

STATE OF VERMONT

SUPERIOR COURT
Addison Unit

CIVIL DIVISION
Case No. 23-CV-01214

HON. JAMES H. DOUGLAS,)
Special Administrator of the)
Estate of John Abner Mead,)

Plaintiff,)

v.)

THE PRESIDENT AND FELLOWS)
OF MIDDLEBURY COLLEGE,)

Defendant.)

**MIDDLEBURY COLLEGE’S RESPONSE TO PLAINTIFF’S
STATEMENT OF ADDITIONAL UNDISPUTED MATERIAL FACTS**

Defendant The President and Fellows of Middlebury College (“Middlebury” or the “College”), by and through counsel, submits this Response to Plaintiff’s Statement of Additional Undisputed Material Facts.

1. On June 17, 2022, the Vermont Superior Court, Rutland Unit, Probate Division, in the matter of the Estate of John Mead, Case No. 22-PR-02895, appointed the Honorable James H. Douglas as Special Administrator of the Estate of John Abner Mead, granting him full authority to represent the Estate in this litigation. Complaint/Answer par 17.

Response: Undisputed.

2. Defendant, The President and Fellows of Middlebury College is a Vermont Non-profit Corporation chartered on November 1, 1800 and doing business as Middlebury College, with its principal place of business in the Town of Middlebury,

County of Addison and State of Vermont. Complaint/Answer par 19.

Response: Undisputed.

3. Middlebury is a liberal arts college of the first rank, an achievement that is the result of a process of growth and change that began in 1800, when a few men of the town of Middlebury took upon themselves the challenge of building a college in a small New England town, on what was then the American frontier. Complaint/Answer par 29.

Response: Immaterial.

4. Over the more than two centuries since it was established, Middlebury has developed from “the town’s college” into an institution of international renown with a \$1.518 billion endowment as of 2021. Complaint/Answer par 23.

Response: Immaterial.

5. Middlebury’s original purpose was to train young men from Vermont and neighboring states for the ministry and other learned professions of the early 19th century. The College began modestly, with seven students enrolling in November 1800. Complaint/Answer par 24.

Response: Immaterial.

6. Gamaliel Painter, one of the citizens of Middlebury to whom the College charter had been granted, left most of his estate to the College. Mr. Painter’s gift was an early example of the philanthropic support for Middlebury College that has enabled the institution to prosper. In recognition of his gift, West College, a new building completed a few years prior to Painter’s death in 1819, was renamed Painter

Hall. Painter Hall is the oldest college building extant in Vermont. Complaint/Answer par 25.

Response: Immaterial.

7. Middlebury College continued to grow during the 19th century. The growth was sporadic, however, as the College was not immune to the social and political movements that were affecting northern New England generally. Rocked by evangelical upheaval and religious revival in the 1830s and the Civil War in the 1860s, Middlebury managed to keep its doors open during a period when many small colleges in America were forced to close. In large part, the College survived because of the support of its many friends, both in the town of Middlebury and in the surrounding region. Complaint/Answer par 27.

Response: Immaterial.

8. In 1883, the Trustees voted to accept women as students in the College, making Middlebury one of the first formerly all-male liberal arts colleges in New England to become coeducational. In the following years, Middlebury College began to change from an institution primarily oriented toward its community and its state to a college with larger regional aspirations. President Ezra Brainerd (who held that office from 1885 to 1908) prepared the College for this transformation, and spectacular change occurred under the administration of President John Thomas (1908 to 1921), who established the Language Schools and the Bread Loaf School of English during his presidency. Complaint/Answer par 28.

Response: Immaterial.

9. During the second decade of the 20th century under President Thomas' direction, the College's enrollment more than doubled, and the number of buildings, the size of the faculty, and the value of the endowment all tripled. Complaint/Answer par 29.

Response: Immaterial.

10. During the 1930s, 1940s, and 1950s, Middlebury continued its development toward a position of prominence among liberal arts colleges in the United States. Continued growth in the faculty meant the addition of new subjects to the curriculum and an enhanced academic reputation for the College. New residence halls, academic buildings, and library facilities were added to the physical plant. Middlebury's expansion was coupled with increases in financial resources and the establishment of a tradition of prudent financial administration, including the cultivation of resources for the long term. Complaint/Answer par 30.

Response: Immaterial.

11. John Abner Mead (April 20, 1841 – January 12, 1920) was a Vermont physician, businessman, politician, and philanthropist who served as Vermont's 47th Lieutenant Governor from 1908 to 1910, and Vermont's 53rd Governor from 1910 to 1912. Complaint/Answer par 3.

Response: Undisputed.

12. On October 30, 1872, John Mead married Mary M. Sherman. They had one child, Mary Sherman Mead Hinsman. Defendant's GG.

Response: Immaterial.

13. Mead was a graduate of Middlebury College, Class of 1864. In 1914, on the 50th anniversary of his graduation, he offered to erect the “Mead Memorial Chapel,” which offer was accepted by the Trustees of the College. Complaint/Answer par 32.

Response: Undisputed that Mead was a graduate of Middlebury College, Class of 1864; that he offered to supply funds for Middlebury to build a chapel in 1914 as a gift; and that Middlebury’s Trustees accepted the gift. Disputed to the extent the statement implies that the use of the name “Mead Memorial Chapel” was a condition of the gift.

14. On May 11, 1914, John Abner Mead sent a Letter to Rev. Dr. John M. Thomas, President of Middlebury College, offering “to erect a chapel to serve as a place of worship for the college, the same to be known as the “Mead Memorial Chapel.” (hereinafter “Offer Letter”). Ex. 1. Complaint/Answer par 95.

. . . to erect a chapel to serve as a place of worship for the college, the same to be known as the “Mead Memorial Chapel.” I have in mind a dignified and substantial structure, in harmony with the other buildings of the college, and expressive of the simplicity and strength of character for which the inhabitants of this valley and the State of Vermont have always been distinguished.

Ex. 1 (emphasis supplied)

Response: Undisputed that Mead sent the letter dated May 11, 1914, which is marked Ex. 1. The text of the letter, which is not fully reproduced, speaks for itself. Disputed that the actual substance of the gift offered to Middlebury was to “erect a chapel”; rather, Mead offered to furnish funds between \$50,000 to \$60,000 to be used for the erection of a chapel.

15. The quotation marks around the proposed name, “Mead Memorial Chapel” are written in Mead’s own hand. Ex. 1.

Response: Disputed that the cited Exhibit provides competent support for this assertion. Undisputed that Ex. 1 contains handwritten quotation marks.

16. Mead then told of his ancestors, recounting their lives as embodying the simplicity, strength of character, and religious faith that Mead envisioned the Mead Memorial Chapel would symbolize and specifying the location of the chapel:

With this memory ever present, it has been my hope and prayer that I might be able and permitted to build for this college a suitable place for divine worship and that it might rise from the highest point on its campus as a symbol of the position, most prominent in every respect, which Christian character and religious faith should always maintain in its work for our youth.

Ex. 1 (emphasis supplied). Complaint/Answer par. 2.

Response: Undisputed that the quoted text comes from Ex. 1, the full text of which speaks for itself.

17. Mead’s Offer Letter went on to state:

“I have in mind the furnishing of from \$50,000 to \$60,000 for the erection of such a structure, and I hereby suggest that the Trustees of the College secure appropriate plans for its erection which shall meet with my approval, and that said board appoint a building committee at once, consisting of president Thomas, former President Brainerd and myself to make the necessary contracts for such a structure and to supervise the erection of the same, and I will then bind myself and my estate to provide the necessary means for its erection and completion in accordance with the suggestions of this letter and with the contracts to be made by your committee.”

Ex. 1. Complaint/Answer par 98.

Response: Undisputed that the quoted text comes from Ex. 1, the full text of

which speaks for itself.

18. On May 15, 1914, President Thomas sent a copy of John A. Mead's Offer Letter to the Trustees of Middlebury College announcing:

Your associate, Governor John A. Mead, has made it possible for me to make an announcement which will bring you all great satisfaction and encouragement, as it gives me the keenest pleasure. I enclose a copy of his letter to be signed May 11th which assures the erection of an appropriate and beautiful chapel for Middlebury College.

I have testified many times to the great need of such a building and the large possibilities for good in connection with it. We have all felt for many years that it was one of the most urgent needs of the college, and those who have been closest in touch with the daily life of the institution have felt the need most earnestly.

...

P.S. May I hear from you immediately as to whether you will authorize the acceptance of Governor Mead's proposition and the appointment of the Building Committee which he suggests.

