protagonists find peace and union only in death — reflects a certain melancholy longing of the antebellum era. Pining at gravesides, cherishing locks and *memento mori* locket portraits, and a general preoccupation with those departed from this world was typical of the time. This sensibility gave rise to the romantically gothic sensibility found in works of Edgar Allan Poe and Nathaniel Hawthorne. Consistent with this backdrop, a leitmotif of the diary from the very first entries to the very last is Doe’s expression of loss for 18-year-old Constantia “Connie” Hayes (1832-1851) — second youngest child of the leading family in York County Maine — one of Judge William A. Hayes’ 13 children; a multi-talented family the French general Marquis de Lafayette would call “interesting” during an 1825 visit to South Berwick, Maine.<sup>75</sup> Connie is Doe’s sister-in-law; his brother Ebenezer Ricker Doe having in 1840 married Connie’s older sister Susan, a prodigious poet and scholar.<sup>76</sup> Doe appears to have loved Connie fiercely—the intensity is so one wonders if this was the first love of Doe’s young life.

Granted, the diary is also replete with other road markers of mortality: a young alcoholic who succumbs to the “evil genius of liquor,”<sup>77</sup> a drowning of a local couple in a steamship accident on the Hudson River,<sup>78</sup> and the death of seven in a railway accident (the roar of the “ferocious engine”)<sup>79</sup> are among entries that record and reflect upon mortal passage to the other side. The death of Daniel Webster, is also duly noted, and that the Dover Congregational church bells pealed on a November noon to toll the statesmen’s passing.<sup>80</sup> But it is Connie’s death that Doe meditates upon the most. Connie is Doe’s Beatrice—and like Dante’s muse, she leads him on frequent reflections of mortality and love.

On July 5<sup>th</sup>, Doe enters his sister-in-law Susan Doe’s room and reads over Connie’s diary, letters, and other writings related to her death. “I love to read this book, for in it are mementoes of a great genius and a noble soul, which whose acquaintance I was favored, while the years and the hours were,” Doe writes.<sup>81</sup> His despair is as palpable as it is eloquent: “she was too good, too gentle, for angels long to spare.”<sup>82</sup> He continues:

<sup>3</sup> Baptism of an infant or child.



*Young Doe's diary includes several meditations on death, in particularly mourning the death of Constantia Hayes at age 18, whom Doe fiercely loved. The Hayes family plot is in South Berwick, Maine.*

I had never before grieved at any death or wept at any grave. For the first time I was a mourner. The holy influence of that early, peaceful, sublime death, on me, is unknown to all, and I cannot express it. May its impression be lasting. May its hallowed shadow rest over me, down to the last hour of time.<sup>83</sup>

Indeed, one measure of the profound impact of Connie's death is that Doe resolved to write his own diary after reading these self-reflective writings penned by Connie in her last days.

Doe notes Connie's last written words "were addressed to herself while longing for and aspiring to a more exalted and perfect life: "Be patient, and have trust. It will be well with thee at last."<sup>84</sup> Doe in fact quotes this passage twice in July and then in August of 1852 — almost a mournful refrain. Doe concludes, "that should be her epitaph. It was the subdued and religious tone of a lofty enthusiasm."<sup>85</sup> This entry concludes with news that a portrait of Connie has been painted by an artist in Troy, New York, based upon "only a very defective daguerreotype" and the poor memory of the artist, one familiar with students at the Troy Seminary—the first school of women's higher education. Doe closes, "I am anxious to see it."<sup>86</sup> Several weeks later, Doe sees the portrait and is concerned that it does not capture Connie's likeness, specifically the forehead "which is very defective, wanting breadth, and intellectual cast. She had a magnificent head, and this picture is unjust. I hope it will be altered in this particular."<sup>87</sup> Unfortunately, the portrait has not

been located. The portrait of the other family members—particularly her sister Susan—may give a clue to her looks.

