



## THE ELITE FEDERAL BAR IN BALTIMORE, 1818–1834

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As the federal bar was taking shape in the early decades of the 19th century, Baltimore, Md., was home to a disproportionate share of that bar's elite members. G. Edward White, in his volume of *The Oliver Wendell Holmes Devise History of the Supreme Court*, observed that the "period from 1815 to 1835 was one of the highwater marks in the history of the Supreme Court bar.<sup>1</sup> Of the six pre-eminent attorneys whom Professor White profiled in the book, the law practices of three of them—Luther Martin, William Pinkney, and William Wirt—were centered in Baltimore. After the deaths of Martin and Pinkney in the early 1820s, future Chief Justice Roger Taney, himself an accomplished advocate before the Marshall Court, moved his practice to Baltimore. At a time when the U.S. attorney general was a part-time position, Pinkney, Wirt, and Taney all served in that role while maintaining private practices in Baltimore.

William Wirt was a prolific letter writer. His personal papers provide a detailed record of the Baltimore trial practices of these leading Supreme Court advocates starting in 1818. Wirt's writings portray courtrooms packed with spectators who were there to witness the attorneys' rivalries and oratory. The attorneys worked hard, at great cost to their health and personal lives. In return, they earned fame in their time, but not necessarily great fortune.

### The Baltimore Federal Courts

In the early 19th century, the annual session of the Supreme Court began on the first Monday of February.<sup>2</sup> At

the close of the session, the justices and the Supreme Court bar would scatter across the country to ride the circuit.

Baltimore was the site of two federal trial courts. One was the U.S. District Court for the District of Maryland, which had jurisdiction over admiralty and maritime cases, certain cases involving aliens, and federal misdemeanors. The district court held four sessions in Baltimore each year, commencing on the first Tuesday of March, June, September, and December.<sup>3</sup> A succession of three district judges occupied one seat on the district court during this time period: James Houston, who served from 1806 to 1819; Theodorick Bland, who served from 1819 to 1824; and Elias Glenn, who served from 1824 to 1836.

The second federal court in Baltimore was the U.S. Circuit Court for the District of Maryland, which had original jurisdiction over diversity cases and federal question cases as well as appellate jurisdiction over the rulings handed down by the district court. The circuit court, made up of the district judge and the Supreme Court justice assigned to the Fourth Circuit, sat in Baltimore twice each year, with sessions commencing on May 1 and November 7.<sup>4</sup>

From 1811 to 1835, Gabriel Duvall was the Supreme Court justice assigned to Maryland. In contrast with the pre-eminent lawyers practicing before him, Justice Duvall was one of the Supreme Court's all-time least distinguished members. He authored a total of 15 opinions during his 23 years of service.<sup>5</sup> In addition, it appears that Justice Duvall did not publish any opinions handed down by the circuit

court. His judicial silence is particularly notable because the Fourth Circuit, which then consisted of only Maryland and Delaware, was by far the easiest assignment in the era of circuit riding. Roger Taney, Duvall's successor on the Fourth Circuit, would later estimate his own annual circuit riding consisted of only 438 miles.<sup>6</sup>

Justice Duvall's passivity was probably not too noticeable during the trials over which he presided. After all, early 19th-century attorneys were, above all else, orators. Even before the Supreme Court, according to White, "there were no time limits on arguments," and "Justices put relatively few questions to counsel. ... Written briefs were rare and ... not required."<sup>7</sup>

### Attorneys General in Private Practice

Before the establishment of the Department of Justice in 1870, the U.S. attorney general was a cabinet officer without a department. The attorney general's statutory duties consisted only of arguing cases for the United States before the Supreme Court and of rendering legal advice to the executive branch.<sup>8</sup> Because the duties of the office were much narrower than those of other cabinet officials, the attorney general received lower pay. Congress expected attorneys general to supplement their incomes by maintaining private law practices.<sup>9</sup>

William Pinkney, who served as James Madison's attorney general from December 1811 to February 1814, "resided altogether in Baltimore during the short period of his incumbency, and maintained his post almost without interruption to his private engagements at the bar."<sup>10</sup> Congress responded by passing an act requiring the attorney general to reside in Washington, D.C., and Pinkney resigned shortly thereafter.<sup>11</sup>

This residency requirement presented a problem for Pinkney's successors. The young city of Washington had yet to develop into a center of litigation. Thus, unless the attorney general was independently wealthy, the low government pay required the individual to leave the city in order to maintain a private legal practice.

