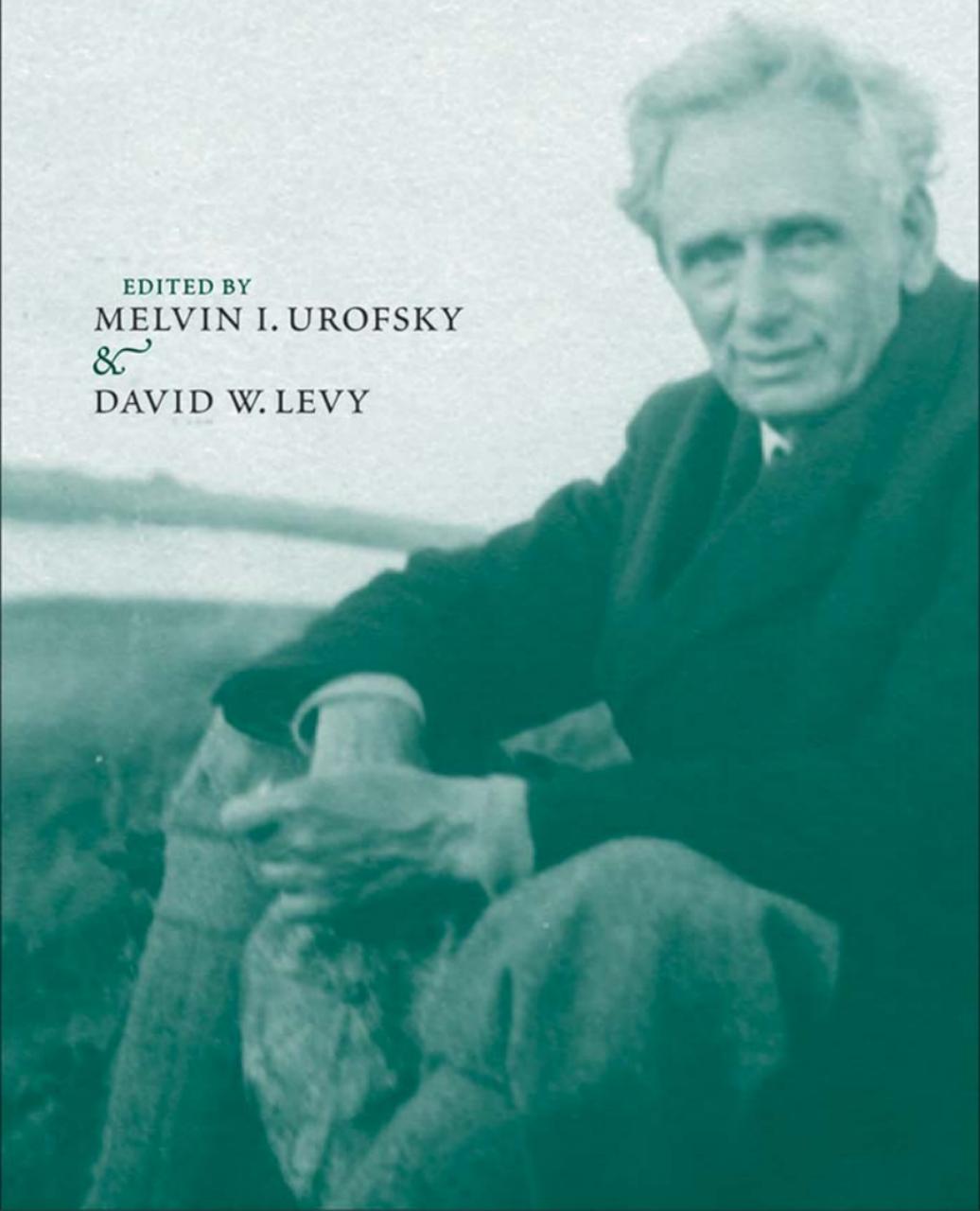


THE FAMILY LETTERS OF  
*Louis D. Brandeis*

EDITED BY  
MELVIN I. UROFSKY  
&  
DAVID W. LEVY



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Louis D. Brandeis

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# **The Family Letters of Louis D. Brandeis**