Ex. 2. Complaint/Answer par 99

Response: Disputed that Ex. 2 is accurately quoted above. Undisputed that Ex. 2, which is dated May 15, 1914, was sent to Middlebury's Trustees and enclosed a copy of Mead's May 11, 1914 gift letter.

19. On May 16, 1914, Trustee Frank C. Partridge wrote to President Thomas agreeing as one of the Trustees, to accept the Offer and appoint of the Mead Memorial Chapel Building Committee as Mead had specified:

Your good news is received and I am delighted that your dream of a new chapel is to be realized. *It is a generous and beautiful thing for Governor Mead to do and of course I agree, as one of the Trustees, to the acceptance of his proposition and the appointment of the building committee which he suggests.*

Ex. 3-1 (emphasis supplied). Complaint/Answer par 100.

Response: Disputed that Frank Partridge’s letter made any reference to the “Mead Memorial Chapel.” Undisputed that Ex. 1 is an unsigned letter dated May 16, 1914 from Partridge to President Thomas agreeing to the gift and appointment of a building committee, which he said would realize President Thomas’s “dream of a new chapel.”

20. On May 16, 1914, Superior Court Judge (and future Middlebury College Trustee) Frank L. Fish wrote to Pres. Thomas:

“Hurrah for Dr. Mead! I have just written him thanking him and telling him he has become one of the immortals.”

Ex. 3-4.

Response: Undisputed that Ex. 3-4 is a May 16, 1914 letter from Frank L. Fish and contains the quoted text.

21. May 17, 1914, Trustee John E. Weeks wrote to Mead with:

[congratulations and thanks for] . . . the splendid gift to Middlebury College. This is a most worthy reminder of your great loyalty to this Institution and *one that can and will be instrumental in great good to this student body as long as time lasts*. . . Your honorable public career is certainly crowned by this act.

Ex. 3-7 (emphasis supplied). Complaint/Answer par 101.

Response: Undisputed that Ex. 3-7 is a May 17, 1914 letter from John Weeks to Mead and contains the quoted text.

22. On May 18, 1914, Trustee A. Barton Hepburn wrote to Mead stating:

It is a splendid, well-considered and generous action on your part. It shows you possess that love for Alma Mater, which is one of the greatest charms of college life, the essence of college spirit; *it shows your respect and reverence for your forebears*, which is one of the highest qualifications a man may possess, and *it shows, also, your disposition to do a good and useful act for the*

community in which you live and the State which you honor and which has bestowed its highest honor upon you. Congratulations and thanks.

Ex. 3-10 (emphasis supplied). Complaint/Answer par 102.

Response: Undisputed that Ex. 3-10 is a May 18, 1914 letter from A. Barton Hepburn to Mead and contains the quoted text.

23. On May 19, 1914, Trustee James L. Barton wrote to Mead stating:

I can hardly describe to you the thrill of satisfaction that I experienced when a letter from Dr. Thomas reported *your magnificent gift to Middlebury College in the form of a Memorial Chapel. I know of nothing more fitting as a memorial – nothing that will be of greater value to the College in all the years to come.* I know of no building that could be put up out from which will go more fundamental and permanent influences for social, civic and national righteousness, for our own country and for the world. I want to express my deep personal appreciation of this gift, as well as my appreciation as a member of the Board of Trustees. *I am sure you will get great satisfaction in seeing the walls of the building rise, as you realize what they mean to the College, the State, the country and the world, in all the years to come.*

Ex. 3-13 (emphasis supplied). Complaint/Answer par 103.

Response: Undisputed that Ex. 3-13 is a May 19, 1914 letter from James L. Barton to Mead and contains the quoted text.

24. On May 22, 1914, Trustee Brainerd Kellogg wrote to President Thomas, stating:

I can't tell you how pleased I was and am at the news that Governor Mead wishes to build a Chapel on the College grounds. I had not thought that he dreamed of it.

And how fitting that it should be at the semi-centennial of his graduation – showing that his love for his College has not waned but waxed during the 50 years. . . .

Convey to him, please, my personal thanks for his generous plans. *Of course the Trustees will allow him his ways, and will be everlastingly grateful to him in taking it.*

Ex. 3-14 (emphasis supplied). Complaint/Answer par 104.

Response: Undisputed that Ex. 3-14 is an unsigned draft of a May 22, 1914 letter from Brainerd Kellogg to President Thomas and contains the quoted text.

25. On May 23, 1914, John A. Fletcher, Middlebury Trustee and Treasurer, wrote to President Thomas stating:

Replying formally to the welcome news contained in your message of the 15th, *I wish to concur in the acceptance of the "Mead Memorial Chapel."*

It is a splendid gift . . .

I trust that the General Education Board will now look with favor upon your application for a grant toward a new fund, on contemplating this new evidence of the substantial and loyal support of our alumni.

Ex. 3-16 (emphasis supplied). Complaint/Answer par 105.

Response: Undisputed that Ex. 3-16 is an unsigned draft of a May 23, 1914 letter from John Fletcher to President Thomas and contains the quoted text.

26. On June 6, 1914, Trustee M. Allen Starr wrote to Pres. Thomas:

"I congratulate you heartily on this fine gift which will be *a beautiful memorial* and a most needed and welcome addition to our building. ... *His most interesting letter with its details of early history should be framed and hung in the chapel – and also put in the box of the corner stone.*"

Ex. 3-19.

Response: Undisputed that Ex. 3-19 is an unsigned draft of a June 6, 1914 letter from M. Allen Starr to President Thomas and contains some of the quoted text; disputed that it is quoted with perfect accuracy and further disputed that it contains the emphasis provided in the foregoing excerpt.

27. On June 24, 1914, Trustee James M. Gifford wrote to Pres. Thomas:

“I have felt for years that the one building which the College most needed is that which Gov. Mead has undertaken to erect. I feel that it should be located on the most prominent site and that, architecturally, it should be the most attractive of all the buildings of the College.

I believe that Gov. Mead will fully accord with this idea as I know that he feels, as I am sure we all do, that it ought to be the most attractive memorial erected on the College Campus.”

Ex. 3 -20.

Response: Undisputed that Ex. 3-20 is a June 24, 1914 letter from James Gifford to President Thomas and contains some of the quoted text; disputed that it contains the emphasis provided in the foregoing excerpt.

28. On June 22, 1914, the President and Fellows of Middlebury College (Board of Trustees) met and recorded the following resolution to accept Dr. Mead’s Offer Letter to erect the “Mead Memorial Chapel”:

The following resolution, introduced by Dr. Brainerd, on motion of Dr. Barton & Prof. Kellogg, was adopted by a rising vote:-

“Whereas our esteemed colleague, the Honorable John Abner Mead of the Class of 1864, has signified to President Thomas his desire, in commemoration of the fiftieth anniversary of his graduation, to erect a Chapel for Middlebury College, and his readiness to furnish the sum of from fifty thousand to sixty thousand dollars for the erection of such an edifice,

Resolved that the President and Fellows of Middlebury College hereby accept of this magnificent benefaction with sincere gratitude to both Dr. & Mrs. Mead and their family for their deep interest in the religious welfare of the College, so impressively manifested by this provision of a suitable place for divine worship.

Resolved that the Trustees through the Committee nominated by Dr. Mead will use their best endeavors to secure the erection of a dignified and substantial structure, in harmony with the other buildings of the college, and such as will meet the approval of the donor.”

Dr. Mead made fitting response to this resolution. His letter of presentation follows in full:-

[Letter of Gift copied by hand verbatim with quotation marks around “Mead Memorial Chapel”]

On motion of Mr. Partridge, seconded by Dr. Abernathy, the Building Committee for the Mead Chapel was elected as above, Messrs. Thomas, Brainerd, Mead and Weeks.

Mr. Collins of the architectural firm of Allen & Collins then appeared before the Board with tentative plans for the new Chapel, which were discussed at length.

Ex. 4 (emphasis supplied). Complaint/Answer par 106.

Response: Disputed as to the characterization that the Trustees “accept[ed] Dr. Mead’s Offer Letter to erect the “Mead Memorial Chapel.” Undisputed that the Trustees adopted the resolution reproduced above, with the exception of the bracketed text.

29. The Middlebury College Trustees unreservedly and enthusiastically accepted Dr. Mead’s offer to erect a chapel, which offer contained the explicit language: “the same to be known as the ‘Mead Memorial Chapel,’ with the actual quotation marks added by Mead’s own hand to specify precisely the name of the chapel, which was offered as a memorial to the Mead ancestors, and yes, would immediately become synonymous with Governor Mead himself.