William Wirt, who was appointed to the post of attorney general on Nov. 13, 1817, held the position for more than 11 years. The residency requirement led to an unhappy physical separation between Wirt and his family. Elizabeth Wirt maintained the family home in Washington with their 10 children and integrated herself into Washington society, while her husband traveled much of the year.<sup>12</sup>

The Wirts' personal loss was history's gain, however. During the 1810s and 1820s, the mail operated seven days per week, with mail stages running between Baltimore and Washington several times each day. The Wirts' constant correspondence offers a detailed view of the trial practices of the Supreme Court bar.

### Justice Wirt's Arrival in Baltimore

Wirt admitted that his "single motive for accepting the office was the calculation of being able to pursue my profession on a more advantageous ground—i.e. more money for less work."<sup>13</sup> Baltimore presented a natural choice for a location in which Wirt would build a lucrative trial practice. "Because Washington was relatively inaccessible to any major city save Philadelphia and Baltimore, the majority of lawyers

that practiced before the Marshall Court in its early years came from those two cities."<sup>14</sup> In January 1818, Wirt listed five reasons why a young protégé, Francis Walker Gilmer, should set up a practice in Baltimore, rather than in Richmond:

1. It is a larger theatre and the business, I understand, much greater.
2. The bar is not so strong, nor so firmly fixed in the saddle as in Richmond. This is an important consideration while you are yet in your apprenticeship.
3. The profitable business in Baltimore depends on the maritime law, which is of such easy acquisition that you may commence practice with it, at once, and master it wholly in six months.
4. You are entirely new at Baltimore and may take any ground of elevation you choose to start from.
5. There are frequent appeals from Baltimore to the Supreme Court here, which will soon give you an opportunity of presenting yourself in the great *focus* of national observation.<sup>15</sup>

Shortly after dispensing the foregoing advice, Wirt prosecuted his first case in Baltimore in May 1818. President James Monroe requested that Wirt aid in a high-profile prosecution for mail robbery.<sup>16</sup> When Wirt observed that such an assignment was outside the scope of his statutory duties, the U.S. government separately retained Wirt at a cost of \$1,500.<sup>17</sup> The stagecoaches to Baltimore were "badly managed," but, to the relief of Wirt's fellow travelers, his stagecoach made it to Baltimore in record time because the attorney general was aboard.<sup>18</sup> Wirt's "first question upon leaving the stage was whether the mail robbers were under trial—the answer was that the court had risen for the day[,] Judge Duvall being in his room above stairs."<sup>19</sup> After Wirt went to his room at the inn where the case was being heard, Justice Duvall "came into my room ... while I was shaving a few minutes afterwards and informed me that the trial would not take place 'till Saturday."<sup>20</sup> After one week of trial, the jury delivered a guilty verdict and a sentence of death.<sup>21</sup>

Thus, Wirt quickly saw the city as a potential focus for his own legal practice: "I have it in contemplation to try the effect of an admission to the State bar of Baltimore before I leave this place—my friends here think it will be worth 4 or 5000 \$ a year to me—which will be a decent addition to my practice in Washington."<sup>22</sup> The Baltimore bar granted Wirt, as the U.S. attorney general, immediate admission. However, Wirt's protégé, Gilmer, chose Richmond for his law practice after he learned about the Baltimore bar's rule requiring three years' residence in Maryland before admission.<sup>23</sup> Wirt urged Gilmer to seek an exception to the rule, so that they could start a practice together, but Gilmer declined.<sup>24</sup>

During his tenure as attorney general, Wirt spent approximately six months each year in Baltimore. He also built a state appellate practice before the Court of Appeals of Maryland. Wirt spent only about three months of the year—from January to March—at his Washington home. Those three months were Wirt's most grueling stretch of the year, as he wrote attorney general opinions and prepared for and argued cases before the Supreme Court.<sup>25</sup>

