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# GEORGE TURNER, A CHARACTER FROM PLUTARCH[1]

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"Liberty," declared Senator George Turner, speaking, in 1900, on behalf of the Filipinos, "knows no clime, no color, no race, no creed . . . The best of all governments is a tyranny if imposed on the governed without their consent."[2] It was no accident that Turner's ablest and noblest efforts on the floor of the United States Senate were in the interest of a subject people, for the battle for justice, at whatever points the lines happened to be breaking or threatened, was the most absorbing drama of his career. A statesman and a lawyer of a generation that has passed, he loved any fight; but it was with stern joy and unflinching courage that he hurled his deadliest shafts at the forces of injustice or oppression. A Federal marshal in Alabama (1876-1880), Judge of the Supreme Court of the Territory of Washington (1884-1888), member of the Washington constitutional convention (1889), United States Senator (1897-1903), member of the Alaska Boundary Commission (1903), of leading counsel for the United States in the North Atlantic Fisheries Arbitration (1910), and for nearly fifty years a leader of the bar in the State of Washington, Turner presents a career which merits review. Self-educated, distinguished in appearance, courtly in bearing, courageous in action, unyielding on essential points of honor and justice, he presents a character worthy of analysis.

George Turner was born in Edina, Knox County, Missouri, on February 26, 1850. His parents were hard-working, God-fearing, frontier people of good stock, without much, if any, formal education, and without the means to educate their nine children. Poverty and the Civil War put an end to George Turner's formal "education," which consisted of attendance at a one-room school for periods aggregating about eight months. His learning he acquired later by reading and by association with men older and better informed than he. Still a child in years, he served as messenger boy in the Union forces until at odd times, he learned telegraphy, when he became a member of the Military Telegraph Corps, in which capacity he served at various points in his state. In "rough and tumble" Missouri he was forced to early maturity. The

[1] The writer's other published articles on George Turner are as follows: "The Background of a Statesman," *Pacific Northwest Quarterly*, July, 1943; "Senator and Counsel for the United States," same, October, 1943; "Associate Justice of the Supreme Court of the Territory of Washington," to appear in the near future in the *Oregon Historical Quarterly;* "Attorney-at-Law," *Research Studies of the State College of Washington*, September, 1943.

[2] CONG. REC., 56th Congress, 1st Session, 1038 (Jan. 22, 1900).

state which before the Civil War had more than its quota of ruffians, and during that war heard much tramping of soldiers and was often in fear of renegade desperados and stealthy guerrillas, was a state of many suspicions and not a little treachery, of quick tempers and fairly accurate shooting. It did not nurture the smaller or gentler virtues, but it furnished the nourishment from which bad men were made worse and men of character were made stronger. If it could produce a Jesse James, it could also fashion a George Turner.

Self-reliant and mature at sixteen or seventeen, George joined his brother, ten years his senior, Col. W. W. B. Turner, in Mobile, Alabama. He read law under his brother's direction, and, in 1869, at the age of nineteen, he was admitted to the bar. In one of his earliest cases he had a particularly unpleasant experience with a judge. There are several versions of the story, but it seems that the facts were substantially as follows: Turner had unsuccessfully defended a Negro. When Turner appealed, the judge refused to certify the bill of exceptions which Turner presented, unless certain changes were made, changes which the young attorney maintained would not be in accord with the facts. Upon Turner's refusal to make the alterations, the judge sentenced him to jail for contempt of court. His elder brother thought that the matter had gone far enough and he suggested to George that he (George) write an apology to the judge. George smiled, wrote a note, and gave it to his brother for delivery. It developed that the note was not one of apology, but, on the contrary, one in which the indignant George had taken the opportunity to give the judge further instruction on judicial standards. This incident was related by one of Turner's old associates as typical of the man—always sensitive to an injustice, whether to himself or another, prompt to proclaim his indignation, and ready to take the consequences.[3]

Nothing was more natural than that Turner, for all practical purposes a veteran of the Civil War, energetic and ambitious, and not too busy with clients, should enter Republican Reconstruction politics. He rose rapidly in party councils, and in 1874 he was nominated for attorney general of Alabama. He failed of election because Reconstruction was at an end in Alabama and the Democrats were returning to power, but he continued to be the right hand man of George E. Spencer, Alabama's carpet-bag United States Senator, and when that individual was displaced by a Democrat in 1877, Turner became the Republican leader in the state. As such he distributed the Federal patronage and headed the state's delegates (mostly Negroes) at Republican national conventions. He was a loyal follower of the Grant-Conkling-Arthur faction of the party, and Grant named him (1876) United States marshal for the middle and southern districts of Alabama and Arthur appointed him (1884) Justice of the Supreme Court of the Territory of Washing-

[3] F. T. Post, interview, Spokane, Washington, April 4, 1940.

ton.