Ex. 1. Complaint/Answer par. 3.

Response: Disputed as to the characterization the resolution adopted. Further disputed that the cited exhibit establishes that “quotation marks [were] added by Mead’s own hand.” Undisputed that the Trustees accepted

Mead's gift.

30. The gift of the Mead Memorial Chapel was widely reported in the Vermont press and Dr. Mead's Offer Letter was reprinted in several news articles. Complaint Exs. 1-013 to 018. Complaint/Answer par 107.

Response: Undisputed.

31. The Free Press had a special report from Middlebury, May 15, 1914:

EX-GOV MEAD GIVES
COLLEGE A CHAPEL

President Thomas of Middlebury Announces
Offer of \$60,000 *for Memorial.*
TO BE OF WHITE MARBLE

Former Vermont Chief Executive Commemorates
50th Anniversary of His Graduation.

Middlebury, May 15 - President John M. Thomas announced this evening at a meeting at the gymnasium the gift of a \$60,000 memorial chapel by ex-Governor John A. Mead of Rutland, *to be called the Mead Memorial Chapel.* The unexpected announcement was greeted with great enthusiasm. . . . Ex-Governor Mead was cheered by the gathering of 500 persons.

Complaint Ex. 1-013 to 1-014 (emphasis supplied).

Response: Undisputed.

32. On May 16, 1914, the Rutland Herald reported on the gift:

DR. MEAD'S GIFT TO MIDDLEBURY COLLEGE

...

The gift of a chapel, in which the eternal Truth may be taught, and devoted to the sacred purposes of divine worship, is an admirable expression of active piety and reflects creditably upon its donor.

...

It is peculiarly fitting that Dr. Mead should thus recognize Middlebury College, an institution so peculiarly a part of his native state and his personal environment, *for the reason that, as he sets forth in his letter of gift*, his great-great-grandfather was the first white settler in the Otter Creek valley, and brought the Bible, in all its sublime and uplifting beauty, to the peaceful Indians of the wilderness.

The college, too, which has made for itself an enduring name and place in Vermont's institutions of education and uplift, must feel, through its faculty and student body, a peculiar pleasure in *accepting the Mead Memorial Chapel as an expression of native patriotism and appreciation* from a citizen who has been honored with the highest executive office in the gift of his state.

The Herald, for its readers, heartily joins in the sincere approbation and praise which this gift will justly inspire.

Complaint Ex. 1-017 (emphasis supplied). Complaint/Answer par. 109.

Response: Undisputed.

33. The Vermont Tribune's May 21, 1914 edition described Ex-Gov. Mead's gift to Middlebury College and reported:

The new chapel . . . will seat 700 persons. A bronze tablet in the building will contain the following inscription: Mead Memorial Chapel, Erected in 1914 by John Abner Mead of the class of 1864.

Complaint Ex. 1-019. (Emphasis supplied). Complaint/Answer par 111.

Response: Undisputed.

34. President Thomas wrote an article that was published in the April 8, 1915 edition of the Boston Evening Transcript, entitled "MIDDLEBURY'S 100 YEARS, Old Traditions Preserved in New Chapel" in which he explained:

The proposal of ex-Governor John A. Mead to erect a chapel for Middlebury in commemoration of the fiftieth anniversary of his graduation . . . in his letter of gift ex-Governor Mead had said, "I have in mind a dignified and substantial structure, in harmony with the other buildings of the college, and expressive of the simplicity and strength of character for which the inhabitants of this

valley and the State of Vermont have always been distinguished.” *He asked that the chapel to bear his name* might “rise from the highest point of the campus, as a symbol of the position, most prominent in every respect, which Christian character and religious faith should always maintain in its work for our youth.”

The chapel will occupy a commanding location on the grounds on the highest crest of the campus, from which point there is a wide panorama of the Green Mountains and the valley of Otter Creek. On the architrave over the colonnade will be appropriately inscribed “The Strength of the Hills is His Also.”

Ex. 31 (emphasis supplied). Complaint/Answer par 112.

Response: Undisputed.

35. On May 28, 1914, John Mead wrote to President Thomas regarding arrangements for the groundbreaking and laying of the cornerstone for the Chapel. Dr. Mead requested a piece of sod to place in the Evergreen Cemetery in his family’s burial lot and indicated, “We will have the little box with the bible which little John is to place in the stone all properly arranged.” Complaint Ex. 2-001 to 2-002. Ex. 24-2. Complaint/Answer par 113.

Response: Undisputed.

36. On June 23, 1914, Middlebury College held a ceremony titled “Breaking Ground for the Mead Memorial Chapel and Presentation of the Corner Stone” during its commencement exercises. Ex. 25.

Response: Undisputed.

37. Ex-Governor John A. Mead, Class of 1864, gave the speech for the “Breaking Ground and Presentation of the Corner Stone,” which he concluded with:

On this date, I wish to break the ground and place the corner stone for this Memorial Chapel, with the hope and prayer that there shall be a

sacred duty resting upon each, to make this Holy Temple, so soon to be erected, an instrument of great good to those of this generation and to those who may follow after, and that our Alma Mater may be favored by steadily increasing numbers and with ample means for the noble work which will devolve upon her, and all of which she will attempt so willingly, so courageously and so faithfully.

Ex. 27 (emphasis supplied). Complaint/Answer par 115.

Response: Undisputed that Mead gave such a speech. Ex. 27 is a marked-up draft of written remarks by Mead for the event, the text of which speaks for itself.

38. The Rev. James L. Barton, D.D., LL.D., Class of 1881 delivered the “Acceptance in Behalf of the Trustees” in which he stated:

I am honored in being permitted, upon behalf of the trustees of Middlebury College, to accept from the hands of one of their number, a graduate of the College and a revered citizen of this commonwealth, this corner stone and that for which it stands, namely, a fitting chapel to be erected upon this site to embody and represent and perpetuate the religious life of this College.

It is doubly gratifying to me, as it is to the Board of Trustees, that this building, as a memorial, will bear the name of one so long and so honorably connected with this institution and who in the state and nation has always upheld and promoted true piety and civic and national righteousness.

. . . Today we see the *religious ideals of our forefathers* emancipated and exalted to this loftier position and *embodied in a structure worthy the College and its resplendent history*. Here upon this hilltop it will, by the outlines and symmetry of its architecture, proclaim that this College believes in God, in the supremacy of righteousness, in the creation of a safe, sane and just society, the triumph of justice, the transcendent worth of character, the reality of the unseen, and in the immortality of the soul.

. . .
This chapel will provide for the generations of students and faculties of this college that to which the other buildings cannot minister. To this

place all will turn in order to experience the reality of the unseen, to satisfy the thirst of the soul for God.

...

We then, the Trustees of this College, on behalf of ourselves and our successors, in the name of the generations of students it will serve, in full recognition of the supreme importance of such a religious center to the life of the institution, and in loving memory of him whose name this structure is to bear, gratefully accept at your hand this Chapel as we pledge ourselves to safeguard to the limit of our capacity the gift and the ideals it is intended to perpetuate.

Ex. 28 (emphasis supplied). Complaint/Answer par 116.

Response: Undisputed that Barton gave such a speech. Ex. 28 is a marked-up draft of written remarks by Barton for the event, the text of which speaks for itself.

39. Prof. Charles B. Wright gave an “Address in Behalf of the Faculty” which he ended with the statement:

Such an embodiment should this structure be...a chapel whose very lines, I trust, as they rise upon this summit, may prove for us all in the years to come a compelling call to goodness; whose very atmosphere, I trust, may dispose our hearts to praise – shall be but a fit expression, a symbol in stone, of the mingled strength and beauty of the Middlebury life.

The Faculty thank you, Governor Mead, from profoundly grateful hearts. You have bodied forth our dream of years; you have given to an airy nothing a local habitation – and not the least of our pleasure is the thought that through all the days to be it will bear your honored name.

Ex. 29 (emphasis supplied). Complaint/Answer par 117.

Response: Undisputed that Wright gave such a speech. Ex. 29 is a draft of written remarks by Wright for the event, the text of which speaks for itself.

40. The Cornerstone for the Mead Memorial Chapel was laid at the

Groundbreaking Ceremony held on June 23, 1914, where John Abner Mead's namesake, his 3-year-old grandson John Abner Mead Hinsman ("Little John"), placed his small Bible and family tree back to original settler Colonel James Mead into a box inside the Mead Memorial Chapel Cornerstone. The Ceremony was widely reported on in the press. Ex. 30. Complaint/Answer, Complaint Exs. 2-032 to 037.

