

Alan Gray (law clerk to Justice Sutherland)
Untitled Biography of George Sutherland
Unpublished, likely written in 1928 (See p. 32 ln. 2)

GEORGE SUTHERLAND was born at Stoney Stratford, Buckinghamshire, England, March 25, 1862. His ancestors on his father's side came from Caithnesshire, Scotland; his great grandfather, Alexander Sutherland, was born in Edinburgh and served in the Napoleonic wars as an officer in the 71st Highland Foot, whose colonel was Sir John Moore. His father, Alexander George Sutherland, was born in Newcastle, in 1839; and his mother, Frances Slater Sutherland, was of English descent. He was but 18 months of age when his family came to America and settled originally in Springville, Utah. His father for some time was engaged in mining in Montana, shipping his supplies overland from Utah. In 1869, his father located at Tintic, Utah, being one of the discoverers of that mining district; was naturalized as a citizen of the United States before the federal court, at Provo, in 1871; and the following year moved his family to Silver City, where, in addition to his mining operations, he was recorder of the mining district, postmaster and justice of the peace.

Alexander George Sutherland, Jr., for such was the full name of the subject of this memorandum, at the age of 12 went to Salt Lake City, where for two years he worked in the clothing store of O'Reilly Brothers, friends of the family. At the age of 15, he worked in the mining recorder's office, and as agent for Wells-Fargo & Company. In 1879, the Sutherlands removed to Provo, and there, during the following two years, such higher education as he was to receive was obtained at Brigham Young University, then the B. Y. Academy. The Desert News, of September 6, 1922, refers to his school life at the academy as follows:

"Were Dr. Karl G. Maeser still living, no man in Utah would take greater pleasure in the appointment of Mr. Sutherland to the Supreme Bench than this master educator. George Sutherland was for years a student of Dr. Maeser, and the young man's brilliant career in the Brigham Young Academy at Provo, his early home, was one that Dr. Maeser often referred to with delight. The Brigham Young Academy was a Church school; Mr. Sutherland knew its advantages, which he enjoyed for a number of years although not a member of the Church which the school represented.

"Dr. Maeser was a historian of the first rank; he was a linguist; and a litterateur. Along these lines young Sutherland received instruction and training. He obtained also a knowledge of the methods and spirit of the German philosophy with which his great friend and educator was familiar. Mr. Sutherland early became a student of philosophic subjects, and no doubt carried away with him much of the spirit of Kent, whose philosophy was well-known to his teacher. Dr. Maeser was often heard to say that Sutherland in his youth was one of the best writers in the English language he had ever known. He considered every essay this young man handed in for class recitation a model of classic literature. There were in Utah at the time Sutherland came upon the scene few men with such mastery of the English language as Sutherland's father, from whom the young man must have inherited most of his gifts."

Among his classmates at the Academy was Senator William H. King, who was to vie with him later in public life as his predecessor in the House of Representatives and his successor in the Senate.

He spent a year as forwarding agent for railroad contractors who built a large part of the Rio Grande Western Railroad. Of his experience with one of them, the Salt Lake Tribune, of September 25, 1922, makes the following reference:

"Long years ago.....he was a humble clerk in the employ of a railroad contractor. The contractor, Barney McCabe, was of the rough-and-tumble character, had a vocabulary of cuss words that was unique, and was quick to give proof of his versatility along the lines of profanity, especially when matters did not 'break' to suit him.

"McCabe had a contract on the old Rio Grande Western Railroad, now part of the Denver & Rio Grande Western, and Sutherland was chief factotum for McCabe in a warehouse down on the Utah desert. One day the young man received a message from McCabe directing that certain supplies be sent to him further down the line. Young Sutherland figured that McCabe certainly had made an error in part of the order and did not send all of the supplies requisitioned.

WA few days later Sutherland noted a cloud of dust coming in the direction of the warehouse from McCabe's camp, and later McCabe emerged from the cloud. He was in a frenzy and began to 'cuss' as

soon as he was within hearing distance of Sutherland, his plaint being that the clerk had disobeyed orders and failed to send supplies that were badly needed.

"Sutherland started to explain, but had only gotten as far as 'Well, I thought--' when McCabe began another tirade, concluding with: 'You thought, did you? Well, let me tell you that you are not paid for thinking in this warehouse. You are paid to obey orders and nothing else. If I want a thinker I would get somebody who had something to think with, Get me?'

"Having used up the greater part of his vocabulary, McCabe returned to camp twenty miles down the line.

"Sutherland was angry and humiliated, but he said nothing. In fact, as he was the only man in the warehouse, there was nobody he could talk to, and he didn't talk.