What could be expected of a judge whose background was Republican carpet-bag politics? It is true that Turner was not a carpet-bagger, for he had gone to Alabama several years before he was old enough to vote and he did not become a power in Republican politics until Alabama had been "redeemed" by the Democrats, but it is a fact that as a young party worker he had industriously and cheerfully "carried the carpet-bag" for Senator Spencer. Certainly the inhabitants of Washington Territory did not expect much from this political appointee, but they were most agreeably surprised. Judge Turner displayed from the very first the capacity for work, the understanding of the law, and the breadth of tolerance which characterize the ideal judge. Judge James T. Ronald of the Superior Court of King County characterizes Judge Turner as fearless, able, frank, and courteous.[4] Mr. John P. Hartman, a Seattle attorney, who knew Judge Turner fifty years ago, writes that Turner distinguished himself as judge, contributing to the development of the law in the Territory and leaving a permanent influence upon the legal institutions of the State.[5] Studious and careful as a legal craftsman, he spared no pains in writing his decisions. Mr. Hartman recalls that his style was fascinating, his composition clear, his English choice and pure.

Perhaps one of the most significant contributions of Judge Turner was his decision in *Harland v. Territory*,[6] which stopped the legislative practice of amending the Code by reference to sections thereof. The Organic Act of the Territory provided that "every law shall embrace but one subject, and that shall be expressed in its title." In 1883 the legislature had amended section 3050 of the Code of 1881, and had thereby extended the suffrage to women. The title of the act amending the Code read as follows: "An act to amend section 3050, chapter 238, of the Code of Washington Territory." Does this title, Judge Turner asked, meet the requirement of the Organic Act that the object be expressed in the title of an act? His answer was that it did not. "The object of the act in question was to confer the elective franchise on females," he explained, and the statement of that object is not found in the words "to amend section 3050" of the Code. He gave at length, and not without some humor, the most practical and convincing reasons for adhering to the technical requirements of the Organic Act. Judge Langford concurred with Judge Turner, the two constituting a majority of the court. Chief Justice Greene "totally" dissented, stating that he would in due time prepare his opinion. He never did. Judge Hoyt was disqualified from sitting, since the case had been originally tried in his district court. There is not the slightest doubt, however, that

[4] Judge James T. Ronald, interview, Seattle, Washington, August, 1940.
[5] John P. Hartman, in an article on Turner prepared for the writer in February, 1940.
[6] 3 WASH. T. R. 131 (1887).

Judge Hoyt was in "total" accord with the dissenting opinion of the Chief Justice, for three years earlier, in *Rosencrantz v. Territory*,[7] Judge Hoyt had written the majority opinion which was directly contrary to that of the now prevailing opinion. In the *Rosencrantz* case Judge Turner had dissented. Thus the supreme court of the Territory had twice divided on the validity of amendment by reference to sections of the Code, in the *Rosencrantz* case the majority sustaining and in the *Harland* case denying the validity of such procedure. The controversy could not be regarded as settled. How would it end?