Response: Immaterial.

41. Exhibit 26 contains five photographs of the Groundbreaking Ceremony including photos of Mead's grandson "Little John." Ex. 26. Complaint/Answer par 120.

Response: Immaterial.

42. The Mead Family Bible, held by President Thomas at the Groundbreaking ceremony photographed above, has been passed down through the generations of the Mead family and resides with Mead family members who live in Vermont. Exs. 26 & 48.

Response: Immaterial.

43. On December 18th, 1914, Middlebury College's Board of Trustees resolved to go forward with construction of the "Mead Memorial Chapel," evident in the following meeting minutes:

"On motion, duly seconded, it was Resolved that the College forward with the construction of the Chapel with the understanding that \$60,000 – would be contributed by Dr. Mead, the balance estimated at about \$1,000 – to be contributed by the College."

Ex. 5.

Response: Disputed that the Trustees resolved to construct the “Mead Memorial Chapel”: undisputed that they resolved to proceed with “construction of the Chapel.”

44. On January 13th, 1915, John Abner Mead wrote an acceptance letter to the Trustees of Middlebury College agreeing to pay \$60,000 if the College agrees to complete the chapel:

“I agree to furnish funds for the discharge of this contract and for the expenses connected with the erection of this chapel, to the amount of \$60,000, as may be required during the construction and in accordance with the terms of the above contract, binding myself, my heirs and my assigns as above specified. It is agreed on the part of said Trustees that they are to complete said chapel, making it complete in every way, as to grounds, furnishings, etc., for the purposes of a college chapel, as voted at the meeting of the Trustees of said college held in New York City Dec. 18, 1914, and as defined in correspondence between the president of Middlebury College and myself.”

Ex. 6.

Response: Undisputed, except that the above reproduces only a portion of Ex. 6.

45. On 2/22/1915, Pres. Thomas sent a letter to Vermont Marble Co. to get a quote for the change to the plans requested by Mrs. Mead regarding pilasters and windows. Ex. 7.

Response: Undisputed.

46. On 2/24/1915, Rogers responded with a quote for \$1,031 for the changes to add windows and pilasters per Mrs. Mead’s request. Ex. 8.

Response: Undisputed.

47. On February 27th, 1915, John Abner Mead offered to pay an additional \$1,031 to purchase and install the windows and pilasters if the Trustees agreed to finish the chapel as agreed and to install a \$5,000 pipe organ:

“Mrs. Mead and myself agree to have the windows in the chapel (two on either side) and to have the ten pilasters (five on either side), same to be built in accordance with the original plans shown in photo number 1 as to bases and caps and width, and we are to pay \$1031 for the same in addition to the original gift of \$60,000. The trustees agree to finish the chapel as agreed and to instal[] a pipe organ to cost at least \$5000.”

Ex. 9.

Response: Undisputed.

48. On March 1, 1915 Thomas wrote to Trustee Partridge regarding approving Mead’s offer and also on March 1, 1915, wrote to Rogers authorizing the \$1,031 changes. Ex. 10 and 11.

Response: Undisputed.

49. The Mead Memorial Chapel architectural plans bearing final date of March 31, 1915 which incorporated the final change of the windows and pilasters, are the “plans and specifications” which were approved by Mead. Each page of the plans is labeled “The Mead Memorial Chapel” Ex. 14, 15, 16, 17. See for example Ex. 14:

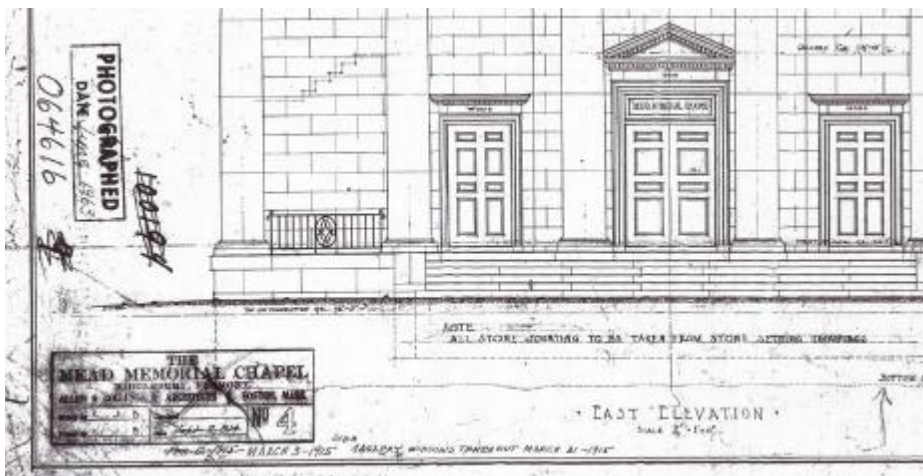


Ex. 14.

Response: Disputed that the March 31, 1915 plans are the “plans and

specifications” which were approved by Mead. Mead’s May 1914 gift letter indicated that he would “bind [him]self and [his] estate” to provide funds toward the erection of a chapel upon the Trustees “secur[ing] appropriate plans for its erection which shall meet with my approval.” Exh. D. Mead wrote to the Trustees and bound himself and his heirs to supply \$60,000 on January 13, 1915, “[i]n consideration of the contract” with Thomas Rogers for erection of the chapel “in accordance with plans and specifications of Allen & Collens, architects.” Exh. X. Any plans reviewed and approved by Mead before he bound himself would have been created prior to January 13, 1915. Otherwise, undisputed and immaterial.

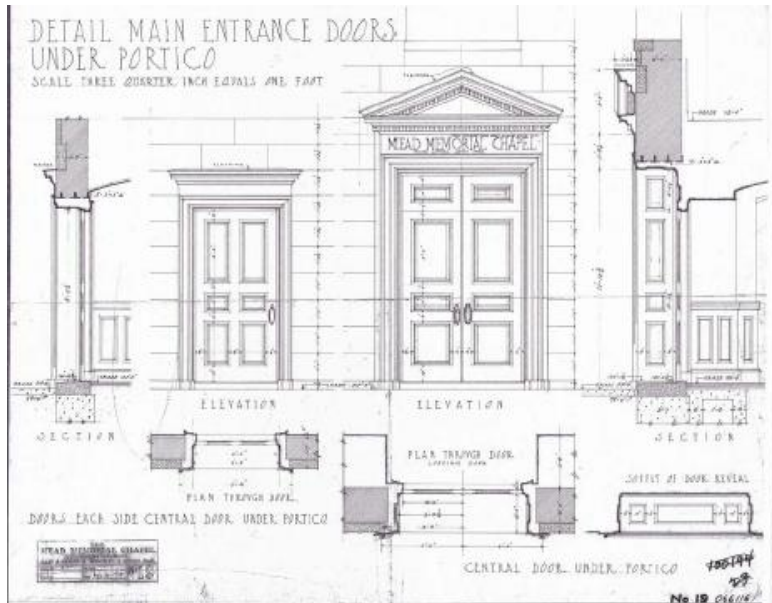
50. Exhibit 14 are the plans for the East Elevations – Main Entrance of the Chapel. The Mead Memorial Chapel sign is detailed on the plans and appears over the main entrance door under the Portico:



Ex. 14.

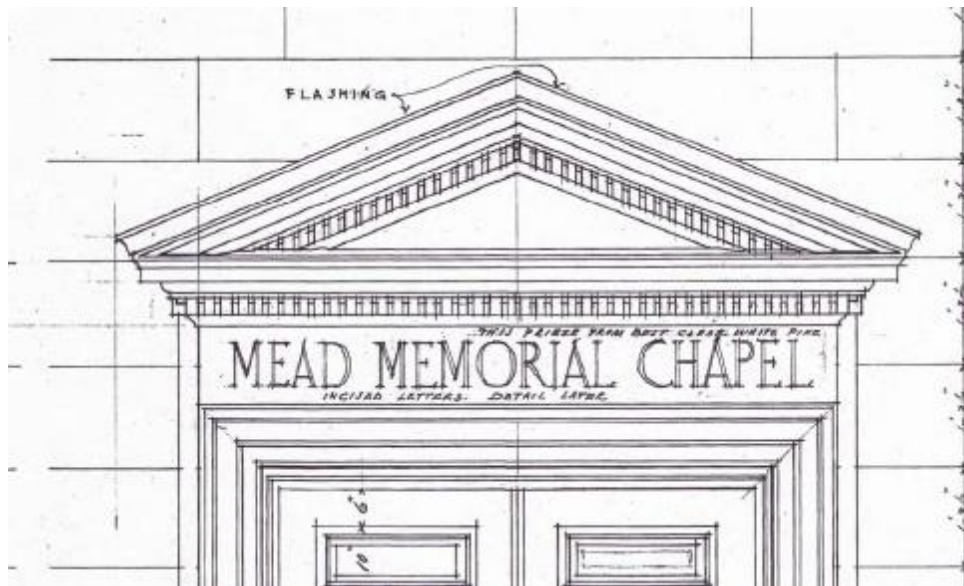
Response: Undisputed and immaterial.