One year after her passing, thoughts of Connie are on Doe's mind again. This time, he is spurred to melancholy by a visit to the Hayes' family plot, which still lacks a monument for Connie.<sup>88</sup> The graveyard is one of the oldest in New England and still sits today in a rural corner of South Berwick, rising on a hill above a small pond, a cathedral of tall pines encircling the worn headstones and tombs. To the left of Connie's grave a hill gives way to a silent, silver pond. The graveyard is just minutes over the state line from Dover, and would have been an easy horse ride for Doe to reach it from the family farm in Rollinsford. Doe contemplates Connie's death, and notes that his "solemn & best thoughts" in the intervening year have come from reflecting upon Connie's passing:

She died a year ago this day. I hope something will be placed, to mark her resting place, soon. Though no device of workers in marble or gold can ever seem an adequate & worthy memento of her, it is sad that she should mingle with the dust, & only common grass grows above. I should like to see something pointing to heaven from that spot. The most eloquent preachers are all the dead. Especially those whom we know & loved, & who were taken from our company. We would follow them, & join them, & enjoy their society again. We would live like them, that we might die like them. And how pleasing would



*Visits to the Hayes family home, now the headmaster's residence at Berwick Academy, were important to Doe. Pictured at right is William Allen Hayes, with whom Doe apprenticed. Hayes and his wife, Mrs. Hayes, were parents of the beloved Constantia; a sister, Susan Hayes, was married to Doe's brother Ebenezer.*



be some appropriate monument to perpetuate the freshness of dear memories, & to lead us from the images of lost friends living again, to their present, our future. Whatever of solemn & best thoughts, I have enjoyed the past year, have chiefly come from reflections of Connie's death. How I should value the sentinel of spotless marble, at her grave, reminding how lovely was her life, & that she is not dead.<sup>89</sup>

Doe at this point in the diary believes firmly in the notion of the resurrection ("...she is not dead."). His piety oscillates and evolves throughout the days of the diary as Connie's death sinks in.

Four months later, on a spring-like day in February, 1853, Doe's melancholy thoughts of Connie's passing return — Doe states of his Sunday musings, "my thoughts as usual on this day, of their own accord, forsake the law, the courts, & books & business of the living, to look forward to the life of the dead."<sup>90</sup> A morbid longing for the sweet hereafter. Doe again writes at length about the loss of Connie. Curiously, he refers to her "leaving one in mourning of which she was not aware."<sup>91</sup> Perhaps Doe's affections were not apparent to Connie. He again believes there is a healthy aspect to his dwelling upon death in this fashion, a kind of personal transfiguration through thought:

And I think better of myself for being capable of the thoughts &

emotions which I enjoy in such contemplation. I feel more conscious of a good heart & a soul not entirely depraved, where my uncultivated affections cluster around a grave & rise above the honors, riches & all the falsities of this world, upward to the home of the angels.

And it is something to know that I am not wholly governed by base & unworthy motives. There can be no selfishness in loving the memories of those we have followed to the tomb.<sup>92</sup>

The diary, fittingly perhaps, ends with a recollection of a Sunday promenade in the graveyard where Connie is buried, before paying a call on her family. There is "little snow on the ground" and it is a "very clear & warm, delightful day, like spring. Long walk, good exercise of body & mind."<sup>93</sup> Doe reflects, in the midst of the spare winter landscape, that Connie is in a better place:

There are no birds singing, no blossoms budding, no green fields, no rustling of leaves, no noise even of insects, nothing to please the eye or ear. No motion of living things but myself here in the graveyard, along with The Father & those who have passed away. The senses declare it a very gloomy place—and yet at this grave I love to visit so much, cold & cheerless as it is, unmarked by any memorial of the living, what vivid recollections & warm emotions are excited! And the scene suggests that she may have been fortunate in escaping the winters of misfortune, sorrow & unhappiness which happens so often to all. I can better realize now, why she may have been taken away, than when nature is clad in gay apparel & the earth is full of pleasantness & melody.<sup>94</sup>