Judge Turner resigned from the bench shortly after the *Harland* case was decided. The next year brought statehood and, of course, the end of the territorial supreme court. The people of the State elected the judges of the new supreme court, and one of the judges so chosen was Judge Hoyt. In December, 1891, the case of *Marston v. Humes*[8] came before this court. The decision in this case might be said to have been reached without disturbing Judge Turner's reasoning in *Harland v. Territory*. Indeed, the Court held that the title which read, "An act relating to pleadings in civil cases"—the title in question in the *Marston* case—was sufficient to indicate the subject of the legislation, and thus, by inference, sufficient to satisfy the rule of interpretation Judge Turner had laid down in the *Harland* case. But Judge Hoyt, who wrote the *Marston* opinion, could not resist the opportunity to reply to Judge Turner's reasoning in the *Harland* case. Judge Hoyt's reasoning, in all probability only *obiter*, has led some authorities to say that *Marston v. Humes* overruled *Harland v. Territory*. That view is of dubious validity. Its probable error is not only shown in the language quoted above from the *Marston* opinion but also from a reference to that case in *State v. Halbert*,[9] where the court states: "We were unanimously of the opinion that, under the constitution, the title was sufficiently expressive of the object of the act." In any event, the question of the validity of a Code amendment by reference to section thereof being again raised in the case of *State v. Halbert* (March 21, 1896), the majority of the court followed Judge Turner's *Harland* decision, leaving Judge Hoyt only what comfort he could gain by having Judge Dunbar associated with him in dissent. Six years later (April 15, 1902), the court unanimously followed Judge Turner's decision, the decision that an act which simply refers in its title to sections of a code to be amended is invalid; that to be valid it must clearly state in its title the "subject" to which it refers.[10] Judge Hadley, who spoke for the court, quoted with approval Judge Deady in the case of *The Borrowdale* (39 Fed. 376). Citing *Harland v. Territory* and referring to

[7] 2 WASH. T. R. 267 (1884).
[8] 3 Wash 267 (1891).
[9] 14 Wash. 306 (1896).
[10] State *ex. rel.* Seattle Electric Co., v. Superior Court, 28 Wash. 317 (1902).

the ruling in that case that the subject must be expressed in the title of the act, Judge Deady had said: "The question is thoroughly considered in the opinion of the court, and the conclusion maintained by argument and authority which are unanswerable."[11]

With the inauguration of President Cleveland, in 1885, the Democrats of Alabama made prompt efforts to have Turner removed from his judicial office in Washington Territory. It is a credit both to the Cleveland Administration and to Judge Turner that the effort at removal was unsuccessful. There were a few persons in the Territory who claimed that Turner was unfit for judicial office, but they were decidedly in the minority. Of the representations made on behalf of Turner to the new Administration at Washington perhaps that of the Bar Association of Spokane County was the most significant. This body adopted a resolution commending Judge Turner for his ability, impartially, courtesy, and industry, emphasizing that his fine qualities were even better displayed as a member of the supreme court of the Territory than as a trial judge, vouching for his integrity as judge and private citizen, and earnestly recommending that he be retained in office for the term for which he was appointed.[12] The resolution was signed by six Republican and six Democratic attorneys of Spokane, and by thirty attorneys, about two-thirds of whom were Republicans, in other towns of the Fourth Judicial District. It would be superfluous to comment upon this and similar testimonials further than to say that they prove a remarkable fact, namely, that a Republican Reconstruction politician, a machine lieutenant, having received for political service performed a judicial appointment, had the mental capacity, the tireless energy, and the moral fiber to meet the exacting requirements of judicial office.

In 1888, several months before his term of office expired, Judge Turner resigned, giving as his reason his desire to practice law and remaining silent on another reason—his interest in elective public office. In 1889 he was chosen by a large majority as a delegate to the convention which would write the constitution with which the Territory would seek statehood. He was made chairman of the committee on the judiciary, and the judiciary article as it now stands in the Washington Constitution is largely his work. He served conspicuously on the committee on tidewater and navigable streams, and he was active in nearly every other phase of the convention's work. An observer[13] reported that "the keen, incisive talker of the convention, the only one, perhaps, who can win votes over to his side by a logical presentation of his case, is Judge Turner of Spokane. Nearly all the members recognize this fact without distinction of party."

[11] Quoted *ibid.*, p. 327.

[12] Resolution of the Bar Association of Spokane County, held at the City of Spokane Falls, August 13, 1885 (photostat). The National Archives, Washington, D. C.

[13] Unidentified newspaper clipping. State College of Washington collection of Turner papers.