"A week later the opportunity came for Sutherland to wreak vengeance on McCabe. Two messengers, each driving four yoke of oxen to a big freight wagon, arrived and told him that McCabe wanted everything in the warehouse sent to a new camp fifty miles distant.

"Included in the supplies were a number of kegs of ox-shoes, which are used on the animals only in rocky or mountainous countries. Sutherland knew, of course, just as well as he knew he was alive, that McCabe did not want these kegs sent, as they weighed at least 500 pounds and could not be used on the oxen in the desert country through which the railroad was then being built.

"Sutherland had been told, however, that he wasn't paid for thinking, but only for obeying orders. Against the protest of the drivers the shoes were included in the freight for the new camp.

"Some days later McCabe again emerged from a cloud of dust in close proximity to the warehouse, ready to tear Sutherland to pieces; but Sutherland wasn't there. He had resigned."

In 1882, he entered the law school of the University of Michigan, where he studied law for one year. It was at the time when Judge Thomas M. Cooley was dean and professor of Constitutional Law, and in a letter from Sutherland to Circuit Judge Rogers, in 1920, is found this recollection:

"Judge Cooley, as you know, was a very serious minded man, very little given to trivial conversation. The only thing in the way of a joke which I ever knew him to originate and perpetrate, was once in the course of a lecture in which he discussed the writ of attachment. He told the students the character of cases in which the writ would lie, and those in which it would not lie, and said, for example, the writ would not issue in an action for divorce. 'Indeed,' he said, 'the action is brought because there is no attachment.'"

At the University of Michigan Club Dinner, in New York City,

February 4, 1911, Senator Sutherland said:

"I remember the young men of my day as an earnest, serious, student body, generally poor in circumstance but rich in high resolve and aspiration, living on less than twenty dollars a month but absorbing more than twenty dollars' worth of information per day. The stern discipline of the school of experience, theirs already to some extent had prepared them for the great fact which becomes apparent to all eventually, that graduation from an institution of learning is not the end but in truth only the beginning of intellectual development."

Early in March, 1883, he was admitted to practice in the Supreme Court of Michigan. He returned to Utah, and on June 18, 1883, was married to Miss Rosamond Lee, of Beaver City, Utah. Three children were born; Philip, an only son, died at the age of 17 years.

George Sutherland's father was a lawyer engaged in active practice from 1875 till his death in 1911, and for several years, commencing in 1883, they were associated together at Provo. The firm of "Sutherland & Son" had plenty of litigation to transact. These early days are later described as follows:

"I transacted all kinds of business, civil and criminal. A lawyer in a small town can't pick and choose -- public opinion demands that he shall treat all men alike when they call for his services. I often traveled on horseback in the mountains to try cases before Justices of the Peace. Some of the Justices had a smattering of the law, but most of them were densely ignorant on that subject. Some had common sense, while some in that respect were woefully deficient. I early discovered that if I had a case involving a point of law that I would have to prepare myself thoroughly beforehand so as to explain it, school-teacher fashion to the stumbling and unlearned Court."

By June, 1886, he was appearing in the Utah territorial supreme court. His first case, to appear in the Utah reports, is that of *People v. Miller*, 4 Utah 410, wherein he was associated with David Evans, of Provo, for the appellant, and obtained a reversal of a conviction of grand larceny.

One of his early cases concerned the defense of some 15 Irishmen, indicted for murder. In July, 1886, in the little mining town of

Eureka, a miner named Fisher quarreled with another named O'Conner, and shot and killed the latter. The aroused community, many of whom were Irish, took Fisher from the jail, beat him with clubs, dragged him off and hung him to the "whim" of the nearest mine. The defendants employed Sutherland, and he was assisted at the trial by Samuel R. Thurman, now Chief Justice of the Utah Supreme Court. All were tried at the same time, seven were acquitted, and guilt was graded among the remaining defendants, who were sent to the penitentiary for terms varying in length.

Anti-polygamy legislation in Congress, culminating in the Edmunds law and the Edmunds-Tucker act, was at this time vigorously enforced in Utah. Feeling between the Mormons and the Gentiles was intense. Thurman defended many of the Mormons in the so-called "cohabitation" cases. Sutherland also appeared in some of the Mormon cases. Nicholas H. Groesbeck, of Springville, was tried on a two-count indictment for unlawful cohabitation, convicted, and fined and imprisoned. The conviction was affirmed in 4 Utah, 487. The case, one of Sutherland's early appellate cases, is of especial importance, however, since his brief was the first to advance (in June 1886) the theory that the offense was "continuous," and could not be "segregated." This doctrine was later (in February 1887) to become the basis for the reversal by the Supreme Court of the United States in ~~Washington~~ in the famous Snow case, 120 U. S. 274; and when rendered by that court Groesbeck and many others, convicted under like indictments, were immediately released.