Edited by Melvin I. Urofsky  
and David W. Levy

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Also edited by Melvin I. Urofsky and David W. Levy

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1 2 3 4 5 6 7 8 9 10

This book is dedicated  
with love and gratitude to the  
members of our own families

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# *Contents*

List of Illustrations	viii
Introduction	ix
Chronology	xv
Sources	xxiii
The Family Letters of Louis D. Brandeis	1
Index	567

# *Illustrations*

*Following page 284*

Adolph Brandeis, ca. 1865

Frederika Dembitz Brandeis, ca. 1865

Louis and Alfred Brandeis, 1881

Susan and Elizabeth Brandeis, 1898

LDB and Alfred Brandeis, mid-1920s

LDB, Chatham, 1931

Susan Brandeis Gilbert, LDB, and Elizabeth Brandeis Raushenbush,  
Chatham, 1931

LDB and grandchildren, early 1930s

LDB and niece Fannie Brandeis, ca. 1930

LDB's son-in-law Paul Raushenbush, 1933

LDB's son-in-law Jacob Gilbert, 1947

Alice and LDB and their four grandchildren, Chatham, mid-1930s

Walter Brandeis Raushenbush, Elizabeth Brandeis Raushenbush, and  
LDB, ca. 1935

Walter and Elizabeth Raushenbush with Louis, Alice, and Frank Gilbert,  
Chatham, 1939

Alice and Louis Brandeis, late 1930s

# Introduction

Thirty-five years have now passed since we embarked upon the work of gathering and editing the letters of Louis Dembitz Brandeis. We (mistakenly) believed that we had completed the project with the publication in the mid-1970s of the five-volume *Letters of Louis D. Brandeis* (State University of New York Press, 1971–78). While working on those volumes, we were given to understand that certain bodies of Brandeis material were not going to be available to us. These included the archive of the law firm of Nutter, McClennen & Fish, the successor firm to Warren & Brandeis; the correspondence between Brandeis and Felix Frankfurter; Brandeis's working papers from his tenure on the Supreme Court; and most of the letters that he wrote to members of his family. Since then, to our surprise and gratification, things have changed with respect to each of these collections of Brandeis material.

In the mid-1960s the senior partners of Nutter, McClennen & Fish believed that client confidentiality precluded opening their files to researchers—even though many of those files were by that time more than seven decades old. After these partners retired, however, their successors reviewed the decision and decided to allow scholarly access to the firm's archive. This occurred too late for us to use those letters, but we are pleased that the Brandeis legal papers are now available on microfilm. Similarly, the Harvard University Law School, the repository of the Court papers, decided to open that collection to researchers; those files are now also available on microfilm.

The Frankfurter letters and those written to members of the family posed different problems. After Brandeis's death in 1941, Justice Frankfurter went to Louisville (the main depository of Brandeis's papers) and removed or destroyed many of his own letters to the Justice. Fortunately, he kept the letters *from* Brandeis, which were deposited in the Library of Congress after his death. Frankfurter's gift, however, allowed his designated biographer, Max Freedman, to control and even to remove files temporarily. Freedman removed the Brandeis folders and left a handful of barely legible thermofax copies in their place. His purpose in doing so remains unknown. Shortly afterward Freedman became seriously ill, and the folders containing Brandeis's letters to Frankfurter were not returned to the Library of Congress until well after his death. The richness of that collection led the two of us to return to the project after a hiatus of more than ten years. In the end we selected, edited, and published 671 of the letters

in *“Half Brother, Half Son”: The Letters of Louis D. Brandeis to Felix Frankfurter* (University of Oklahoma Press, 1991).