After the grave, Doe returns to the living — a visit to Connie's family—the Hayes' vast mansion today serves as the headmaster's house at Berwick Academy. Doe notes, simply: "They appeared very happy."<sup>95</sup> This short declaration is the second to last line of the diary. A few lines earlier, Doe ends his time in the valley of the shadow of death with a poem about Connie's passing:

In the cold moist earth we laid her  
When the forest cast its leaf  
And wept that one so lovely  
Should have a life so brief  
Yet not unmet it was, that one  
Like this young friend of ours  
So gentle and so beautiful  
Should perish with the flowers.<sup>96</sup>

With the diary's abrupt end, the reader wonders whether Doe has resolved his season of sorrow. Sixteen months after Connie's passing, is he at peace? Or would Doe continue to mourn her as he turned to his trade instead of romance — work that he would pursue with relentless ardor.

Doe would not marry for another 13 years.

## PART IV: THE RECREATIONAL LIFE

*Had an intensely stupid time till half past 9, when we had a quiet ride by moon light...*<sup>97</sup>

—Charles Doe, Tuesday July 27, 1852.

*O God, make me good, but not yet.*

—Evelyn Waugh, *BRIDESHEAD REVISITED*.

Charles Doe's biographer fashions the young Doe as a barefoot farm boy type; descended from means but nonetheless wary of reading and cultural engagements. Professor Reid states "a boy's life in sophisticated Portsmouth was different from a boy's life in rustic Somersworth.... [Doe] was a farmer's son who lived in a farmer's world."<sup>98</sup> Contemporaries such as Jeremiah Smith claimed Doe read a mere handful of textbooks, let alone anything else, before his admission to the Bar.<sup>99</sup>

Smith attributes this count to Doe himself.<sup>100</sup> Reid also claims Doe was unaware of literary movements of his century. By contrast, the diary reveals the 22-year-old Doe to be as cosmopolitan as any young law student today.

Smith's recollection on Doe's book learning is incorrect; Doe frequently notes his reading in the diary, often while eating apples and occasionally smoking. Doe also plays the flute, writes poetry, works on reading French literature and philosophy, and engages in lively debates with friends and family on the hot topics of the day such as slavery, politics, and religion. Recreation of the outdoor type takes Doe to the beaches of Maine, the Isles of Shoals, fishing, swimming, and duck hunting. Cultural outings in Portsmouth, Dover, and Boston abound. In the short span of the diary Doe sees Ralph Waldo Emerson at the Dover Lyceum, attends programs at the Portsmouth Athenaeum, enjoys theatrical performances in Boston, frequents the Salmon Falls Club, and participates in debates and public speaking exercises at the Young Man's Literature Association and the Forensic Club. And Doe even tries in vain his hand at courting when not in court. The 22 year-old Doe is a far cry from a mere "farmer's son." He was engaged in all manner of activities and demonstrates the well-roundedness of what we would now term a liberal arts education.

## Duck Hunting and Dating

In one especially comic interlude that could still happen in some of the more rural reaches of New Hampshire, Doe goes duck hunting in the morning and then confronts a stoic pair of sisters who make him question social conventions when it comes to the delicate matter of expressing affection.

About the duck hunt, Doe reflects wryly, "Fired at two teal, have no reason to think I hurt them."<sup>101</sup> Doe's failure to fell the ducks is in contrast to his prolific fishing skills, recorded elsewhere in the diary, including a day when he and a friend landed 97 mackerel.<sup>102</sup>

Like Charles Ryder in *Brideshead Revisited*, Charles Doe's diary seems to betray a love for a whole family, not just one individual. Doe records that his first legal apprenticeship was with Judge Hayes, Connie's father. Doe's brother married into the family; he records arguments between his brother and Connie's brother Frank, and on this October day in 1852, a year after Connie's death, Doe clumsily attempts to take one of Connie's older sisters out for a ride. Mary is 22, Doe's age. Charlotte is 24.