Turner led in the bitterest fight of the convention, the battle which occurred over the efforts of the railroads to win a constitutional provision which would give them a chance to acquire the tidewater lands. It should be stated that several of Turner's judicial decisions had run counter to the interests of the railroads, and they strongly suspected that he was a man who might oppose them in other matters. At the convention it soon became evident that Turner was the delegate who must be turned aside if the railroads were to achieve their purpose. While the debate on the tidewater lands was in progress, a disastrous fire swept through a large section of Spokane destroying, among other buildings, the one in which the Judge maintained his office. Railroad lobbyists told Turner that this misfortune was ample excuse for his leaving the convention; that he should go home to look after his affairs, and run for the United States Senate the next year—on a fund of $25,000 which the railroad would raise for his election expenses. The exact response of the Judge, who did have senatorial ambitions, is known to but a few friends. In 1930, looking back over the years and in a mellow mood, the Judge lied that he just laughed.[14] The nearest approach to what he said which may be reduced to writing is: "If I did not know that you have no sense and do not realize what you are trying to do, I would throw you out of my office." The reply that his friends declare he actually made does him no less credit as a man of honor and merits a barbed-wire corsage for mastery of scathing invective. It was—well, it was brief, direct, adequate, just, forgivably profane, and legally unprintable. He remained in Olympia. The constitution as framed and adopted asserted the State's "ownership to the beds and shores of all navigable waters,"[15] and excepted from the provision validating the laws of the Territory then in force "any act of the Legislature of Washington Territory granting shore or tide lands to any person, company or any municipal or private corporation."[16]

From 1888 to 1897 Turner was profitably engaged in the practice of law and he had the good luck to invest in a mining property which paid handsome dividends. His interest in politics remained, and he made several attempts to win a seat in the United States Senate. He had strong support but still stronger opposition, that of the railroads, the dominant influence in the Republican state organization. An incident in the bitter senatorial fight of 1893 is worth recording because it indicates something of the methods employed in senatorial elections in those days and illustrates a quality in the character of Turner. The Judge had paid the election expenses of a member of the legislature who was pledged to support him for the United States Senate. After voting once or twice for his patron, the member deserted him, giving as his reason the impossibility of electing Turner. Sweet vengeance was slow

[14] Spokane *Chronicle*, April 9, 1930.
[15] Art. XVII, sec. 1.
[16] Art. XXVII, sec. 2.

in coming, but Turner was determined to have it. About the time Turner was elected to the Senate (1897), the legislator who had broken his pledge to Turner received a Federal appointment from the hands of Turner's political opponents and he was still holding the office when, toward the end of Turner's term as Senator, Theodore Roosevelt became President. On the best of terms with the "square deal" President, Turner asked him to remove the "traitor" from the Federal payroll. It was done. "I got him at last," Turner reported gleefully to a friend. "Well," commented the friend, "I am rather sorry that you did. On our old coat of arms is the inscription 'Eagles do not fight with mice.'" "That might satisfy you," replied the unforgiving Senator, "but I had to get that ————."[17]

Turner went to the Senate on the free silver movement. Spokane was the capital of "16 to 1" in the Pacific Northwest, and Turner was one of silver's leading advocates. Neither he nor his close associates were particularly interested in the monetary theories back of the free silver crusade, but they were interested in silver mine properties and in the prosperity the mines were bringing and could bring to Spokane. Furthermore, Turner's unfriendly attitude towards railroads and other large business combinations had placed him in a position where he could expect nothing from the Republican party. Consequently, he became a Silver Republican (about 1900 he became a Democrat) and led the Washington branch of that group into an alliance with the Populists and Democrats. In 1896 this combination easily carried the state for Bryan, the Democratic nominee for President, and for John R. Rogers, a Populist whom the "allies" had named for governor. When the legislature convened in January, Turner was chosen Senator, although not without some initial threats by the Populists to elect one of their own party or the danger of a Republican alliance with a faction of the Populists to defeat Turner.

Senator Turner wore the toga as if it had been made for him. He had found the ideal place for the exercise of his interests and the display of his talents. He respected and won the respect of his able colleagues. At the time he went to the Senate he had a positive dislike for Senator Hoar of Massachusetts. Soon he looked upon him as one of the finest and best equipped of all the Solons. From first to last he had the confidence of and was on intimate terms with Teller of Colorado, Daniels of Virginia, and other leading senators of the minority party. Despite a few prickly thorns he sometimes included in the bouquets he discriminatingly handed Lodge and Beveridge, he was always on good terms with them. An individual who was not a Senator and who never had been one but who had been elected to preside over the Senate had his eyes on Turner. That individual was, of course, Theodore Roosevelt, President after the assassination of McKinley. Doubt-

[17] Frank H. Graves, interview, Spokane, Washington, December 27, 1939.