The family letters—the materials that constitute the present volume—are yet another story. When we began gathering the letters for our initial volumes, we approached both of Justice Brandeis’s daughters, Susan Brandeis Gilbert and Elizabeth Brandeis Raushenbush. Ms. Gilbert told us that she had not kept any of her father’s letters. But after her death two of her children, Alice Brandeis Popkin and Frank Brandeis Gilbert, found among their mother’s papers several boxes of family materials, which they deposited in the Goldfarb Library of Brandeis University. When we learned about this, we approached Ms. Popkin and Mr. Gilbert and asked their permission to edit and publish some of those letters in an effort to round out the Brandeis project. They graciously agreed to our request, and we wish to thank them heartily for their permission and for their support of our work.

Brandeis’s other daughter, Professor Elizabeth Raushenbush (who was until the end of her life an ardent and generous champion of our project), informed us that she had numerous letters from her father, but that for reasons of privacy she felt unable to turn them over to us. Instead she went through her papers and allowed us to print in their entirety around two dozen letters and to utilize in our annotation fragments from many others.<sup>1</sup> She also told us that it was her intention to destroy the bulk of the letters from her father before her death. Unfortunately, from a scholar’s point of view, she carried out her intention.<sup>2</sup> But, we are very glad to say, she could not quite bring herself to destroy one very special group of her father’s letters.

The one body of correspondence that Elizabeth Raushenbush did not have the heart to destroy consisted of several dozen letters written by her father to her mother, Alice, during their courtship. Alice Brandeis had shown these letters to Alpheus T. Mason, who used portions of them in his pioneering 1946 biography, *Brandeis: A Free Man’s Life*. We republished those excerpts from Mason’s biography in volume 1 of the *Brandeis Letters*, supplemented by a few additional paragraphs provided by Ms. Raushenbush. On her death, she left those letters to her niece, Alice Popkin. When we began discussing this volume with Ms. Popkin and Mr.

1. The source of the letters that we have republished in this volume is indicated as “EBR.”

2. A few letters, however, escaped and eventually found their way into the hands of Elizabeth Raushenbush’s son, Professor Walter Raushenbush, then of Madison, Wisconsin. He generously permitted one of us to search through the papers in his basement and to remove, edit, and publish those letters that we judged to be historically important. The source of these letters is indicated in the pages that follow as “Raushenbush MSS.”

Gilbert, Ms. Popkin suggested that for a truly complete picture of her grandfather those letters should be integrated into the other family correspondence. For this act of generosity we are especially thankful to her.

Needless to say, had it been possible to do so, we would have merged all of these collections into one seamless chronological project, so that both scholars and general readers would have been able to see simultaneously the private as well as the public man, the lawyer as well as the jurist, the citizen as well as the reformer, the man of public affairs as well as the loving husband, father, and grandfather. The image that would then have emerged might have gone far to dissipate the portrait of Brandeis as cold, aloof, and lacking in basic human emotions, a man whose letters, according to one characterization, read like legal briefs.

We were faced by similar predicaments in the volume devoted to the Frankfurter letters and in this volume. We had already published portions of the then-available correspondence in our first five volumes. If we omitted the letters we had already published, we felt that the remaining letters would present a jagged narrative and tell an incomplete story. We chose, therefore, to include certain already published letters so that this volume, like the Frankfurter collection, can tell a more complete story. Thus in addition to the great bulk of heretofore unpublished letters in this volume, readers will also find some previously published letters to Brandeis's brother Alfred, to his wife, to his daughter Elizabeth, and to other members of the family. We believe that this decision is warranted on both scholarly and narrative grounds—the need to allow the letters to tell the fullest possible story of the relationship between the man and his family.