When I called at Mrs. Hayes, invited either of the girls to ride without specification, & their sense of propriety being very delicate, or else neither willing to go, they were much perplexed as to which one should go. Have been troubled so before. If they would treat me like a brother, or if I had a sister! But I suppose I ought not to expect them to view me differently from others, that is as an acquaintance (what a cold word!) who may possibly have peculiar designs.<sup>103</sup>

Doe offers to settle the impasse with an unromantic coin toss, but Charlotte yields to her younger sister, Mary.<sup>104</sup> The ride does not seem to have gone well, despite the lush colors of fall:

The day was fine, the foliage beautiful, with the changed colors of autumn, but we had a dull ride. I should like to know if M. dislikes me very much, & desires to avoid my company. I should like to know this for her sake, for if it is so I could please her once. What strange things are men not telling to the face our thoughts of each other! The very thoughts above all, which we often wish to know.<sup>105</sup>

Doe's conundrum leads him to question social propriety: "Why should not all be as free & unreserved, & more so, than most members of one family are with each other?"<sup>106</sup> Doe's attempt to perhaps woo Connie's sisters go nowhere. Charlotte declines another date later in the fall<sup>107</sup> and by diary's end is in Washington, D.C.<sup>108</sup>

## An Isles of Shoals Interlude

The diary contains a number of accounts of seacoast adventures. Doe's wry and comic observations on a trip to the Isles of Shoals off the New Hampshire coast is the kind of entry that makes these diaries an engaging read. The July voyage starts in the early morning hours.<sup>109</sup> Doe recounts that a "motley crew of us embarked on a little, wee-wash tub of a steamboat, which atoned for the Lilliputian size, & snail speed, by a terrifically screaming whistle."<sup>110</sup> Doe's impression of his fellow travelers is that they are decidedly blue collar: "A mixed company were we, congenial only by coarseness. A dozen Irish, a family of Mulattoes, a German dry goods clerk, & the remainder of the 75 Yankee factory people & mechanics."<sup>111</sup>

Doe focuses the rest of the entry on the plight of a laborer family patriarch who "in particular attracted much attention, coming on board with his whole family, & bearing on his arm a huge covered, wooden pail, at the contents of which we could not guess."<sup>112</sup> The pail contained ginger bread which the man fed his family.<sup>113</sup> Does comments, "[o]ne of the girls had fine eyes, but (mirabile dictum!) would not talk half the time. Another had pretty feet, but the higher understanding was far less attractive than the lower. Her conversation was the most sublimated essence of ignorant silliness."<sup>114</sup> With a nod to equality, Doe observes, "the mulattoes were the most refined & well-bred of the party, & were treated with perfect kindness & respect by all."<sup>115</sup>

On Appledore, Doe indulges himself with flower-gathering after a feast at Smutty Nose

"where an excellent chowder was served up with shoal plates, & pewter spoons for 25 cents."<sup>116</sup> Doe recounts a ramble over the rocks and gathering "a huge bouquet, & I thought a rare one, for such a desert, but as no one else noticed it or seemed to be as capable of any botanical sentiment, except steamboatanical, I threw it overboard before arriving home."<sup>117</sup>

The large family skirts disaster by Doe's account, when the boat almost leaves Appledore without the matriarch:

As we left the island, the man with the wooden pail was thrown into dire tribulation, by the loss of his better half. She had gone to the farthest part of the island to bathe, & the Capt. Said he could not wait. And the poor husband, & his disconsolate children must go ashore, & be away from home all night. They were overwhelmed

with fear and despair. The steam whistle gave an unearthly yell, & the unfortunates were thrilled with the sad reflection that they should not see their dear home again till the next day.<sup>118</sup>

But at the last minute "the disordered dress of the old lady appeared flying towards us, over rock & bush, & mire. And faster as she flew, louder the whistle blew. The excitement was intense. It was a desperate race for sweet home."<sup>119</sup> The poor matron lost her footing and Doe records that she

stumbles over a stone, now rolls over a wall, now dashed through whortle berry bushes & wild roses. It was a shame to laugh, but we knew the Capt. Would not leave her. At last, puffing like the boat's chimney, she reaches the wharf, & with her husband & children restored to hope again, she rushes aboard, tipping up the plank, in her eager haste, running over a boy, & bruising her husband's shins. It was really a scene worthy of a comic almanac.<sup>120</sup>