less Roosevelt was impressed with Turner's character and worth, and the President testified that "Anything relating to our international relations . . . I was certain to discuss with Senator Lodge and also with certain other members of Congress, such as Senator Turner of Washington and Representative Hitt of Illinois."[18] Of Roosevelt Turner said: He "treated me with marked courtesy, and evinced toward me a very friendly spirit, which naturally begat on my part a like spirit . . . I came to have for him a great admiration. As a man, while tolerant of lapses in others, his standards of conduct were high. As a friend, he was all that a friend could be."[19]

Turner was of that class of senators who give distinction to the Chamber, not of the type whose career in the Senate brings nothing beyond a little prestige for themselves. He served the United States rather than the State of Washington. He was, as all good senators have been and are, a national representative. Although he came from one of the newest states, he seldom mentioned that state or its particular interests. His great efforts were saved for national issues and problems. He opposed the Gold Standard Act, favored an Isthmian Canal, although he opposed the Panama route, and time and time again made exalted appeals for liberty and justice for the Filipinos. Often, as in the last case mentioned, he was found on the side of those who most needed a champion. He was for the rights of the bona fide homesteaders and miners as against the pretentious and sometimes questionable claims of large concerns; he was for fair treatment of labor, yet he was in no sense a defender of labor violence in industrial disputes. He opposed monopolies and subsidies, and, although he could not rid himself entirely of his old Republican faith in the protective tariff, he voted against the Dingley tariff bill because it went too far in subsidizing manufacturers and not far enough in protecting western products.

Courage, independence, and integrity characterized his career in the Senate. Considerable pride was present also. He was far from indifferent to his political future, but he would not sacrifice his principles to insure it. There is no doubt that he could have made his peace with the Republicans in 1900 or even later, but there is no evidence that he ever thought of returning to that party. In 1902 economic prosperity restored the Republicans to full power in the State of Washington, and the legislature of 1903 elected a "safe and sane" Republican to succeed Turner.

Senator Turner tried several times to return to public office, but he never succeeded. In 1904 he ran for governor. Vigorously advocating a state railroad commission, he had the support of all Democrats and many Republicans, and ran about 15,000 votes ahead of his ticket, but he was still approximately that number of votes behind Albert A. Mead,

[18] AUTOBIOGRAPHY, pp. 383-384.
[19] Turner to F. S. Wood, August 31, 1925.

the Republican candidate. As Democratic hopes brightened after 1909, Turner became a very active backer of Champ Clark for the presidency. One of the leaders for the Missourian in the Baltimore convention (1912), he stayed with him to the end. This was typical of Turner, this loyalty to a candidate to whom he had pledged his support. The Judge actively supported Wilson after the nomination, but the fact that the Judge had backed a losing candidate for the nomination impaired his influence in the Democratic party.

In 1914 Turner failed by a small margin to win the Democratic nomination for United States Senator. Two years later he was successful, and faced Senator Miles Poindexter, the Republican candidate for reelection. Poindexter had been a Progressive, had supported a number of the liberal measures of the Wilson administration, and now again a Republican he appealed to Progressives to follow him and Theodore Roosevelt back to the party of Lincoln. Turner also claimed to be a Progressive, to be a supporter of Wilson "because he is standing in government for what I have stood for for the last twenty years. I consider him a statesman of high ideals and remarkable constructive ability, and if elected to the Senate I expect to support him loyally in all the constructive policies advocated by him . . . But much as I admire him I will not be his echo or that of any other man. I shall be an American senator and speak for the people of Washington as my conscience shall dictate."[20] These are the words of a statesman, essentially the same as those of Burke to the electors of Bristol.

On specific issues of governmental policy—railroad regulation, trusts, postal savings, freedom of the Philippines, and a few other matters—the Judge was entitled by any fair test to wear the progressive label. On the issue of popular control of government through such devices as the initiative, the referendum, and the recall and on the issue of woman suffrage he could claim to be a progressive only as an eleventh-hour convert, never convincing evidence of repentance. As these mechanisms of popular government were almost invariably included in the progressive program, it is easy to understand why the Judge could not satisfy the more liberal of the political reformers. The Judge was a firm believer in undiluted representative government; he did not entertain the conviction that the people could make their own laws and he was certain that they were incapable of passing upon the work of the courts through the medium of the recall of judges or of judicial decisions. Furthermore, Turner was never a good campaigner. There was too much of the lawyer and judge in him. On the stump he was somewhat ponderous and a bit monotonous. He made few gestures and those he made were sometimes awkward. If he tried (and he seldom did) to be less formal in his speeches, he was likely to give the impression of talking down to the sovereign voter. He was no back-