51. Exhibit 15 are the plans for the Detail Main Entrance Doors under the Portico. The Mead Memorial Chapel sign is detailed on the plans and appears over the main entrance door under the Portico. See Ex. 15 immediately below:



Response: Undisputed and immaterial.

52. A closeup view of the detail of the Mead Memorial Sign on Exhibit 15 reveals the specifications of material: "THIS FRIEZE FROM BEST CLEAR WHITE PINE", the wording of the sign: "MEAD MEMORIAL CHAPEL", that they will be incised letters with detail to follow, and of course the exact measurements and specific location to affix the sign to:



Ex. 15.

Response: Undisputed and immaterial.

53. On April 14th, 1915, Middlebury College's Board of Trustees accepted John Abner Mead's offer to add \$1,031 and the College will buy a \$5,000 pipe organ, evident in the following meeting minutes:

“Voted, that the Trustees accept with gratitude Dr. Mead's proposal to add \$1,031 – to the gift of the Chapel, and agree to install therein a pipe organ to cost \$5,000 –”

Ex. 12.

Response: Undisputed.

54. On June 21, 1915 Dr. Mead sent an additional Offer Letter to President Thomas pledging an additional \$7,000 for a Chime of Bells stating:

“If acceptable to the members of the Board of Trustees, Mrs. Mead and I would be pleased to add a chime of bells to our gift of the Mead Memorial Chapel.”

Ex. 18.

Response: Undisputed.

55. Dr. and Mrs. Mead's addition gift of a Carillon of Bells was installed in the Chapel tower. There were eleven bells, the largest weighing 2500 pounds and the smallest 275 pounds. Each bell bears the inscription:

“Presented to Middlebury College by John Abner and Mary Sherman Mead.”

“Ring in the valiant man and free, The larger heart, the kindlier hand;
Ring out the darkness of the land, Ring in the Christ that is to be.”

Complaint/Answer par 125. Complaint Ex. 3-041 & 3-042. Ex. 23.

Response: Undisputed.

56. On June 23rd, 1915, Middlebury College's Board of Trustees gratefully accepted John Abner Mead's offer to add the Chime of Bells, evident in the following meeting minutes: “It was voted that the gift of Mr & Mrs Mead be gratefully accepted.” Ex. 19.

Response: Undisputed.

57. The entire cost of the Chime of Bells was paid directly by Mead to Meneely Bell Company in the amount of \$6,960 in December 1915. Ex. 22.

Response: Undisputed.

58. The construction of the Mead Memorial Chapel proceeded over the next two years, during which time Dr. Mead attended meetings of the Mead Memorial Chapel Building Committee in Middlebury, met with architects, approved project designs, controlled the budget, and provided credit and payment for all labor and materials. Ex. 37. Complaint/Answer par 122.

Response: Undisputed except as to the characterization of the Chapel as the “Mead Memorial Chapel”; disputed to the extent this statement suggests that the name was an essential element of the gift or building.

59. Besides the costs of the Chapel building itself, Dr. Mead contracted and paid for a \$5,000 pipe organ, \$1,031 for Pilasters, and \$1,559.39 for pews. Complaint/Answer par 123.

Response: Immaterial.

60. The Mead Chapel was the work of Allen and Collens of Boston. It draws freely upon the vocabularies of the American classical styles of the 18th and 19th centuries in its translation of the traditional New England meeting house into marble. Thus, one finds a Greek Revival temple front, Georgian doors and windows, and a Federal tower. Above the colonnade is inscribed a quotation from Psalm 95:4, “The strength of the hills is His also.” Within the building is a beautiful Georgian-inspired paneled sanctuary. Complaint/Answer par 126.

Response: Immaterial.

61. As the College grew, changes were inevitable. The balconies were added in 1938 (with the consent of Mead’s daughter, Mrs. Carl Hinsman, see Exhibit 46), increasing the seating capacity to 715. The original organ was replaced in 1971 by the large Gress-Miles organ. The tower now holds a wonderful 48-bell carillon, cast and tuned in France from the original bells and other sets. It is played regularly. Seven of the original eleven bells were recast and reinscribed with Mr. and Mrs. Mead’s presentation inscription and Bible verse so that each of the original eleven

Bells remain as they were originally inscribed with Dr. & Mrs. Mead's name on each bell. Ex. 23. Complaint/Answer 130.

Response: Undisputed.

62. President Thomas would later recount while Eulogizing Governor Mead at his funeral in 1921:

For a year and a half we worked together in the consideration of plans and details and *the result was* a structure which a professor of Yale College pronounced the other day *one of the most beautiful buildings in North America*. Stately, reverent, graceful, combining the classic beauty of ancient Greece, the chaste dignity of our Puritan fathers, and the mystic impressiveness of the early Christian builders, its daily assemblies make subtle impressions on the youth who gather there speaks to them without other voice of "the light that never was on land or sea."

Complaint Exhibit 8-034 to 8-035 (emphasis supplied).
Complaint/Answer par 129.

Response: Undisputed.

63. The Mead Memorial Chapel Dedication Ceremony was held on June 18, 1916 during which Dr. Mead made a Presentation Speech, recalling his grandson's role in the Groundbreaking and Setting of the Cornerstone two years earlier, when at 3 years old, "Little John" placed his Bible and family tree in the cornerstone:

With the labor of love and devotion all complete, it is with great pleasure and an honor that I, through him who assisted me some two years since "in removing the soil" for the "setting of the corner stone", and who placed under the same his token of love, - his Bible and a short history of his relation to those who made this Temple possible; as I state, it is with pleasure, that through him, I may present to you, Doctor Brainerd, former President of this College, the keys to the Mead Memorial Chapel, - and may the Kind Providence who governs all our efforts for the greatest good and happiness of his children, give you all strength and wisdom, - that your and our fondest and most extravagant anticipations

of this day may be more than realized, in the years that are to come.

Ex. 33. Complaint/Answer par 131.

Response: Undisputed that the Mead Memorial Chapel Dedication Ceremony was held on June 18, 1916, during which Dr. Mead made a presentation speech. Further undisputed that Ex. 33 is a marked-up draft of Mead's speech, and that the foregoing text appears in that draft.

64. Mead's speech was followed by "Little John," now 5-years, presenting the Keys to the Mead Memorial Chapel to the College Trustees. Complaint Ex.4-011. Complaint/Answer par 132.

Response: Immaterial.

65. Dr. Brainerd, Former President of Middlebury College accepted the Keys on behalf of the Trustees and stated the following in his acceptance speech:

Doctor Mead:-

I esteem it a great privilege to appear in behalf of the President and Fellows of Middlebury College and accept publicly, your gift of this beautiful sanctuary, that we have this day met to dedicate to the service of Almighty God. For many years, especially since the old chapel proved too small to hold even the half of our students, it has been the fond hope and the earnest prayer of the friends of the College, that in God's providence there might appear a man of the religious fervor and the financial ability requisite to meet this urgent need for a larger and more suitable edifice. Today our ardent hopes are realized; our prayers are graciously answered. *And to me it is especially gratifying that our benefactor is my beloved classmate, one to whom I am bound, now for fifty six years, by ties of the warmest friendship.*

During these many years (which have passed with us so swiftly) the Heavenly Father has been pleased to grant you strength of mind and body, and varied opportunities for doing great service to your fellowmen. How well I recall the patriotic zeal with which, while yet a student in

college, you enlisted in the war to maintain the union of these United States. [Unreadable word] later, as a well-trained physician, you served in another war—against the diseases that distress mankind; and by sound judgement and kindly sympathy achieved an enviable reputation in his beneficent calling. Still later your executive talent enabled you to build up a great industry, whose products are now used in every civilized portion of the world. More recently you served the commonwealth of Vermont, in the highest public office, with business sagacity, with fidelity, and with honor. *But the noblest deed of all---the one for which future generations will hold you most in grateful remembrance---*is the erection of this spacious and attractive chapel, where the religious life of the College may find fitting expression and the stimulus of hallowed associations.

