

INTRODUCTION

THE CONTINUING SEARCH

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It is now almost two decades since Cynthia Rapp began collecting the in-chambers opinions (ICOs) by the Justices of the Supreme Court of the United States, and about 15 years since Ross Davies made the collection available to lower courts, law libraries, practitioners, and the general public. To date, the *In Chambers Opinions* series and its periodic supplements – now continued in *The Journal of Law* under the designation of *Rapp's Reports* – have comprised 525 opinions. Copies of these opinions have been located in a variety of sources, but the most common locations have been the files of the Supreme Court itself, the Records of the Supreme Court held at the National Archives, and the personal papers of individual justices in the Library of Congress and other repositories throughout the country.¹

The issue of *Rapp's Reports* that comprises this issue of the *Journal of In-Chambers Practice* includes six more opinions. The first of these was authored by Justice Robert Grier in 1849 and addressed an application for injunctive relief in the *Wheeling Bridge* case. The editors are indebted to John D. Gordan, III, a member of the New York Bar and a trustee emeritus of the Supreme Court Historical Society, for bringing this historically significant opinion to our attention and sharing a copy of the now-rare pamphlet reprinting the opinion with us.²

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¹ See Ira Brad Matetsky, *The Publication and Location of In-Chambers Opinions*, 4 Rapp supp. 2 at vi, xiv-xix (2005) (discussing the most common locations where previously published in-chambers opinions can be found).

² For a detailed treatment of the *Wheeling Bridge Case*, see ELIZABETH BRAND MONROE, *THE WHEELING BRIDGE CASE: ITS SIGNIFICANCE IN AMERICAN LAW AND TECHNOLOGY* (Northeastern University Press 1992). For an earlier treatment, see James Morton Callahan, *Semi-Centennial History of West Virginia*, App. A (1913), available at www.ohiocountylibrary.org/wheeling-history/5279. For some non-legal background, see Francis W. Nash, "A Glance at the Wheeling Bridge Case," *availa-*

The other five offerings in this issue are short twentieth-century in-chambers opinions – two each by Justices Harlan Fiske Stone and Felix Frankfurter and one by Justice Stanley Reed – located in the editors’ searches through the libraries and archives. These are all relatively brief opinions and some are in the form of letters or orders, though containing enough reasoning for the justices’ decisions to warrant inclusion in these reports. None were published in any form when they were issued or disseminated to anyone other than the parties or their counsel. In two of these opinions (*Solovay* and *Murphy*), the circuit justice denied applications for leave to appeal, under a now-obsolete aspect of Supreme Court practice, on the ground that no constitutional or other federal question had been presented below. In two others (*Brotherhood of Locomotive Firemen* and *U.S. Overseas Airlines*), the justice denied applications for stays of lower-court rulings pending the Supreme Court’s consideration of certiorari petitions. In the fifth opinion, Justice Frankfurter reiterated his aversion to extending the statutory period for filing a certiorari petition.³

The editors’ search for ICOs that have not previously been published – or at least have not been reprinted since their original publication long ago – is ongoing. But within the next year or so, the editors will finish searching through the most likely locations for newfound ICOs. We increasingly rely on our readers – academics, practitioners, court personnel, lawbook collectors, or anyone else who can understand the thrill of this particular hunt⁴ – to bring us opinions they are aware of, or potential leads to such opinions. All are invited to thumb through their old law books and files and correspondence with an eye to turning up ICOs that the world ought

ble at georgetownsteamboats.com/gs/2010/02/06/a-glance-at-the-wheeling-bridge-case/. Allegations that Justice Grier acted improperly during this litigation (he was exonerated by the House Judiciary Committee) are discussed in Daniel J. Wisniewski, *Heating Up a Case Gone Cold: Revisiting the Charges of Bribery and Official Misconduct Made Against Supreme Court Justice Robert Cooper Grier in 1854-55*, 38 J. Sup. Ct. Hist. 1 (Spring 2013).

³ See also, e.g., *Brody v. United States*, 1 Rapp 198 (1957) (Frankfurter, J., in chambers) (granting only two-day extension); *Carter v. United States*, 1 Rapp 142 (1955) (Frankfurter, J., in chambers) (denying extension); *Mackay v. Boyd*, 4 Rapp 1841 (1955) (Frankfurter, J., in chambers) (denying extension); *Goldman v. Fogarty*, 1 Rapp 123 (1954) (Frankfurter, J., in chambers) (denying extension); *McHugh v. Massachusetts*, 5 Rapp No. 2, 1 J. In-Chambers Practice 40, 36 A.B.A. J. 899 (Frankfurter, J., in chambers) (1950) (granting less than 15 days of requested extension).

⁴ Cf. Arthur Conan Doyle, “The Adventure of the Bruce-Partington Plans” (1908), reprinted in *HIS LAST BOW: SOME LATER REMINISCENCES OF SHERLOCK HOLMES* (1917) (“I play the game for the game’s own sake.”).

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to know about, or at least have access to when the need arises. If you discover an ICO or a reference to an ICO – or a writing that might reasonably be characterized as an ICO – please let us know.

We also welcome leads to sources on the procedures and practices used for in-chambers applications in bygone days, which were enormously different from those in use today – a topic that will be the subject of a forthcoming issue of this *Journal*. The editors can be reached by e-mailing imatetsky@ganfershore.com.