## Wirt versus Martin and Pinkney

When Wirt established his private practice in Baltimore in 1818, he was familiar with his two chief rivals, Luther Martin and William Pinkney. Martin, a signer of the Declaration of Independence, was at the tail end of a long, distinguished, and inebriated career. Martin was renowned for delivering great speeches while visibly drunk.<sup>26</sup> Wirt had first risen to national prominence opposite Martin in the 1807 treason prosecution of Aaron Burr before Chief Justice Marshall in Richmond. Wirt's speech, with its refrain of "Who is Blennerhassett?"—a reference to Burr's alleged co-conspirator—was a staple of oratory instruction for decades thereafter.<sup>27</sup> But the defense attorneys in the case, led by Martin, persuaded Marshall to dismiss the charges. Martin's defense of Burr harmed his career back in Baltimore, where a mob, dubbing the defense attorney "Lawyer Brandy Bottle," hanged him in effigy along with Marshall, Burr, and Blennerhassett.<sup>28</sup>

Wirt harbored a deep dislike for Pinkney, which dated back to a trial that took place in 1811. As Wirt recalled in 1816, "I was near that man for five or six weeks, watched him narrowly and saw not one [trait] of intellect, *on a grand scale*. His first views of subjects, started for the first time, are never deep and rarely correct."<sup>29</sup> Wirt found Pinkney's manners "very coarse—he has nothing of the care, the softness, the delicacy, the refinement or the *nature* of the genuine gentleman—on the contrary he is stiff, harsh, assuming, repulsive, and, in a short time, disgusting."<sup>30</sup> Wirt admitted that "Pinkney was very polite to me," but Wirt expressed that "I cannot love the man—for *he* has *no heart* but for himself."<sup>31</sup>

Wirt opposed both Pinkney and Martin at a trial held in August 1818. Matched against two of the greatest attorneys of the day, Wirt could focus only on the "hot, desolate and barren" conditions. "Pinkney commenced his speech today and spoke throughout it—he goes on again tomorrow," Wirt wrote. "Then Luther Martin and then me. I have no hope of speaking tomorrow. I am wretched here. . . . [T]he court house is badly attended. Every one has grown weary of this subject."<sup>32</sup> Nevertheless, Pinkney's performance in the Baltimore heat did earn some respect from Wirt, who wrote that Pinkney was "really a fine creature in his profession: has a fertile and noble mind."<sup>33</sup> In October 1818, as Wirt prepared for a major trial against Pinkney the next month in Baltimore, Wirt admitted that he found "much pleasure in meeting" Pinkney, writing that "[h]is reputation is so high that there is no disparagement in being foiled by him, and great glory in even dividing the plain. To foil him in fair fight, and in the face of the United States—*on his own theatre, too*—would be crown so imperishable, that I feel a kind of youthful pleasure in preparing for the combat."<sup>34</sup>

That "youthful pleasure" did not last long. The trial in question involved the prosecution of Commodore Thomas Taylor on five counts of piracy. Wirt and Elias Glenn, Maryland's U.S. attorney (and future district judge), sought to introduce evidence regarding "several vessels not named in the indictment, to evince [Thomas'] piratical intention."<sup>35</sup> Pinkney, who represented Taylor, "exhibited

his vast powers in their fullest effect," leading Justice Duvall and District Judge Houston to determine that "the crimes charged in the indictment were the only ones to be considered in the case."<sup>36</sup> Pinkney then successfully argued to the circuit court that Taylor's acts were within the scope of a commission from the united provinces of Rio del Plata, leading the jury to acquit Taylor "on every count of the indictment without leaving the box."<sup>37</sup> After the circuit court acquitted a Baltimore merchant allegedly abetting Taylor, Glenn ordered entry of a *noli prosequi* as to the rest of the alleged abettors. A contemporary newspaper account anticipated that written opinions in this important case would be forthcoming,<sup>38</sup> but Justice Duvall, true to form, published nothing.