We feel obliged to note that before the completion of this volume Ms. Popkin and Mr. Gilbert decided, upon serious reflection, to withdraw their permission to present about three dozen of the letters we had hoped to publish here. Those letters touched upon health matters, internal family finances, and other topics that, in their judgments, intruded unduly upon the private affairs of the Brandeis family. As scholars, of course, we greatly regretted that withdrawal of permission—not only for the obvious reasons, but also because it seemed to us that none of the proscribed letters showed any member of the family behaving in any but the most affectionate, honorable, and respectful way. In the end we reluctantly submitted to the stipulation. We did so partly because we acknowledge the right of Ms. Popkin and Mr. Gilbert, under the terms of the gift; partly out of deference to their standards of family privacy; and partly out of the strongest possible conviction that the letters published here—even without the omitted handful—constitute a contribution of enormous and lasting value to the scholarly community. (In philosophic moments, more-

over, we had to admit that it was not entirely inappropriate that two of the grandchildren of the man whose 1890 article had done so much to define “the right to privacy”<sup>3</sup> should, eleven decades later, invoke the right themselves.) We make particular note of this matter because we realize that those who are most familiar with Brandeis’s life are already aware of these tender areas and will almost certainly wonder why we failed to include materials on these subjects. This is especially true since the popular 1983 biography by Lewis Paper,<sup>4</sup> who researched the letters before the donors realized the full extent of the collection, quoted passages from some of the letters in question.

That the letters presented here do in fact represent a very substantial contribution to our understanding of Louis Brandeis and of the time in which he lived is undeniable and will be obvious, we believe, to any reader. We think that these letters are especially important for two reasons in particular. First, they reveal the extent to which Brandeis was involved in the innermost workings of the progressive movement. In the daily letters that he wrote home to Alice from Washington (quite unself-consciously recounting his busy day’s activities), historians will be able to see how President Woodrow Wilson, virtually all of his cabinet officers, and a score of prominent senators and representatives resorted to Brandeis regularly for advice on almost every aspect of public affairs. We think that the letters written from 1912 through 1916 (and some during American participation in World War I) will demonstrate more clearly than any other available source the central role that Brandeis played in the formation of national policy.

Second, readers of this volume will emerge with an image of Brandeis much different from the one derived both from our own earlier volumes and from many of the published biographies. Here we see a young man head-over-heels in love, who throughout his long life maintained an unwavering devotion to his wife, a daily interest in the lives and careers of his daughters, and a touching pride in the youthful achievements of his grandchildren. We detect in these intimate letters a man who reveled in family and took with utmost seriousness the obligations of kinship. There is nothing cold or detached or aloof about the private Brandeis, but it is perfectly in keeping with his views of privacy that while he was alive he kept this part of his life and personality hidden from public view.

We have followed the same general rules of editing and annotation as in our earlier volumes. We have attempted to include a representative

3. Louis D. Brandeis and Samuel D. Warren, “The Right to Privacy,” 4 *Harvard Law Review* 193 (1890).

4. Lewis Paper, *Brandeis* (Englewood Cliffs, 1983).

sampling of letters that give as full a view as possible of Brandeis within the context of family relationships. In our notes we have striven to make each letter more comprehensible than it otherwise would have been. We try to identify every name that Brandeis mentions at its first appearance, to explain some aspects of problems and events as well as the laws and judicial cases he discusses, and to call attention to other letters (both in this volume and in the others) that might shed further light on the subject. In the interest of conserving space for more letters, we have omitted most bibliographic references to previous studies of the issues and personalities to which Brandeis alludes. With only a few exceptions we have published each letter in its entirety. And once again we owe a great debt to scholars, librarians, and archivists too numerous to mention who have helped us over the years.