With grateful hearts, *dear brother*, we accept your generous gift: and we assure you of our earnest purpose so to utilize its opportunities for religious culture, as to promote the growth of earnest Christian character in the students of Middlebury College.---*Here for generations yet to come the melodious bells of this Chapel shall sound out over the Campus and the Town* the strains of Christian music, that from childhood have awakened in our souls the sentiments of faith and courage and earnest living.

...
The lord reward you, dear friend, for all that you have done, or may yet do, for the good of others; and may the years of earthly life that still remain be your best years, filled with blessed memories and abiding peace.

Ex. 34. Complaint/Answer par 133.

Response: Undisputed that Brainerd delivered a speech at the Mead Memorial Chapel Dedication Ceremony. Further undisputed that Ex. 34 is a draft of Brainerd’s speech, and that the foregoing text appears in that draft.

66. The 1916 Kaleidoscope, the Middlebury College Annual was dedicated to Governor Mead with a photo of the Chime of Bells and a poem “The Chapel Bell.”

Ex. 36.

Response: Undisputed.

67. On September 19, 1916, President Thomas sent invitation to Dr. Mead and his family to attend the first assembly of students at the Mead Memorial Chapel:

We have our opening Thursday morning of this week at nine o'clock. All the faculty and students will be together in the new chapel and I am expected to make an opening address. I am sure it would do much to this first assembly of students in the Mead Memorial Chapel if you and Mrs. Mead could be present, especially if you could bring little John and his father and mother. I know you are very busy, and of course I would not impose it as a duty, but if you can run up we will all be very glad to see you.

(Complaint Ex. 4-027). Complaint/Answer par 135.

Response: Undisputed.

68. President Thomas' Address to the first assembly of students in the Mead Memorial Chapel on September 19, 1916 began:

At the opening of the 117th year of Middlebury College and at this first student assembly in this stately and beautiful chapel, whose dignity and impressiveness must move us all to serious and earnest thought, I wish to sound a note of progress in the things which make up the inner life of a college. . . . Surprise as well as admiration is expressed by every visitor to this Mead Memorial Chapel . . . They had not imagined that such structures had been erected for any college in Vermont.

(Complaint Ex. 4-032). Complaint/Answer par. 136.

Response: Undisputed.

69. Middlebury College's website explains the import and significance of the Mead Memorial Chapel (now referred to as the "Middlebury Chapel"), which symbolizes the aspirations of the College, just as Governor Mead intended:

"This beautiful white marble structure rises on the highest point of the campus, its spire symbolizing the aspirations of the College."

"The light which shines here nightly is seen in the entire valley. Over the portal are carved the words from Psalm 95:4, "The Strength of the

Hills is His Also.”

(Complaint Ex. 6-001). Complaint/Answer par. 138.

Response: Immaterial.

70. A Middlebury College Video which is contained on the college’s website:

Mead Chapel Turns 100, June 15, 2016 states:

Middlebury College celebrated the Mead Memorial Chapel’s Centennial in 2016 with a video production entitled “Mead Chapel Turns 100,” featuring Middlebury College’s Glenn Andres, Professor Emeritus, History of Art and Architecture, in which he details the history, symbolism and importance of the “Mead Memorial Chapel” to Middlebury College, stating as follows:

“But the Chapel has continued to function in accord with President Thomas’ larger vision of it as the college’s meeting house. Of course it remained a place for Sunday services, for weddings, but also for college ceremonies, convocation, baccalaureate and until the completion of the Center for the Arts, it was also the main venue for the college concert series.”

“The monumental centerpiece and aesthetic keystone for the college for 100 years, Mead Chapel has remained an important symbolic and central venue for college activities and traditions.”

Middlebury College Video: Mead Chapel Turns 100, June 15, 2016, Glenn Andres, Middlebury College Professor Emeritus, History of Art and Architecture, 2016, (emphasis supplied).

<https://www.middlebury.edu/announcements/news/2016/06/video-mead-chapel-turns-100>

(Complaint Exhibit 6-012.) Complaint/Answer par.139.

Response: Immaterial.

71. In addition to the value of the building itself, Middlebury College Trustee and Treasurer John Fletcher felt that the gift toward construction of the chapel would be helpful in securing financial support for Middlebury from the State

Board of Education, as referenced in his correspondence concurring with the acceptance of Mead's offer to build the Mead Memorial Chapel. Complaint/Answer par 141.

Response: Immaterial.

72. Even the Middlebury Campus newspaper reported on the gift of the Mead Memorial Chapel:

. . . Every one felt that a gift of great significance and importance had come at a most opportune moment. . .

And so Middlebury starts out on the road of progress once more, or rather continues steadily to advance despite discouragements and apparent setbacks. After the completion of the General Education [sic.] Board fund of \$200,000 and the Carnegie report, it looked as if progress was at an end for a time, and that the college would be forced to battle to keep even. *Governor Mead has changed all that. His gift will inspire every friend of Middlebury to courage and optimism, and everyone will believe that still other gifts and yet more notable advance are to be the order of the day.*

Ex. 1-018 (emphasis supplied).

Response: Undisputed.

73. After the Mead Memorial Chapel was built in 1916, Dr. Mead provided President Thomas with photos and other materials documenting the construction of the Chapel so President Thomas could create a booklet which, according to Mead, "might stimulate some of our friends to pattern after Mr. Hepburn's example and give you an elegant dormitory for the girls or possibly something else which you might more desire at this time." Complaint/Answer par.145.

Response: Immaterial.

74. Mead offered to pay the cost of publication of the booklet and wrote to President Thomas, "To be frank with you, I have special hopes that it may be productive of great good to our college, as I do feel that others can be made specially interested in our Alma Mater, and that the full history and description of the Chapel should induce others to lend a helping hand." Complaint/Answer par 146.

Response: Immaterial.

75. In September of 1916, Pres. Thomas ordered 250 copies of the "Hymnal of Praise" with the inscriptions "MEAD MEMORIAL CHAPEL," stamped on the covers in gold, as evident here:

"I wish now to order 250 copies of the Hymnal of Praise, cloth binding, with MEAD MEMORIAL CHAPEL stamped in gold on the covers."

Ex. 39.

Response: Immaterial.

76. In December of 1916, John Abner Mead agreed to pay for Hymn Boards to be installed in the Mead Memorial Chapel and delegated the choice of the design to Pres. Thomas:

I have read your letter with interest and should be more than willing to leave the judgement in this matter to yourself, though I must confess to you, as you state, that at the same money I should prefer the simpler board. . . . P. S. Kindly send bill when the same is obtained."

Ex. 40.

Response: Immaterial.

77. John Abner Mead made financial contributions to Middlebury College during his lifetime in addition to erecting the Mead Memorial Chapel. Ex. 40, 41 (

\$1,000 in 1918 to the Endowment Fund). He left no provision for Middlebury College in his Last Will and Testament. Defendant's Exhibit GG.

Response: Disputed that Mead "erect[ed] the Mead Memorial Chapel." Otherwise, immaterial.

78. Dr. Mead also made substantial financial donations to other charitable causes during his lifetime, including the establishment of a youth center facility open to all faiths which Mead named "The Community House." Ex. 49. Complaint/Answer par 86, 87. Defendant's Ex. FF (Warranty Deed). Mead's Will provided an additional \$50,000 for continued maintenance of the Center after his [death]. Complaint/Answer par 88. Def's Ex. GG.

Response: Undisputed, except that the \$50,000 bequest for the Mead Community House was conditioned upon officials of the Congregational Church "furnish[ing] an equal amount annually for the same purpose," with failure of such condition triggering reversion of the bequest to Mead's heirs.

79. Mead's Last Will and Testament also bequeathed \$50,000 to the Congregational Church of Rutland for the maintenance of other Congregational churches in Rutland County. Complaint/Answer par 89. Def's Ex. GG.

Response: Undisputed.

80. Dr. John Abner Mead died of pneumonia at his home in Rutland on January 12, 1920. He was 78 years old. His wife, daughter, grandson, and son-in-law survived him. Complaint/Answer par 90. Def's Ex. GG.

Response: Undisputed.

81. At Governor Mead's funeral on January 16, 1920, Middlebury College President John M. Thomas gave the Eulogy which was published in its entirety in the Middlebury Register the next day and stated in part:

As to his gift of the Mead Memorial Chapel, I can not do better than to quote from the letter in which he announced his purpose.