Tempers between Wirt and Pinkney flared during the piracy trial. When newspaper accounts suggested that Wirt challenged Pinkney to a duel, Wirt pre-emptively provided his own account to his wife:

I write tonight to take off any alarm from a paragraph which may be copied from the Baltimore papers into the Intelligencer, relating to a collision between Mr. Pinkney and myself, in court, here. He insulted me by a rude remark which was generally believed here to have been premeditated. . . . [I gave] him a day after the thing occurred to see if he would not of himself, offer a voluntary apology on the scene where the insult was given. He failed to do so and I was driven to the unchristian necessity of exacting from him the explanation due to my honor. It is not necessary to detail the circumstances. He has made the necessary explanation—and we meet tomorrow at breakfast.<sup>39</sup>

Elizabeth Wirt responded to her husband's defense of his honor with cutting sarcasm:

Oh my Husband, my Husband, what shall I say or do. I am disposed to jump into the stage and be whisked off to Baltimore directly, to hold your dear head to my bosom if indeed you live. Oh thought of honor and frenzy! Have I been so near to being desolate—and my dear little ones fatherless. Can it be that you the father of ten children would have forsaken them, and rushed unbidden before your creator—and this for a rash word spoken by reptile man. Wretched misguided mortals!<sup>40</sup>

Wirt did not appreciate his wife's unsympathetic response: "Your letter received to day disappoints me a little—How would you have received an insulted and disgraced husband? But enough—it is over—my honor and my life both are safe."<sup>41</sup>

In February 1819, Wirt, Pinkney, and Martin returned to Washington and argued the case of *McCulloch v. Maryland*, 17 U.S. 316 (1819). Martin, as the attorney general of Maryland, led the attack on the constitutionality of the Bank of the United States. Wirt and Pinkney joined Daniel Webster in the defense of the Bank. Martin's

speech in defeat was among his most famous and among his last. He suffered a debilitating stroke in August 1819, after which he would “wander aimlessly into courtrooms, staring vacantly and munching gingerbread.”<sup>42</sup>

Over the next three years, Pinkney and Wirt maintained a prickly relationship at the top of the Baltimore bar. In 1820, Wirt noted that Pinkney spoke “with more than his usual courtesy—to me he was perfectly courteous though he gave my colleague ... some dry cuts.”<sup>43</sup> The long-winded Wirt was quick to criticize the same trait in Pinkney, noting that his rival “promised to speak only two hours and a half—he has spoken two *days*—and is, at this moment, at it again, for the third day.”<sup>44</sup>

An overworked Pinkney died of a sudden illness during the Supreme Court’s February 1822 term. Wirt wrote his private tribute to Pinkney in a letter to Gilmer, and the tone was conciliatory: “He was a great man. On a set occasion, the greatest, I think, at our bar. ... He ... had very great force of mind, great compass, nice discrimination, strong and accurate judgment: and, for copiousness and beauty of diction, was unrivalled.”<sup>45</sup> Even then, Wirt could not resist a backhanded compliment: “In my last two struggles with him I was perfectly satisfied[,] ... for to draw his supremacy into question, on his own dung-hill, was honor enough for ambition as moderate as mine.”<sup>46</sup>

At the time of Pinkney’s death, Wirt remained unsure of the value of continuing his own practice in Baltimore. “One gentleman assured me ... that [Pinkney’s] last year’s practice was worth only \$8000—and another says that [Pinkney] himself represented it is worth \$23,000.” Wirt predicted that “[s]omebody will go to Baltimore in Pinkney’s place.”<sup>47</sup>

### Wirt versus Taney

Wirt’s prediction proved correct. In 1823, Roger Taney, a successful 46-year-old attorney, moved his family and his law practice from western Maryland to Baltimore.<sup>48</sup>

Wirt’s rivalry with Taney was much friendlier than his rivalry with Pinkney was. Although Wirt occasionally represented the same side that Pinkney did, Wirt and Taney were much more likely to join forces.<sup>49</sup> At first, Wirt did not find Taney to be as imposing an opponent as Pinkney. In an 1825 letter, Wirt told his wife that “Taney has made what they call here a great speech—what I call a very good one—and I must endeavor not to fall short—though I have a pretty tough cause of it to handle.”<sup>50</sup> Taney, for his part, was prone to flatter Wirt, who happily accepted the compliments but appeared to miss the rivalry with Pinkney. The day after Taney’s “very good” but not “great” speech, Wirt reported to Elizabeth:

I have spoken three hours today. They call it as usual a great speech. Taney told me I had made a most beautiful speech and he had heard me with unqualified pleasure from beginnings to end—that it was passionate, awash and graced with all the embellishments which I know so well how to lay on. Those are about his words. Others are loud in praise of it. But for my own part I think it was only so so. But if it

passes with the best judges here for the best speech that was made, far be it from me to deny it.<sup>51</sup>

A few months later, in the heat of summer before the Maryland Court of Appeals, Wirt recounted a similar story: “I have been in ... to day what Taney calls ‘a noble argument’ and every body else ‘*great*’ etc. etc. It was a good argument ... but I was speaking near four hours through the heat of the day and I am half dead with fatigue.”<sup>52</sup> The flattery continued upon their return to trial practice in Baltimore, where Taney conveyed hyperbolic praise to Wirt’s close friend, Jonathan Meredith:

Taney went to Meredith with his hands up, in his satisfied way, to say “Well I have heard Mr. Wirt with great admiration, before—but this is the most beautiful, the most powerful, and the very closest argument that I ever heard even him deliver—I watched him closely and he never once let go a point that he propounded ‘till he had made it perfectly clear.”

He came to me to day—“I am frightened to death. I told every body yesterday that I was sure of my cause and I verily believe you will take it from me.”<sup>53</sup>

The flattery may have been justified, as Wirt gleefully reported that, amidst applause in the courtroom, “I gained my cause, to the extreme mortification of Taney ... and the victory is attributed wholly to my speech. It is no disadvantage to me to have it cracked up over the heads of every body else.”<sup>54</sup> By the close of 1825, Wirt spoke of his contests with Taney in the same competitive tone with which he had described his contests with Pinkney. When Taney arrived in Annapolis for an argument before the Maryland Court of Appeals, Wirt wrote, “Taney has arrived—and we commence our war, i.e. our argument, tomorrow.”<sup>55</sup>

Notwithstanding the prestige of his growing state appellate practice in Annapolis, Wirt preferred Baltimore. The mails between Washington and Annapolis took days rather than hours, leading Wirt to write to Elizabeth in December 1825 that “I sh’d be very glad to get to Baltimore where I can hear from you a little more regularly.”<sup>56</sup> But the grind of trial practice in Baltimore placed its own strains on their relationship, as Wirt reported on December 19 that the “Judges this day announced that they would not adjourn for Xmass.”<sup>57</sup> Elizabeth responded, “It is a hard fate indeed. And yet our expenses have been so great that we can not choose between labour & rest—but must drudge on whether we wish or no.”<sup>58</sup> As a small consolation, the mail was delivered on Christmas day, permitting Wirt to send a letter wishing his wife “Merry xmass to you dearest love and to all our children.”<sup>59</sup> The nonstop litigation did not benefit the court either, as Justice Duvall called a premature end to the January 1826 term when he “declared himself too unwell to hear another argument this term.”<sup>60</sup>

Taney and Wirt’s rivalry in Baltimore’s trial courts reached its pinnacle with the “Church Mandamus” case in state court in May 1827. After a schism in a city Presbyterian congregation, a dispute arose as to ownership of the

church's property. Wirt represented the majority and the pastor, while Taney represented the dissenting minority in its application for mandamus to transfer possession of the church property. The trial took place before "an eager and excited crowd," including "ladies of the highest fashion and consideration in the city, attracted thither by the general interest of the cause and by the fame of the counsel."<sup>61</sup> Wirt's winning speech, delivered before an ever-growing crowd in oppressive heat, drew roaring applause and was published in newspapers and pamphlets.<sup>62</sup>