There are, however, some debts related to this volume in particular that we are eager to acknowledge. The National Endowment for the Humanities supported this project with a generous grant, just as it supported the earlier volumes, and we can never adequately express our gratitude to the NEH for its faith in our project and in us. Smaller but critical awards were given by the Virginia Commonwealth University Faculty Research Fund and the Research Council of the University of Oklahoma. All of the handwritten letters from the Gilbert collection were originally transcribed by Philip E. Urofsky, then a student at the University of Virginia Law School and now a senior trial attorney with the U.S. Department of Justice. Throughout this undertaking we have benefited regularly from the wise counsel and limitless knowledge of Brandeis embodied in our friend and co-worker Philippa Strum. We reiterate our warm thanks to Eric Tachau, Alice Brandeis Popkin, Frank Brandeis Gilbert, and Walter Brandeis Rauschenbush for their consistent and generous support of our work. We owe a special debt to Frank Gilbert, who at the very end of our labors undertook an extremely meticulous reading of the entire manuscript; he saved us from a number of embarrassing errors and was able to elaborate and enrich several of our editorial notes. We also received valuable assistance from Helga Madland, Karin L. Schutjer, Richard Lowitt, Benjamin R. Levy, Dirk Voss, Joseph Bendersky, and Peter Schulz. Our experience with the University of Oklahoma Press has been gratifying from start to finish; while we owe many debts to the staff there, we wish to single out especially John Drayton, the director; Jean Hurtado, the able and always helpful acquisitions editor, who worked closely with us from the start; and Alice Stanton, whose editorial skills, professionalism, efficiency, and unfailing pleasantness made the production of this volume a real delight. Our copy editor, Kathy Burford Lewis, subjected the manuscript to a very

thorough final reading, expertly catching a number of mistakes and greatly improving the readability of our editorial notes. Valerie Sanders, editorial assistant, provided invaluable help with the proofreading. The index was capably prepared by Robert R. Fayles.

On other occasions we have expressed—however inadequately—our gratitude to our wives, Susan and Lynne, who did not realize when they took us for better or for worse that they were also taking Louis Brandeis into their lives. Our children have grown up thinking that someone called “LDB” was a part of their families—and in many ways he was. As we bring this long project to its conclusion, we thank our families for their tolerance and support, knowing that neither words alone nor the formal dedication of this volume in their honor can ever fully express the measure of our gratitude and our debt. Back in 1978, as we wrote the acknowledgments to volume 5, we addressed some similar closing words to the members of our families: “We can now say to them, and to all those many others who helped us so generously, ‘We have finished.’” It was, of course, a lie. Now, twenty-three years later, we boldly repeat the assertion. And this time we really mean it.

Melvin I. Urofsky

*Richmond, Virginia*

David W. Levy

*Norman, Oklahoma*

# Chronology

- 1822 Father, Adolph, born
- 1829 Mother, Frederika born
- 1849 May, Brandeis, Dembitz, and Wehle families arrive in America  
September 5, Adolph Brandeis weds Frederika Dembitz
- 1851 Sister Fannie born  
Family settles in Louisville, Kentucky
- 1852 April 9, sister Amy born
- 1854 March 23, brother Alfred born
- 1856 November 13, LDB born in Louisville, Kentucky
- 1872 August 10, Brandeis family leaves for three-year stay in Europe
- 1873 Enrolls in Annen-Realschule in Dresden, Germany
- 1875 Family returns to the United States  
September, enrolls in Harvard Law School
- 1877 Graduates first in his class
- 1878 September, begins practice of law in St Louis  
November, first courtroom experience
- 1879 July, returns to Boston to open partnership with Samuel D. Warren,  
Jr.
- 1881 July, publishes first article in *American Law Review*  
July, admitted to the Massachusetts bar
- 1882 September, teaches one-year course on evidence at Harvard Law;  
decides against a teaching career
- 1887 Helps found *Harvard Law Review*
- 1889 Partnership with Warren dissolved  
November, argues first case before the Supreme Court
- 1890 March 5, sister Fannie commits suicide  
March, becomes reacquainted with Alice Goldmark (AGB) and  
begins serious courtship  
October 4, engaged to Alice Goldmark  
December, publishes “Right to Privacy” with Samuel Warren in  
*Harvard Law Review*
- 1891 March 23, marries Alice Goldmark
- 1893 February 27, first daughter, Susan, born
- 1896 April 25, second daughter, Elizabeth, born
- 1897 Appears before House Ways and Means Committee to oppose  
Dingley Tariff  
Law firm reorganized as Brandeis, Dunbar & Nutter  
April 30, opposes charter revision of Boston Elevated line