[Full text of Mead's Offer Letter]

This afternoon, as we pay here our tribute of honor and affection, the chimes which bear his name on every bell are sounding out the hymns I loved and which he chose to hear the first time they were played, "Nearer my god to Thee", "Lead Kindly Light", "God be with you 'till we meet again". The dedication of the Chapel is complete – The Mead Memorial Chapel.

So our friend built his empire in our midst. If another could have built it, another did not. He loved his work and he gave his all to it to the very last. *He carved his name high in the marvelous roll of Vermont's men of achievement, and he earned his rest.*

Ex. 8-034 to 8-035. Complaint/Answer par 137.

Response: Disputed that the foregoing text accurately reproduces the text of the cited exhibit, and that the "full text" of Mead's Gift Letter appears in that exhibit. Undisputed that the foregoing represents a portion of the text printed in the cited Middlebury Register article.

82. In 1920, Middlebury College's Board of Trustees paid tribute to Mead, evidenced in their meeting minutes:

"In the death of Ex-Governor John Abner Mead of the Class of 1864 Middlebury College has lost one of its most distinguished alumni of the State of Vermont, and one of the most helpful of its Trustees and most generous of its benefactors. Governor Mead was a notable example of those successful men of our nation who have pushed their way upward against great obstacles and by force of mind and will and character succeeded to positions of great responsibility and usefulness in the

industrial world and in public life. His career as a physician was honorable and highly useful. Turning to business he became one of the masters of industry in New England. *In the gift of the Mead Memorial Chapel he endowed the college with one of the most beautiful buildings on any campus in America, which will speak to coming generations of his wisdom and foresight in benevolence and symbolize the strength of character of its donor.*”

Ex. 42.

Response: Undisputed.

83. John Mead was buried at the Mead Family plot in Evergreen Cemetery in Rutland with his ancestors, including Colonel James Mead and Mercy Holmes Mead, whom John Abner Mead had reinterred there from the West Rutland Cemetery in 1895 and where he had replanted the sod from the Mead Memorial Chapel Groundbreaking Ceremony in June 1914. Complaint/Answer par 92. Ex. 24-2.

Response: Immaterial.

84. John Abner Mead’s headstone records his service in the Union Army, his professional life as “a beloved physician in Rutland for 21 years,” and his many offices held including his Governorship of course. His headstone contains the final engraving:

“A CHRISTIAN AND PHILANTHROPIST”

Complaint Ex. 8-008. Complaint/Answer par 93.

Response: Undisputed.

85. On June 14th, 1920, Pres. Thomas wrote to Carl B. Hinsman about “completing” the west end of the Chapel with marble, as it had been built of wood to save costs when the Chapel was erected by Mead and stating:

“My thought is that it is something that ought to be borne in mind to be done at the proper time and that measures should be taken to insure that the Chapel will be preserved as a memorial to Dr. Mead.”

Ex. 43.

Response: Immaterial.

86. On April 29th, 1931, Carl B. Hinsman wrote to Pres. Moody about repairs to the spire, and expressed strong desire that it be restored:

“Mrs. Hinsman and I have studied these pictures very carefully and we would really feel it quite a calamity of the spire was removed entirely. On referring to the booklet which was gotten out and presented to Dr. Mead giving an account of the design, erection and dedication of the Building, considerable stress was laid from these several standpoints on the fitness and beauty of the spire as a part of the architectural scheme. The Building occupies such a commanding position on the Campus and in the landscape surrounding it that it would be indeed regrettable if the spire should be abridged or done away with.

Mrs. Hinsman feels quite strongly that the spire should be restored to its original condition, and from your description of the situation, it would be less of a task to do that than it would be to remove it entirely. Thanking you for bringing the matter to our attention...”

Ex. 44.

Response: Immaterial.

87. On May 8th, 1931, Pres. Moody wrote to Carl B. Hinsman saying the matter was settled, and that they were to proceed with repairs to the spire:

“On receipt of your letter of April 29th, I told Mr. Fritz, our Business Manager, that we would look upon the matter of the spire of Mead Chapel as settled, and we are going to proceed with the repairing of the spire. ... I feel that it is like talking of gilding a lily to talk of improving the Mead Chapel, for it is by all odds the most harmonious building we have on the campus and the most beautiful.”

Ex. 45.

Response: Immaterial.

88. On July 20th, 1937, Pres. Moody wrote to Mrs. Carl Hinsman asking for consent to add the galleries as balcony seating, a copy of which is as follows:

My dear Mrs. Hinsman:

Wednesday morning of last week we began the work of putting galleries in Mead Chapel, and the scaffolding is already up and active work on the walls has begun.

The final estimate as detailed is \$11,038.59. It will cost rather more than we at first expected. I hope very much that you will feel that I am only sending this information because of your request for it, and even more strongly I hope you will not feel that we submitted the idea of galleries to you with any thought that it was in any way a suggestion or a plea for help. The gift of the Chapel was a very generous one and no one can estimate the contribution it has been over the years, both from the physical as well as the spiritual standpoint.

The only point was that the college had so outgrown all its quarters that something had to be done, and we were not willing to consider changing our practice in respect to Chapel attendance, so great has been its value. And we did wish to have your consent to any change made in a building given to the college by your father.

In exactly the same way, when we had outgrown the Starr Library, which has given the college by the Starr family, and had in hand money for its enlargement, we went to Dr. Starr for permission to make the enlargement. He not only consented to our plans, but refused to allow another donor to give anything toward the construction, saying that since it was a Starr Library, he did not wish any but star money to go into the building. The amount was more than he wanted to lay out in one payment so he spread it over several years, reimbursing the College in partial payments. We had contemplated a change in Hepburn hall, but there again I would not be willing to go ahead without the consent of Mrs. Hepburn.

Ex. 46.

Response: Immaterial.

89. On April 2nd, 1985, the re-inscription of 7 of the original 11 bells which

were recast in 1985, were ordered with Mead's gift and verse:

"Following our telephone conversation of March 28, 1985, I write to confirm that the following inscription should appear on the first eleven bells:

GIFT OF GOVERNOR MEAD AND MARY SHERMAN MEAD
PRESENTED TO MIDDLEBURY COLLEGE BY JOHN ABNER AND
MARY SHERMAN MEAD

A.D. 1915

RING IN THE VALIANT MAN AND FREE THE LARGER HEART
THE KINDLIER HAND RING OUT THE DARKNESS OF THE LAND
RING IN THE CHRIST THAT IS TO BE"

Ex. 47.

Response: Immaterial.

90. On May 9th, 1908, Pres. Thomas wrote to D. K. Pearsons:

"I hope you will see your way to give for education in your native State. We should have at least \$250,000.00 for a Woman's College, and if you will give me a start, I will set out to get it. But I plead with you for \$50,000.00 now, to meet the pressing need of a building for our girls to live in, some central place to gather for their social life...

Marble is cheap in Vermont, and for the sum named we will erect a building that will do you lasting honor, and will be a blessing to hundreds of girls who otherwise would be without opportunity of higher education."

Ex. 50, p.1-2.

Response: Immaterial.

91. In September 1908, the Middlebury College Bulletin volume III reads:

"THE D. K. PEARSONS *Pearsons Hall* BUILDING AND
ENDOWMENT FUND

Ex. 50, p.5-7.

Response: Immaterial.

92. In 1909, Middlebury College Board of Trustees accepted Dr. Pearsons' offer, as seen in the following meeting minutes:

“Voted that the Board engage in an active effort to meet the conditions of the offer of D. K. Pearsons to give \$25,000 – provided that \$75,000 – additional be raised, and that the matter be informed to the President-elect with favor.”

Ex. 50, p.8.

Response: Immaterial.

93. On February 9, 1910, Pres. Thomas wrote to D. K. Pearsons:

“Will you give me \$50,000 if I will raise \$150,000 additional? I want it to build a dormitory for boys, and to provide more recitation rooms. If you will give me until July 1, 1911, I know I can get the money, and I can have the dormitory ready for that fall. I am in better shape to get \$150,000 now than I was to get the \$75,000 when you made the offer of \$25,000. ... *We want to call it Pearsons Hall, if you will let us.*”

Ex. 50, p.12-13.

Response: Immaterial.

94. On February 9, 1910, Pres. Thomas wrote to John G. McCullough:

“But if you could make the “McCullough Gymnasium Fund” \$25,000, on condition that I secure a like sum from other sources, I believe I could get the balance for a “McCullough Gymnasium” before next commencement.”

Ex. 51, p.2-3.

Response: Immaterial.