### The Jacksonian Era

Although the two were personally friendly, Wirt and Taney could not have been further apart when it came to politics. Wirt witnessed Andrew Jackson's political rise with great apprehension. Taney, by contrast, was the Jackson administration's leading legal mind, serving as Jackson's attorney general and as secretary of the treasury.<sup>63</sup>

Upon Jackson's election in 1828, Wirt briefly considered moving to New York but, at Elizabeth Wirt's urging, the Wirts moved their family residence to Baltimore.<sup>64</sup> Another Wirt protégé, future Supreme Court Chief Justice Salmon Chase, who studied law under Wirt in Washington in the late 1820s, chose Cincinnati over Baltimore.<sup>65</sup>

As both an attorney and a reluctant politician, Wirt was a leading opponent of the Jackson administration. The Cherokee Nation hired Wirt to represent it in its disputes with the Jackson administration and the state of Georgia. Wirt viewed his legal representation of the Cherokee Nation as both a moral issue and an opportunity to discredit Jackson.<sup>66</sup> In *Worcester v. Georgia*, Wirt achieved a great paper victory for the rule of law in 1832, even though the decision could not protect the Cherokee from the "Trail of Tears."

The Anti-Masonic Party—one of the numerous opposition parties that arose before anti-Jackson factions coalesced to form the Whig Party—held its convention in Baltimore in 1831. To Wirt's great surprise, the Anti-Masons nominated him for the presidency. Wirt accepted the nomination, but he came to regret the decision when the National Republicans nominated Henry Clay, splitting the anti-Jackson vote. Wirt actually won Vermont's vote, but Maryland's electorate voted for Clay as Jackson won a second term.<sup>67</sup>

Wirt, who entered a dark phase when his favorite daughter died soon after the family moved to Baltimore, began to grow weary of practicing law in the 1830s. Never realizing the financial independence that he had hoped to achieve during his 11 years as attorney general, in 1833, Wirt lamented that "business is getting worse & worse."<sup>68</sup> That May, Wirt repeatedly wrote to Attorney General Taney in an attempt to recover a fee from the U.S. Treasury for services rendered "in preparing instructions for documents from Spain" in a case heard by the Supreme Court.<sup>69</sup> Practice before the Circuit Court for the District of Maryland grew frustrating, as Justice Duvall grew so deaf that he was unable to hear Wirt's voice.<sup>70</sup> Given the lack of written briefs during this era, and given Justice Duvall's aversion to written opinions, it is likely that District Judge

Glenn was doing all of the circuit court's work.

In February 1834, Wirt died in Washington after a brief illness.<sup>71</sup> Chief Justice Marshall adjourned the Supreme Court to form a funeral arrangements committee, and both houses of Congress adjourned for the funeral.<sup>72</sup> Wirt left substantial debts, forcing his family to leave Baltimore to avoid creditors.<sup>73</sup>

Marshall himself died in 1835, and, following a spirited Senate debate, Taney succeeded Marshall. With Taney's confirmation as chief justice of the Supreme Court in 1836, Baltimore entered an era during which the federal judiciary in the city outshone its bar. Although known for a sickly appearance, Taney, probably aided by his assignment to an easy circuit, presided over the Supreme Court and the circuit court for more than 28 years, until his death at age 87. Sitting on the circuit court in Baltimore during the Civil War in 1861, Taney authored the habeas corpus decision in *Ex Parte Merriman*, 17 F. Cas. 144 (C.C.D. Md. 1861), which is among the most significant decisions ever authored by a Supreme Court justice while sitting as circuit judge.

### Observations

For the elite members of the Supreme Court bar during the early days of the republic, trial practice mirrored Supreme Court practice. In competition with other attorneys of national note, these orators delivered grand speeches for days on end. But it was not an easy way to make a living. Lawyers spent up to six days per week in court, even during grueling summer sessions. Moreover, an elite practice was no guarantee of wealth. Even accounting for the size of the Wirt household, it remains noteworthy that Wirt barely kept his head above water while maintaining one of the country's top legal practices. It was not until later in the century that lucrative legal work for railroad companies would offer lawyers of Wirt's caliber a path to personal fortune.