- 1900 November, involved in anti-imperialist movement
- 1901 Helps William McElwain to reorganize his business  
August 22, mother dies
- 1902 January, drafts bill to reduce political activities of public service corporations  
November, works for union in the anthracite coal strike
- 1903 April 9, attacks corruption in Boston city government  
July, joins the Filene brothers to found the Industrial League
- 1904 April 21, speech to Boston Typothetae on industrial relations  
May 2, Public Franchise League begins campaign against Boston gas consolidation
- 1905 Introduces “sliding scale” idea to help solve Boston gas controversy  
May 4, delivers “The Opportunity in the Law” to Harvard Ethical Society  
October 26, delivers “Life Insurance: The Abuses and the Remedies” to Boston Commercial Club
- 1906 January 20, father dies  
February 17, sister Amy dies  
September 15, publishes “Wage-Earners’ Life Insurance” in *Collier’s*  
November 26, Massachusetts Savings Bank Insurance League organized
- 1907 June 26, Savings Bank Life Insurance scheme signed into law in Massachusetts  
June, first becomes interested in New England transportation monopoly: the New Haven–Boston & Maine merger  
October 19, declines chance to run for mayor of Boston  
November, publishes “How Boston Solved the Gas Problem” in *American Review of Reviews*  
December, forms Massachusetts Anti-Merger League  
December, issues “Financial Condition of the New York, New Haven & Hartford Railroad and of the Boston & Maine Railroad”
- 1908 January 15, argues *Muller v. Oregon* before the Supreme Court  
February 24, *Muller* case decided  
June, first Savings Bank Life Insurance policy issued
- 1910 January 7, retained by *Collier’s* as counsel in Pinchot-Ballinger conservation hearings  
January 26, first hearings of Ballinger Joint Investigating Committee  
February, argues *Ritchie v. Wayman* before Illinois Supreme Court  
May 27–28, makes summary in Ballinger hearings  
July 21, enters Garment Workers’ strike negotiations in New York  
Late August, enters fight to oppose advanced freight rates

- September, hearings on advanced freight rate case  
 September 2, Garment Workers' Protocol agreement signed  
 October 12, Interstate Commerce Commission (ICC) advanced freight rate hearings begin in Washington  
 November 1, claims railroads might save a million dollars a day by employing scientific management  
 December 9, gives interview on "The Jews as a Priest People" in *Jewish Advocate*
- 1911 January, federal government brings suit against United Shoe Machinery Company  
 January 17, argument before ICC in advanced freight rate case  
 March 7, Secretary Ballinger resigns  
 March 27, delivers "The New Conception of Industrial Efficiency" to Economic Club of New York  
 April 22, publishes "Organized Labor and Efficiency" in *Survey*  
 November 28, publishes "Using Other People's Money" in *New York American*  
 December 14–16, antitrust testimony before the Senate Committee on Interstate Commerce
- 1912 January, agrees to aid Stanley Committee investigation of U.S. Steel  
 January 26–27, antitrust testimony to House Judiciary Committee  
 February 2, Robert La Follette collapses during presidential campaign  
 July 2, Democrats nominate Woodrow Wilson  
 July 20, publicly endorses Wilson in *Boston American*  
 August 13, meets Jacob deHaas, who awakens his interest in Zionism  
 August 28, meets Wilson for extended conference at Sea Girt, New Jersey  
 Mid-September, sets out on political stump tour for Wilson  
 September 14, publishes "Trusts, Efficiency, and the New Party" in *Collier's*  
 September 28, Wilson wires asking for advice on "major economic issues"; LDB replies September 30  
 October, publishes "Business—the New Profession" in *System*  
 November 2, interviewed in *New York Times*, "Regulation of Competition against the Regulation of Monopoly"  
 November 5, Wilson elected president  
 December 13, publishes "The New England Railroad Situation" in *Boston Journal*
- 1913 March 1, Wilson announces cabinet selections without LDB  
 March 1, publication of Pujo Committee report  
 March 4, Wilson inaugurated