95. On March 4, 1910, John G. McCullough wrote to Pres. Thomas:

“As to your second suggestion, you seem quite confident of being able to raise before Commencement from other sources the sum of \$25,000. to

enable you to erect a fitting Gymnasium for the College, provided I would give a like sum for that purpose, thus making your Gymnasium fund at least \$50,000. You may count of me for the second \$25,000. upon the conditions stated in your letter.”

Response: Immaterial.

96. On June 25, 1910, Pres. Thomas wrote to John G. McCullough:

“I was able to announce that Alumni and friends have pledged \$25,000. Thus meeting the conditions of your promise of an equal sum made on the...gymnasium fund of \$60,000.”

Ex. 51, p.4-5, Ex. 51, p.11.

Response: Immaterial.

97. On May 25, 1911, Pres. Thomas wrote to John G. McCullough referencing the “McCullough Gymnasium.” Ex. 51, p.16.

Response: Immaterial.

98. By undated letter, Mrs. James M Gifford wrote to The President and Fellows of Middlebury College indicating:

It is my intention to build a hall in honor of my beloved husband for the use of the boys of Middlebury College, to be known as “THE JAMES M. GIFFORD MEMORIAL HALL for BOYS”, the construction of which shall according to his wishes follow the plan used by Mr. A. Barton Hepburn

Ex. 53, Page 1

Response: Immaterial.

99. On June 10, 1939, at the Board meeting, the Board read the offer letter from Mrs. Gifford reviewed its report and voted that President Moody be authorized to communicate the Board’s acceptance. Ex. 53, p.6-7

Response: Immaterial.

100. On July 20, 1939, Mrs. Gifford wrote to the President and Fellow of Middlebury College, stating:

As I advised you in my letter of June 9th 1939 it is my intention to build a hall for the use of the boys of Middlebury College, to be known as quote the James M Gifford Memorial Hall for boys. UN quote I now desire to make a formal agreement with the college for the erection of this building

I hereby request you to permit the erection of this building on the land belonging to Middlebury College north of Meade memorial Chapel, in a situation corresponding to the location at Hepburn hall South of the Chapel, the building to be erected of native Vermont limestone and the plans to correspond generally with the plans of Hepburn hall but with such minor variations as may be directed by the college authorities and approved by me, or, may be desired by the college authorities and approved by me, or in the case of my death, my personal representative.

Ex. 53, page 8.

Response: Immaterial.

101. On July 20, 1939, The President and Fellows of Middlebury College acknowledged receipt of Mrs. Giffords offer:

“...in receipt of your letter of July 20th 1939, in which you offer for yourself, your heirs, executors and administrators, to pay the cost of building and furnishing and equipping a hall for the use of the boys of Middlebury College, to be known as, “The James M. Gifford Memorial Hall for Boys”, provided the college will permit the erection of the building on its land to the north of Mead Memorial Chapel in a situation corresponding to that of Hepburn Hall to the to the South of the Chapel.

I have been authorized by the president and fellows of Middlebury College to accept this generous offer and to advise that the college hereby agrees that the hall may be erected at the place requested by you and in accordance with the plans as stated by you

Ex. 53, p.10

Response: Immaterial.

102. On October 14, 1939, the Report of Middlebury College building committee of James M Gifford Memorial Hall for boys reads:

“JAMES M. GIFFORD MEMORIAL HALL FOR BOYS. ... As Mrs. Gifford intends to sign the building contract herself and requires that the plans and specifications must meet with her approval,”

Ex. 53, p.11.

Response: Immaterial.

103. On October 31, 1940, the Board’s Acceptance of the “James M. Gifford Memorial Hall for Boys” reads:

“The graciousness and hospitality of this building are a symbol of the generous nature of his whose name it bears. ... It is a fitting memorial to a life which exemplified all these virtues, simple but massive, harmonious yet strong. ... We recognize that though only the name of James M. Gifford adorns this building, nevertheless into its stone and mortar has gone something more, - a lifetime’s devotion, to one worthy of that devotion. This gift to the College which Mr. Gifford loved so greatly and served so long, so faithfully and so efficiently, is gratefully accepted, not only for its own sake, but for the sake of him in whose honor it stands and for your sake, Mrs. Gifford, who have so wonderfully preserved his name, along with the great names of the College, - Painter, Starr, McCullough, Mead, Hepburn, and now Gifford.”

Ex. 54.

Response: Immaterial.

104. Built of Vermont marble and placed on the highest point on campus as Dr. Mead directed, the “Mead Memorial Chapel” stands not only as the most dominant building on the campus, but has become an iconic feature of Middlebury's landscape, and has been featured in the College’s promotional materials.

Complaint/Answer par. 4.

Response: Immaterial.

105. For more than a century, the Mead Memorial Chapel has been home to student performances, guest lectures, religious services, weddings, baptisms, funerals, and annual events like Convocation and Baccalaureate. Over the years, it has welcomed Academy Award winners, Nobel laureates, and pillars of art, business, and science for discussions, readings, and panels. Complaint/Answer par. 5.

Response: Immaterial.

106. In the early morning hours of Monday, Sept. 27, 2021, Middlebury College removed the wooden “Mead Memorial Chapel” sign, which hung in a niche above the entrance of the Chapel, identifying the College’s house of worship and “Meeting House” for community gatherings for the past 105 years. Complaint/Answer par. 6.

Response: Undisputed that Middlebury removed the wooden “Mead Memorial Chapel sign on September 27, 2021.

107. The College did not issue a public statement in advance of the removal of the sign for “Mead Memorial Chapel.” Complaint/Answer par. 7.

Response: Immaterial.

108. The College did not notify the Mead family nor seek their consent to alter the building, to remove the sign from the building or to remove the Mead name from the memorial chapel. Complaint/Answer par. 7.

Response: Immaterial.

109. In 1914, when Mead offered to erect a memorial chapel, the following named buildings existed to memorialize or honor donors or others who served the College as if detailed in Middlebury College Bulletin 1913-1914, Vol. VII, December, 1913, No. 4:

Painter Hall - in 1810 Colonel Seth Storres of Middlebury gave to the corporation 30 acres of land upon which the first building of the college was erected in 1814 it was called at first "West College" but in 1846 was named Painter Hall in honor of Gamaliel Painter, one of the most generous patrons of the college and who had bequeathed all his property to the institution. It has been in continuous use since its erection and it's the oldest college building in Vermont. Id. at 99 & 117.

Starr Hall - a large dormitory, was erected by the beneficence of Charles and Egbert Starr in 1861, and rebuilt in 1865, after a disastrous fire, by the same donors. Id. at 100 & 117.

The Egbert Starr Library - the beautiful and convenient marble library now occupied was erected with funds bequeathed by Mr. Egbert Starr, and dedicated during the Centennial exercises of the College in July 1900. The cost of the building was \$50,000, to which was added \$5000 for its decoration and \$5000 for the purchase of books by the son of the donor, Dr. M Allen Starr. Id. at 109.

The Warner Science Hall - the large and convenient Warner Science Hall, was erected in 1901 through benefactions of the late Ezra J Warner, of the class of 1861. The building is a memorial of his father, Hon. Joseph Warner, formerly a resident of Middlebury, and a trustee of the college from 1850 to 1865. By the will of Mr. Warner the college has received a bequest of \$25,000 for the care and maintenance of the hall, and for the purchase of supplies for the departments which it accommodates. Id. 111.

The McCullough Gymnasium - in 1910 Hon. John G McCullough of Bennington offered to give \$25,000 towards the erection of a gymnasium, and the alumni of the college completed a gymnasium fund of \$50,000 at commencement of that year the building was dedicated at the commencement of 1912. Id. at 114.

The Porter Athletic Field - the college has recently acquired a new athletic field, purchased and equipped at a cost of \$10,000, the gift of a

friend. Id. at 115.

Pearsons Hall - a new building for women, was opened at the beginning of the college year in 1911. Id. at 118.

Battell Cottage – named for Hon. Joseph Batell of the Class of 1823, a large donor to the college, was enlarged in 1910. Id. at 118.

Plaintiff's Opposition to Motion to Dismiss, Exhibit 11 (Middlebury College Bulletin 1913-1914, Vol. VII, December, 1913, No. 4).

Response: Immaterial.

110. It appears that currently, Middlebury College has named more than 70 buildings on its campus for proper family names. Ex. 55.

Response: Immaterial.

Dated at Burlington, Vermont, this 5th day of August, 2024.

By: /s/ Justin B. Barnard
Justin B. Barnard, Esq.

DINSE
209 Battery Street
Burlington, VT 05401
802-864-5751
jbarnard@dinse.com

Counsel for Defendant