[20] Letter to *Spokesman-Review*, April 19, 1914.

slapper, no glad-hander, no first name caller. The children, the old folks, the pioneers interested him as much as they did most other candidates for public office, but he could not make sentimental references to them. As for Poindexter, it was not necessary for him to prove that he was a progressive. His record took care of that. He was not on the defensive. Nor had Poindexter's experience as lawyer and judge "cramped his style" on the hustings. He was more in tune with the times than Turner both on the issues of the day and in campaign methods. Although Wilson carried the state by a small margin, Turner lost it to Poindexter by a large majority (135,339 to 202,287). Now sixty-six years of age, Turner was through with running for public office.

There is an element of tragedy in Turner's failure to remain in or return to the Senate. Able, learned, persuasive, and eloquent on the great issues which were debated in that body, he had found in his one term of service deep pleasure and satisfaction. In the presence of these opportunities he was happiest and at his best. His failure to be returned to the Senate in 1914 or 1916 may be explained by the suggestion that politically he was a misfit in the progressive era. Never flexible nor adaptable, he was not at home with the new liberalism, the popular government movements of 1909-1916. He was rather an old liberal of the best Whig tradition. As such, he believed more in government *for* the people than in government *by* the people. It is only fair that a man should be judged by the beliefs, customs, and standards of the time in which he achieved his greatest success. Applying this test to Senator Turner, he is revealed as a fairly successful politician under the old caucus-convention system, an office-holder who never failed in a public trust, and, in his representative capacity as Senator, one of whose statesmanship any commonwealth could be proud.

Significant as were Turner's public services as judge, constitution maker, senator, and citizen, he was a lawyer rather than a politician. In nearly fifty years of residence in the state, he held office for less than ten. His clear thinking, his facility in analyzing and presenting intricate problems, orally or in writing, his passion for justice, his courage, his combative qualities made him an uncompromising statesman and a fighting lawyer; and since to continue as a statesman one must, unless most fortunately situated, be a politician, Turner spent the greater part of his life as an attorney at law. The law was his first love, his absorbing interest, and he won distinction as one of the ablest lawyers of the Pacific Northwest.

Turner was at various times asked by the National Government to place his legal talents at its disposal in international controversies to which it was a party. In 1903, just as his term in the Senate was expiring, he and Elihu Root and Henry Cabot Lodge were designated by President Roosevelt to serve as commissioners who should meet

with a like number of British commissioners to settle the Alaska-Canadian boundary dispute. In 1910 he served with Elihu Root, Samuel J. Elder, and Charles B. Warren as counsel for the United States in the North Atlantic Coast Fisheries Arbitration. This was an Anglo-American arbitration case heard and decided by the Permanent Court of Arbitration at the Hague. From 1911 to 1914 he was a member of the Canadian-American International Joint Commission and from 1918 to 1924 he was counsel for the United States before that Commission. The limits of space make impossible a review of his work as arbiter, commissioner, and counsel for the United States and for the same reason is precluded any discussion of the many leading cases in which he served as counsel for individuals and corporations. Discussion must be limited to the broader question, What kind of a lawyer was he?

"Turner was what we in the profession call a 'born' lawyer," writes Benjamin H. Kizer, who as a younger attorney in Spokane had many opportunities to observe the Judge in the role of advocate. "To such a man the basic principles of Anglo-Saxon jurisprudence come as naturally to his mind as do the lips of the babe to the mother's milk. The fundamental principles of the law have in them a natural justice, an inevitable symmetry and proportion, that appealed to Turner as harmonies appeal to the musician, or poetic rhythm to the poet, or the flowing lines of the statue to the sculptor, or the majestic construction of a cathedral to the architecturally minded. 'Born' lawyers with this intuitive perception of legal principles are rare in the law although each generation . . . has a few."[21]

Judge Turner was never greatly interested in the law or the facts of an ordinary controversy; "he was left utterly cold by the arbitrary *ipsa dixits* of commercial law, the law of bills and notes," says Kiser. In the "run-of-the-mill" type of litigation he was probably less successful than attorneys of moderate ability because he was unable to find in it the opportunity for the exercise of his great talents. Another reason for the absence of any outstanding success in the common run of cases was that as a jury lawyer he was below par. He did make some good jury speeches, but usually he talked down to the jurors, thus failing to establish that "we-are-all-intelligent-men" relationship with them.