- March 10, first trip to Washington to consult with new administration  
 March 20, makes first important Zionist speech  
 June 11, meets with Wilson on monetary reform measure  
 November 22, publishes first article on “Breaking the Money Trust”  
     in *Harper’s*  
 November 24, second advanced rate hearings begin before ICC  
 December 23, Federal Reserve Act becomes law
- 1914 January 20, Wilson delivers antitrust message  
 February 16, testifies before House Judiciary Committee on anti-  
     trust legislation  
 April 30–May 1, final argument in advanced rate case  
 June 26–27, testifies before Senate Committee on Interstate Com-  
     merce on antitrust  
 July 23, Justice Department files antitrust suit against New Haven  
     railroad  
 August 1, World War I breaks out in Europe  
 August 30, accepts chairmanship of Provisional Executive Com-  
     mittee on Zionist Affairs  
 September 26, Federal Trade Commission bill becomes law  
 October 15, Clayton Antitrust Act becomes law  
 December 16–17, argues Oregon minimum wage case before  
     Supreme Court
- 1915 January 12, argues California eight-hour case before Supreme Court  
 March 21, Jewish Congress Organizing Committee established  
 April 25, delivers “The Jewish Problem: How to Solve It” to East-  
     ern Council of Reform Rabbis  
 July 4, gives Faneuil Hall speech on “True Americanism”
- 1916 January 5, publishes “Palestine and the Jewish Democracy” in  
     *Outlook*  
 January, publishes “The Living Law” in *Illinois Law Review*  
 January 28, Wilson nominates LDB to the Supreme Court  
 February 9, confirmation hearings open  
 May 24, after months of controversial testimony, full Judiciary Com-  
     mittee confirms nomination, 10–8  
 June 1, Senate confirms nomination to Supreme Court  
 June 5, Chief Justice White administers oath of office  
 July 16, ambushed at Astor House “peace conference” for Ameri-  
     can Jewish Congress  
 July 21, resigns official positions in Congress, Zionist, and Jewish  
     charities organizations

- August 14, refuses Wilson's request that he serve on Mexican arbitration commission
- November 7, Wilson reelected
- November 13, LDB celebrates sixtieth birthday
- 1917 April 2, Wilson asks for declaration of war against Germany
- April 23, LDB meets Balfour
- May 6, long discussion with Wilson on Zionist matters, including a possible British mandate over Palestine
- May 7, private talk with Balfour
- October 14, receives proposed text for Balfour Declaration
- November 2, Balfour Declaration issued
- 1918 May 25, proposes reorganization scheme for American Zionism
- November 11, World War I ends
- December, first American Jewish Congress meets in Philadelphia
- 1919 January 18, Versailles Peace Conference opens
- May 7, treaty presented to Germany
- June 14, sails with party for England on *Mauretania*
- June 20, arrives in England and meets Chaim Weizmann
- June 23, party arrives in Paris
- June 25, leaves Marseilles for Egypt
- July 8, party arrives in Jerusalem
- July 26, leaves Port Said for return to Marseilles
- August, Zionist meetings in London
- August 30, sails from England for home
- September 25, Wilson suffers collapse in Colorado
- November 10, dissents in *Abrams v. U.S.* free speech case
- November 19, Senate rejects Treaty of Versailles
- 1920 April 20, Palestine becomes a British mandate
- June 13, leaves for London Zionist conference
- July 7, delivers "The Upbuilding of Palestine" address at London conference of World Zionist Organization
- August 19, sets sail for home on the *Zeeland*
- 1921 April 2, Weizmann arrives in New York
- April 26, meets Albert Einstein in Washington
- June 5–7, Zionist convention at Cleveland defeats LDB-Mack administration; with thirty-six others, resigns official positions in Zionist Organization of America (ZOA)
- June 19, resigns as honorary president of World Zionist Organization
- July 16–17, LDB-Mack forces reorganize after the Cleveland convention