Doe's detailed descriptions of his fellow-passengers and their at-times tragicomic lot reveals an observational skill and eye for mischief and comedy which would blossom in Doe's later years in joke-telling and legal satire in some of his famous written opinions decrying certain insurance practices. His humor, as expressed in an opinion that addressed the plight of mink and geese in a case regarding the use of force to defend property (*Aldrich v. Wright*, 53 N.H. 398 (1873)) ends up being used against him. Excerpts from the "Mink Case" were read on the floor on the United States Senate in an effort to dissuade President Chester Arthur from nominating Doe to the United States Supreme Court. (Doe was never nominated).

## Beach Day

At times, the entire seacoast seems to be Doe's playground, with daytrips up to the Maine coast and far flung locales in New Hampshire. Doe's rambles are perhaps all the more remarkable considering horses, rail, and carriage were the principal conveyances in 1852.

Doe recounts a trip to the Maine coast in early August, 1852. Doe and his young companions traversed the "roughest road in the country" and reached the Cape Neddick House (a distance of 24 miles) in two hours.<sup>121</sup> Doe's humor once again is revealed when he recounts a tale of young parents having a difficult time caring for their presumably newborn child:

At the Hotel found Tebbetts of Gt. Falls. . . . Tebbetts was green & he had a green, young wife, & a squalling baby. The management of the responsibility perplexed the inexperienced owners hugely. But [Doe's companion Mary] generously relieved them by suggesting that they lay it on a bed, & surround it with an embankment of pillows, to prevent it rolling off. After this was done, the brat went to sleep, & we had no more matrimonial music.<sup>122</sup>

Doe and his companions then set out into the wilds the next day looking for a path to the sea and a high vantage point they wanted to visit, but ended up with a gulf of water between them and the rocky peak:

“we found our advance checked by the ocean. The end of the cape, a stupendous cliff, which was our object to reach, proved to be an island.”<sup>123</sup> But the despair is momentary as the water between land and the promontory was not more than a foot deep. Like some rag-tag charge of the Light Brigade, Doe and his party dashed into the sea, carrying the women on their shoulders:

Down over the rocks we dashed to the water, shouldered the girls & marched over the sea, then charged up the opposite precipice, with irresistible resolution, clambering over a passage almost impossible, gained in triumph the top of the rock castle, & then were we richly repaid for our labor by the immense expanse of ocean stretching out North. E. & S. from the rock-bound shore which rose almost perpendicularly to our feet. The island was an enormous crag, covered on the top with grass & weeds. There was a fisherman’s hut on the top, but no body at home. We returned soon for fear of the rising tide. It would soon cut off our retreat. Forging it safely again, with the exception of one wet foot for each lady passenger, we returned to the carriages & lunch.<sup>124</sup>

Doe and company traveled through York and back towards home where “thunder & lightning burst upon us” and “so ended the day’s adventures.”<sup>125</sup> Doe notes simply, “It was a great day. We traveled about 40 miles, & had a memorable time.”<sup>126</sup> The pleasure of a shore-side visit and attendant unpredictable New England weather resonate now as much as they did then.

## CONCLUSION: THE PATH AHEAD

While reading the juvenilia of T.S. Eliot or other luminaries, a reader seeks clues to the heights these young adults will reach as adults. Doe’s early musings on his chosen career path are uncanny in their modesty. Considering the prominence Doe will achieve in nineteenth century jurisprudence and the shadow he still casts today, 116 years after his death, one is struck by how little Doe actually dwells on the law in the diary. Most of the ink is spilled on other pursuits. His notes on court sessions tend to be perfunctory — records of verdicts, poor jury charges, satchels of work brought back by his mentor Mr. Christie.