In cases involving important questions of constitutional or international law or some other fundamental legal principle Judge Turner would toil unceasingly and with infinite patience, finding in them a nourishment which satisfied some deep hunger in his soul. It was in these cases that his powers of mind were best exhibited. "Given such a cause," says Frank H. Graves, a professional associate and lifelong friend, "and given a court that would listen and could understand, he was well-nigh invincible . . . He had no patience with quibbles, with

[21] Benjamin H. Kizer, letter to the writer, March 12, 1941.

fine-drawn distinctions about either the law or the facts. A wide survey of the testimony established certain conclusions of fact. An appeal to a broad, fundamental principle of law applicable to the state of facts demanded a certain judgment."[22] And the Judge, adding burning and persuasive eloquence to his legal learning, strove, almost irresistibly, to win that judgment.

Mr. Graves describes his preparation for a trial as "simple and direct, but thorough and painstaking. Having prepared his own theory of the case, he explored every possible other theory that might make against the one he had adopted. He expended frequently great ingenuity in forecasting what might be urged against him. Time and again I have seen him go into court most elaborately prepared to meet propositions which were not urged, and which counsel on the other side evidently had never thought of. He wrote out in his own hand every argument of law or of fact in full. And so accurate was his reasoning and so precise the English in which he put it that scarcely a change was afterwards made. And he had this very remarkable faculty: Without re-reading more than once what he had written he could reproduce it almost word for word in oral argument without referring to the manuscript; indeed, he seldom took that manuscript into court with him."[23]

On legal principles he was inflexible in conviction and in method. Quoting again from Mr. Graves: "He would not argue any theory or any doctrine in which he did not believe. . . . When he and Senator Root were before The Hague Tribunal in the Newfoundland Fisheries arbitration case, they had become convinced the day before it came their turn to argue that they could not succeed upon the theory they had adopted and prepared. Thereupon, Mr. Root suggested a totally different theory, but not necessarily one antagonistic to the other. Judge Turner said to Mr. Root that he could not argue that theory for two reasons, first, he had prepared upon the other and he could not change upon such short notice, and, secondly, because the theory they had proceeded on was a sound one in his view and should be presented to the court. Thereupon, it was arranged that he should present that theory, and that Mr. Root should argue the other. Judge Turner always insisted to me that the case was won upon Senator Root's argument with no time given him to prepare it except the day and a half while he, Turner, was making his argument. He always referred to it as one of the finest instances of forensic skill and eloquence, almost extemporaneous. 'However,' he added, 'it was not sound and the other should have been the theory of the court.' "[24]

Further evidence bearing upon the Judge's disinclination to argue for a theory is which he did not believe is furnished by B. S.

[22] Frank H. Graves, *"In Memoriam: Judge George Turner,"* before the Spokane Bar, February 20, 1932.
[23] *Ibid.*
[24] *Ibid.*

Grosscup, an attorney of Seattle. He discussed with Turner the question: Should a lawyer present a "cause based upon a legal proposition which he believed to be unsound?" Turner maintained that a lawyer should present his client's case regardless of his own ideas of its merits, but then he asked: "Do you think that you could present to a court a proposition in which you did not believe as forcibly as someone else might present it if he fully believed in its soundness? By attempting to present it yourself, would you not deprive your client of the benefit of a presentation by some one who believed in the soundness of his argument?"[25]

Judge Turner's conception of law was conventional but interesting. Here again we are indebted to his good friend, Mr. Graves, who paraphrases the Judge: "Law, declared Judge Turner, was not something imposed by the sovereign upon the subject; it was a body of fundamental principles regulating man's relations one to another. It was a matter of growth and not of *ipse dixit*. It changed as times and conditions changed, but it always followed the same broad and fundamental principles, reapplied, and reshaped, and readapted to the changed conditions. The principles never undertook to coerce the people into a method of thought or conduct greatly different from that which they had habitually followed. It furnished only an ultimate standard and fitted in precisely with the habits of thought and the habits of conduct prevailing in the community. Thus, it was that the great principles of Anglo-Saxon law had developed from the time of the Magna Charta. The principles do not alter; their application only had been changed, and hence it was that through all the centuries people of each succeeding generation were content with the law and content with the law's administration."[26]