In 1886 the Sutherlands severed their law partnership, and since both were practicing law in the same courts the son, to prevent con-

fusion, dropped "Alexander" from his baptismal name. With Thurman, some 12 years his senior in age, he formed a partnership in Provo, and a little later Senator William H. King became a member of this firm. The partners all took an active interest in politics.

The Gentiles in the territory had, in 1870, organized the "Liberal party." Sutherland's father was one of its early supporters. It had for its object the overthrow of polygamy and church interference in governmental matters. The Mormon people in opposition formed what they called the "People's party." Both parties were purely pro-church and anti-church in character and bitterly opposed each other for many years. George Sutherland was an active member of the Liberal party; and in 1886, the Gentiles formed a secret organization known as the "Loyal League" for the purpose of opposing the admission of Utah into the Union until the practice of polygamy had ended. About this same time, there became manifest a growing restlessness and dissatisfaction on the part of the younger men in the church, and some of the older ones, as well, with reference to the conditions of affairs. Demands began within the Mormon circle that the church should give up polygamy, and that a system of politics should be inaugurated in Utah in harmony with ^{that} which existed in other communities. Thurman and King were Mormons, and with other young men of the church organized a Democratic party, which was called in derision the "Sage Brush Democracy," but which name they afterwards adopted in earnest themselves. In 1888 Thurman was nominated for delegate in Congress, and conducted a campaign against representatives of the Liberal and People's parties. Sutherland and others countered by organizing the Harrison & Morton Republican Club of central Utah, designed to create sentiment for the

Republican party. Its headquarters were in Provo, and it had but two Mormon members, one of whom was Senator Reed Smoot. It was viewed with suspicion by the Mormon Church authorities, who in those days believed that Republican and Liberal were synonymous terms; and many were the requests young Smoot received to abandon the club. Thurman failed of election to Congress, but was returned in 1889 to the territorial legislature as representative of the People's party. In February, 1890, George Sutherland was nominated for Mayor of Provo on the Liberal ticket, but was not elected, though supported by many of the younger men of the church. In September, 1890, the Mormon Church issued its famous manifesto forbidding polygamy, and the following year political parties were organized through Utah upon national lines.

The Republican Party of Utah, as it now exists, was organized in May, 1891, and recognition granted by the National Committee. At a meeting held in Provo, delegates were chosen for the Minneapolis convention. George Sutherland attended the convention as an alternate. In the fall of 1892, he opposed Frank J. Cannon for the Congressional nomination, receiving 205 votes to the latter's 211. The Liberal party, however, had not entirely disappeared; and in the fall election, Rawlins, a Democrat, won out, although Cannon succeeded him in the election of 1894.

From 1890 to 1894, George Sutherland was president of the Board of Directors of the territorial insane asylum. In 1893, he decided to remove to Salt Lake City, a field of larger endeavor. He formed a partnership, which lasted until 1898, with Parley L. Williams, one of Utah's leading lawyers, and Waldemar Van Gott. For several years he

devoted his entire time to the practice of law, and the field of mining litigation, with the magnitude of interests usually at stake and the opportunities for the lucrative returns, not unnaturally attracted his attention.

Utah attained statehood in 1895, and George Sutherland, a leader of the fast-growing Republican party, represented the Sixth Senatorial District in the first State legislature. His ability as a lawyer won for him the chairmanship of the Judiciary Committee. Among other measures, he introduced the law which declared that mining and irrigation were industries of paramount importance in which the entire people of the state were interested, and that therefore in their behalf the right of eminent domain should be exercised. Under this law, rights of way for the building of tramways, etc., for mining and the construction of canals and ditches for the irrigation of lands were brought within the power of eminent domain. The validity of the law was assailed, but it was upheld by the state Supreme Court and by the Supreme Court of the U. S. See Strickley v. Highland Boy Mining Co., 200 U. S. 527, (argued by Sutherland.)

In April, 1896, immediately following its organization in the new state, George Sutherland was admitted to the bar of the United States Circuit Court for the District of Utah. In 1898, he became a member of the firm of Bennett, Harkness, Howat, Sutherland and Van Cott, which later became the firm of Sutherland, Van Cott & Allison; and on October 20, 1899, he was admitted to the bar of the Supreme Court of the United States.

The Utah Republicans split in 1896 on the question of free silver, and Cannon, their representative in the United States Senate, shortly afterwards withdrew and entered the Democratic party. William H. King

was Utah's representative in the House of Representatives from 1897 to 1900. In 1900, George Sutherland attended the National Republican Convention at Philadelphia as a delegate, was nominated for the House of Representatives by the Utah convention, and in the fall election defeated King, his Democratic opponent, by a vote of 46,180 to 45,939.