Perhaps this is why Doe grew up to be the judge and humane personage he would become — his training was spent becoming a well-rounded person in addition to a well-rounded lawyer.

I hope this introduction to the diary will serve to further advance our understanding of Doe’s humanity and his complexity as a young attorney and human being coming of age in a tumultuous time in American history.

## ACKNOWLEDGMENT

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invaluable.

## ENDNOTES

- 1 John Phillip Reid, *CHIEF JUSTICE: THE JUDICIAL WORLD OF CHARLES DOE* 29, 184-185 (1967).
- 2 *Id.* at 186.
- 3 E-mail correspondence between Professor John Phillip Reid and the author dated July 23, 2013.
- 4 Diary of Chief Justice Charles Doe - Entry for July 15, 1852.
- 5 *Id.*
- 6 Reid, *CHIEF JUSTICE* at 44.
- 7 Jay Surdukowski, Not Your Average Doe: Notes on the Recently Discovery Library of Chief Justice Charles Doe, *NH BAR JOURNAL* (Winter, 2008).
- 8 Phrase derived from Professor Reid’s first study of Doe, a note in the *Harvard Law Review*. John Phillip Reid, Doe of New Hampshire: Reflections on a Nineteenth Century Judge, 63 *Harvard Law Review* 3 (1950).
- 9 Diary of Chief Justice Charles Doe - Entry for July 18, 1852.
- 10 Gorton Garruth, *WHAT HAPPENED WHEN: A CHRONOLOGY OF LIFE & EVENTS IN AMERICA* 367 (1989).
- 11 *Id.*
- 12 Diary of Chief Justice Charles Doe - Entry for July 18, 1852.
- 13 Reid, *CHIEF JUSTICE* at 66.
- 14 See, generally, the Public Broadcasting System’s collected articles on the American Colonization Society and Africans in America ([www.pbs.org](http://www.pbs.org)).
- 15 George Brown Tindall and David E. Shi, *AMERICA: A NARRATIVE HISTORY* 373 (Brief 3<sup>rd</sup> Ed. 1993).
- 16 *Id.*
- 17 Alan Brinkley, *THE UNFINISHED NATION: A CONCISE HISTORY OF THE AMERICAN PEOPLE* 335 (2<sup>nd</sup> Ed. 1997).
- 18 *Id.*
- 19 Barbara Palmer, “Historian situates ‘back-to-Africa’ movements in broad context,” *Stanford Report* (March 1, 2006) found at: <http://news.stanford.edu/news/2006/march1/colonize-030106.html>
- 20 Tindal, *AMERICA* at 373.
- 21 Brinkley, *UNFINISHED NATION* at 335.
- 22 *Id.*
- 23 Diary of Chief Justice Charles Doe - Entry for July 18, 1852.
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- 25 *Id.*
- 26 *Id.*
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- 28 *Id.* at 66/67.
- 29 Randall Kennedy, A Note on the Word “Nigger” accessed at <http://blackhistory.harp-week.com/1Introduction/RandallKennedyEssay.htm>
- 30 Letter of Charles Doe to Ricker Doe, January 8, 1850 – private collection.
- 31 The meaning of this passage’s reference to a high-interest loan in Wisconsin is ambiguous. According to the 1858 *WISCONSIN SENATE JOURNAL*, Charles Doe of Dover owned \$1,000 (over \$28,000 in today’s money) in stock in the Central Wisconsin Bank, as did Constantia Hayes’ brother General Joseph Hayes of South Berwick (1835-1912), and an A.S. Hayes of South Berwick, presumably another relative of the Hayes family.
- 32 *Id.*
- 33 Letter of Charles Doe dated February 22, 1850 – Library of Virginia collection “A New Englander Described Danville Slaves.” Accession 38743, Personal Papers Collection.
- 34 *Id.*
- 35 *Id.*
- 36 *Id.*
- 37 *Id.*
- 38 *Id.*
- 39 Letter of Charles Doe to Thomas Doe dated May 22, 1861 – private collection.