Even the fame proved fleeting. History has all but forgotten Wirt, Pinkney, and Martin. Taney is remembered for his judicial service not for his private practice. Despite the unusual concentration of legal talent in Baltimore, only a Boston-based attorney, Daniel Webster, remains in the public memory because of his private law career. **TFL**

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## Endnotes

<sup>1</sup>G. Edward White, *THE SUPREME COURT AND CULTURAL CHANGE, 1815–35* 290 (1988).

<sup>2</sup>Stat. 156 § 1.

<sup>3</sup>1 Stat. 73 §§ 3, 9; 2 Stat. 156 § 15.

<sup>4</sup>1 Stat. 73 § 11; 2 Stat. 156 § 4.

<sup>5</sup>White, *supra* note 1, at 321.

<sup>6</sup>*Id.* at 323.

<sup>7</sup>*Id.* at 203.

<sup>8</sup>1 Stat. 73 § 35.

<sup>9</sup>Galen N. Thorp, *William Wirt*, 33 J. S. Ct. Hist. 223, 232 (2008).

<sup>10</sup>John Pendleton Kennedy, *MEMOIRS OF THE LIFE OF WILLIAM WIRT, ATTORNEY GENERAL OF THE UNITED STATES* 56–57 (1849). The author has personally reviewed and transcribed the handwritten letters at the Maryland Historical Society and at the University of Virginia and takes full responsibility for any discrepancies between the original letters and the article's quotations from those letters.

<sup>11</sup>*Id.*

<sup>12</sup>Anya Jabour, *MARRIAGE IN THE EARLY REPUBLIC: ELIZABETH AND WILLIAM WIRT AND THE COMPANIONATE IDEAL* 99–103 (1998).

<sup>13</sup>2 Kennedy, *supra* note 10, at 73.

<sup>14</sup>*Id.* at 202.

<sup>15</sup>Letter from William Wirt [hereinafter cited as WW] to Francis Walker Gilmer (Jan. 14, 1818) (on file with University of Virginia Special Collections, Gilmer Letterbooks, No. 38-588 [hereinafter cited as Gilmer Letterbooks]). The author has personally reviewed and transcribed the handwritten letters from the Gilmer Letterbooks at the University of Virginia and from the Wirt Papers at the Maryland Historical Society. The author takes full responsibility for any discrepancies between the original letters and the article's quotations from those letters.

<sup>16</sup>WW to Elizabeth Wirt [hereinafter cited as EW], May 7, 1818 (on file with Maryland Historical Society [hereinafter cited as Wirt Papers], Reel 3).

<sup>17</sup>Thorp, *supra* note 9, at 296.

<sup>18</sup>WW to EW, May 2, 1818, and May 7, 1818, Wirt Papers, Reel 3.

<sup>19</sup>WW to EW, May 7, 1818, Wirt Papers, Reel 3.

<sup>20</sup>*Id.*

<sup>21</sup>WW to EW, May 9, 1818, Wirt Papers, Reel 3.

<sup>22</sup>WW to EW, May 10, 1818, Wirt Papers, Reel 3.

<sup>23</sup>2 Kennedy, *supra* note 10, at 71.

<sup>24</sup>WW to Gilmer, June 1, 1818, and Oct. 15, 1819, Gilmer Letterbooks, No. 38-588.

<sup>25</sup>Thorp, *supra* note 9, at 233.

<sup>26</sup>Peter Irons, *A PEOPLE'S HISTORY OF THE SUPREME COURT: THE MEN AND WOMEN WHOSE CASES AND DECISIONS HAVE SHAPED OUR CONSTITUTION* 123 (2d ed. 2006).

<sup>27</sup>*United States v. Burr*, 25 F. Cas. 2 (C.C.D. Va. 1807).

<sup>28</sup>White, *supra* note 1, at 235.

<sup>29</sup>WW to Gilmer, Apr. 1, 1816, Gilmer Letterbooks, No. 38-588. The case was probably *Jones v. Shore's Executor*, 14 U.S. 462 (1816).

<sup>30</sup>*Id.*

<sup>31</sup>*Id.*

<sup>32</sup>WW to EW, Aug. 12, 1818, Wirt Papers, Reel 3.