Turner's conviction that common law principles were adequate to cover the relations of one man to another, did not in any sense impair his faith in written constitutions which control the activities of government and the relations of individuals to government. His objection to the Eighteenth Amendment was that it was a police regulation, a sumptuary law, a despotic edict written into the Constitution where it had no place under Anglo-Saxon principles of jurisprudence. For the fundamental principles of the Constitution—those provisions which established the boundaries of authority between the nation and the states, created the separate branches of the national government, and vouchsafed to individuals their civil liberties—he had the greatest admiration. On these he was an authority in the courtroom and in the Senate Chamber. He grew to be more and more the constitutional lawyer, particularly after his period of service in the Senate. His views of the Constitution did not always harmonize with those of the Supreme Court

[25] B. S. Grosscup, letter to Frank H. Graves, April 22, 1932.
[26] Graves, *"In Memoriam."*

of the United States, an experience which most constitutional lawyers have shared with him.

On occasion Judge Turner would express in open court his dissent from an opinion of the eminent Tribunal which makes our constitutional law. The situation was tense in the Circuit Court of Appeals in San Francisco when, as an octogenarian attorney, he had an exchange with Circuit Judge Wilbur relative to a decision of that Tribunal. The attorney was stating his case against the Eighteenth Amendment when Judge Wilbur interrupted: "Do you not know that the Supreme Court of the United States has sustained the validity of the Amendment and the laws enacted thereunder?"

"Yes, your honor," replied Turner, "but that does not change my views."

"You stop and sit down," ordered Judge Wilbur.

Raging within, calm without, Turner responded: "I will sit down when the court tells me to do so."

Judge Rudkin whispered to Judge James and then said: "You may proceed with your argument, Judge Turner."[27]

As a lawyer Judge Turner was not an Elihu Root or a Charles Evans Hughes, but he was an advocate of distinction—"by far the greatest lawyer . . . on the Pacific Coast," wrote Judge C. R. Holcomb,[28] expressing the opinion of many other judges and attorneys. Judge Ross, one of the ablest judges who have ever sat in the Circuit Court of Appeals of the Ninth District, once told Mr. Grosscup that he considered Turner "the most helpful advocate to the Court of any man who appeared before it."[29] Viewing Judge Turner's career as a whole, one must conclude that he was not a politician who practiced law at odd times, but a remarkably able lawyer who entered the field of politics at intervals. Certain traits of mind and character—intelligence, memory, literary style, an inflexible sense of honor, and love of justice—traits indispensable to the great lawyer, he had in full measure. Of the traits mentioned, his passion for justice was the most pronounced. Another trait, common in great lawyers of his day, the combative spirit, was a close second to his devotion to justice.

The underdog who found himself a victim of injustice could count on the help of the Judge, and the fee for such service was never more than incidental. His sense of justice went beyond the provisions of statutes; even contrary to some statutory enactments. He hated an unjust law no less than he was outraged by an injustice for which the law provided remedies. Any legal procedure which he regarded as highhanded or arbitrary called forth his eloquent denunciation. He would have agreed heartily with Federal District Judge Lowell of

[27] Judge James M. Geraghty and Mr. Richard Nuzum, interview, Spokane, Washington, December 26, 1939.

[28] Judge C. R. Holcomb to Frank H. Graves, March 19, 1932.

[29] B. S. Grosscup to Graves, April 22, 1932.

Massachusetts concerning the wire-tapping activities of Federal agents. Said Judge Lowell: "Uncle Sam . . . becomes a sneaking cur. Just think of the shame of this thing. Worse, the pity of it."[30]

Benjamin H. Kizer remembers Judge Turner as a "warrior lawyer of a pioneer day who lived characteristically and intently in the search for justice through forensic combat," and he recalls his "consummate skill and driving power" in that combat. However fierce the legal battles may rage in our time there are more negotiations, more truces, more armistices than when Judge Turner was in his prime. The Judge belonged in the old camp of doughty legal knights. He was in the "great Roman tradition," says Kizer. "He was not merely a minister of justice; he was a soldier of justice ready always to fight for its ascendancy."[31]

*(To Be Continued)*

[30] Quoted in *Time*, May 7, 1933.

[31] Benjamin H. Kizer, *"Eulogy of Judge Turner Before the Washington State Bar Association,"* July 21-22, 1932.