- 40 Id.
- 41 Id.
- 42 Diary of Chief Justice Charles Doe - Entry for October 10, 1852.
- 43 The Old Testament, Genesis Chapter 32.
- 44 Reid, CHIEF JUSTICE at 30.
- 45 Id. at 240.
- 46 Diary of Chief Justice Charles Doe - Entry for November 7, 1852.
- 47 Id.
- 48 Id.
- 49 Id.
- 50 Id.
- 51 Id.
- 52 Id.
- 53 Id.
- 54 Id.
- 55 Id.
- 56 Diary of Chief Justice Charles Doe - Entry for October 24, 1852.
- 57 Diary of Chief Justice Charles Doe - Entry for October 10, 1852.
- 58 Id.
- 59 Id.
- 60 Id.
- 61 Id.
- 62 Id.
- 63 Diary of Chief Justice Charles Doe - Entry for July 25, 1852.
- 64 Diary of Chief Justice Charles Doe - Entry for November 28, 1852.
- 65 Id.
- 66 Id.
- 67 Id.
- 68 Id.
- 69 Id.
- 70 Id.
- 71 Id.
- 72 Id.
- 73 Diary of Chief Justice Charles Doe - Entry for February 27, 1853.
- 74 Reid, CHIEF JUSTICE at 241.
- 75 Wendy Pirsig, Hayes Family: judge, writer, tariff commissioner, Civil War general, editors – Old Berwick Historical Society (2012) found at <http://www.oldberwick.org>.
- 76 Id.
- 77 Diary of Chief Justice Charles Doe - Entry for July 24, 1852.
- 78 Diary of Chief Justice Charles Doe - Entry for August 1, 1852.
- 79 Diary of Chief Justice Charles Doe - Entry for October 10, 1852.
- 80 Diary of Chief Justice Charles Doe - Entry for November 2, 1852.
- 81 Diary of Chief Justice Charles Doe - Entry for July 7, 1852.
- 82 Id.
- 83 Id.
- 84 Diary of Chief Justice Charles Doe - Entry for July 7, 1852 and August 1, 1852.
- 85 Diary of Chief Justice Charles Doe - Entry for July 7, 1852.
- 86 Id.
- 87 Diary of Chief Justice Charles Doe - Entry for July 18, 1852.
- 88 Diary of Chief Justice Charles Doe - Entry for October 25, 1852.
- 89 Id.
- 90 Diary of Chief Justice Charles Doe - Entry for February 7, 1853.
- 91 Id.
- 92 Id.
- 93 Diary of Chief Justice Charles Doe - Entry for February 27, 1853.
- 94 Id.
- 95 Id.
- 96 Id.
- 97 Diary of Chief Justice Charles Doe - Entry for August 1, 1852.
- 98 Reid, CHIEF JUSTICE at 29.
- 99 Jeremiah Smith, Memoir of Hon. Charles Doe, PROCEEDINGS OF THE SOUTHERN NEW HAMPSHIRE BAR ASSOCIATION 127 (1897).
- 100 Id.
- 101 Diary of Chief Justice Charles Doe - Entry for October 11, 1852.
- 102 Diary of Chief Justice Charles Doe - Entry for August 22, 1852.
- 103 Diary of Chief Justice Charles Doe - Entry for October 11, 1852.
- 104 Id.
- 105 Id.
- 106 Id.
- 107 Diary of Chief Justice Charles Doe - Entry for November 2, 1852.
- 108 Diary of Chief Justice Charles Doe - Entry for February 27, 1853.
- 109 Diary of Chief Justice Charles Doe - Entry for July 22, 1852.
- 110 Id.
- 111 Id.
- 112 Id.
- 113 Id.
- 114 Id.
- 115 Id.
- 116 Id.
- 117 Id.
- 118 Id.
- 119 Id.
- 120 Id.
- 121 Diary of Chief Justice Charles Doe - Entry for August 1, 1852.
- 122 Id.
- 123 Id.
- 124 Id.
- 125 Id.
- 126 Id.

## ABOUT THE AUTHOR



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