<sup>33</sup>2 Kennedy, *supra* note 10, at 80.

<sup>34</sup>*Id.*

<sup>35</sup>*Commodore Taylor—A law case*, NILES WKLY. REG., Dec. 19, 1818.

<sup>36</sup>*Id.*

<sup>37</sup>*Id.*

<sup>38</sup>*Id.*

<sup>39</sup>WW to EW, Dec. 2, 1818, Wirt Papers, Reel 3.

<sup>40</sup>EW to WW, Dec. 3, 1818, Wirt Papers, Reel 3.

<sup>41</sup>WW to EW, Dec. 4, 1818, Wirt Papers, Reel 3.

<sup>42</sup>White, *supra* note 1, at 240.

<sup>43</sup>WW to EW, Nov. 22, 1820, Wirt Papers, Reel 4.

<sup>44</sup>WW to EW, Apr. 7, 1821, Wirt Papers, Reel 4.

<sup>45</sup>WW to Gilmer, March 9, 1822, Gilmer Letterbooks.

<sup>46</sup>*Id.* In reprinting this letter, Wirt's biographer downplayed this petty swipe by replacing the phrase "on his own dung-hill" with the word "anywhere." See 2 Kennedy, *supra* note 10, at 138.

<sup>47</sup>WW to Gilmer, March 9, 1822, Gilmer Letterbooks.

<sup>48</sup>Walker Lewis, *At Home With Justice Taney*, 51 AM. BAR. ASS'N J. 829, 830 (1865).

<sup>49</sup>*Oliver v. Alexander*, 31 U.S. 143 (1832); *Tiernan v. Jackson*, 30 U.S. 580 (1831); *Sheppard v. Taylor*, 30 U.S. 675 (1831).

<sup>50</sup>WW to EW, Jan. 11, 1825, Wirt Papers, Reel 6.

<sup>51</sup>WW to EW, Jan. 12, 1825, Wirt Papers, Reel 6.

<sup>52</sup>WW to EW, June 29, 1825, Wirt Papers, Reel 7.

<sup>53</sup>WW to EW, Oct. 27, 1825, Wirt Papers, Reel 7.

<sup>54</sup>WW to EW, Oct. 28, 1825, Wirt Papers, Reel 7.

<sup>55</sup>WW to EW, Dec. 5, 1825, Wirt Papers, Reel 7.

<sup>56</sup>WW to EW, Dec. 12, 1825, Wirt Papers, Reel 7.

<sup>57</sup>WW to EW, Dec. 19, 1825, Wirt Papers, Reel 7.

<sup>58</sup>EW to WW, Dec. 20, 1825, Wirt Papers, Reel 7.

<sup>59</sup>WW to EW, Dec. 25, 1825, Wirt Papers, Reel 7.

<sup>60</sup>WW to EW, Jan. 18, 1826, Wirt Papers, Reel 7.

<sup>61</sup>2 Kennedy, *supra* note 10, at 227.

<sup>62</sup>*Id.* at 228–230.

<sup>63</sup>William L. Reynolds, *Maryland and the Constitution of the United States: An Introductory Essay*, 66 MD. L. REV. 923, 932 (2007).

<sup>64</sup>2 Kennedy, *supra* note 10, at 237, 267.

<sup>65</sup>Harold M. Hyman, *THE RECONSTRUCTION JUSTICE OF SALMON P. CHASE: IN RE TURNER AND TEXAS V. WHITE* 27 (1997).

<sup>66</sup>Jill Nordgren, *THE CHEROKEE CASES: THE CONFRONTATION OF LAW AND POLITICS* 53–55 (1996).

<sup>67</sup>Jabour, *supra* note 12, at 149–151.

<sup>68</sup>*Id.* at 153.

<sup>69</sup>WW to Taney, May 14, 1833, and May 20, 1833, Wirt Papers, Reel 23.

<sup>70</sup>White, *supra* note 1, at 326.

<sup>71</sup>Jabour, *supra* note 12, at 161–162.

<sup>72</sup>Thorp, *supra* note 9, at 235.

<sup>73</sup>Jabour, *supra* note 12, at 164.