Utah's sole representative in the lower branch of Congress prepared and introduced a bill opening the Uintah Indian Reservation. His position, contrary to the previous holding of the Interior Department, was that the Indians had no title to the reservation and Congress therefore had power to open it without their consent. Congress accepted this view and incorporated the provisions of the bill into the Indian Appropriation Act. Sutherland addressed the House on this bill on February 18, 1902.

On April 15, 1902, he made a speech on the Cuban reciprocity bill, on the side of the opponents of reciprocity, and when the vote was taken on the 18th he was one of the 54 Republicans, mostly from States engaged in the beet sugar industry, who voted against the bill and in favor of the sugar interests.

Again on May 28th he refused blindly to follow the Republican party. He made a speech against the bill providing for the melting and recoinage of silver dollars into subsidiary coins. In reply to the contention that the silver dollar would not circulate among the people and should therefore be coined into subsidiary coins which would circulate, he pointed out that the silver dollar like gold coins circulates in the form of certificates; and he argued that the bill was unwise because it undertook to destroy five hundred millions of legal tender

money to be replaced with an equal quantity of limited legal tender money. With 2 other Republicans he voted against the bill; it was defeated in the Senate.

He was a member of the Irrigation Committee of the House which together with the Senate Committee framed the Reclamation Act under which millions of dollars have been expended in the construction of reservoirs, canals and other water systems for the irrigation and redemption of arid lands. In the framing of the bill, a conflict of opinion arose as to the distribution of the fund arising from the sale of the public lands among the several states named in the bill. and Sutherland prepared/the House Committee adopted section 9 of the bill, a compromise between the two conflicting views, which provided that the major portion of the funds arising from the sale of lands in each state should be used in that particular State. He addressed the House in support of the legislation on June 13, 1902.

For Utah he secured other beneficial legislation, including the act which granted lands to Utah in lieu of certain sections which were lost to the state by reason of being embraced within Indian reservations and prior grants or covered by bodies of water.

He declined renomination to Congress, and at the expiration of his term resumed the practice of law as senior member of the firm of Sutherland, Van Cott and Allison.

Mention should be made of another of Utah's leading lawyers, Judge Jebez G. Sutherland, who died in 1902. After many years as a judge, a Representative in Congress, and a leading lawyer in Michigan, he removed to Salt Lake City in 1874 and soon became leader of the bar. George Sutherland was associated with him in a number of cases, including

famous mining litigation in 1886. Judge Sutherland turned from active practice to writing, and during the period from 1875 to 1882 prepared his famous work on Damages. In 1891 his great treatise on Statutory Construction was published. With the organization of the territorial Bar Association in 1894, he was unanimously selected as its president. And in 1896 he married a sister of Mrs. George Sutherland. These ties and others brought the two Sutherlands together, and the influence of the elder judge upon the young lawyer was undoubtedly great.

In 1902, Reed Smoot, who two years previously had become an Apostle of the Mormon Church, became a candidate for the Republican nomination to the U. S. Senate. George Sutherland, recalling the many bitter church controversies, opposed the nomination on the sole ground that it was unwise to send to Washington a high church official as the State's representative. But Smoot was elected by the Republican legislature. State and national opposition speedily followed, and his right to his seat was under investigation until 1907.

In 1904 came the turning point in George Sutherland's life. He attended the Chicago Republican Convention and supported Roosevelt in the campaign that followed. He aspired to the nomination to the U. S. Senate, and received the unanimous vote of the Republican members of the State Legislature. He took his seat in the Fifty-ninth Congress, in March, 1905. He did not push himself forward. His first major speech -- his only lengthy speech in that Congress -- was made on January 22, 1907, when in the Congress -- in the Smoot debate, he outlined conditions in Utah. Senators Knox, Beveridge, Hopkins, Foraker, and others, had spoken on the legal and constitutional aspects of the Smoot case, but

it remained for the junior Senator from Utah to state his position. He had taken part in and knew intimately the struggle for religious tolerance through which Utah had passed as a territory and was then passing as a State, and the statements of the non-Mormon Senator from Utah were strong for the defense of the Senator Smoot. His position was approved in the vote that was shortly thereafter taken.

In the Senate he was assigned to membership on the Committees on Coast and Insular Survey. Indian Affairs, Transportation Routes to the Seaboard, Irrigation, and Mines and Mining. He also was named a member of the Select Committee on Industrial Expositions, and as Chairman of the Committee to Investigate Trepassers on Indian Lands. But by far the most important assignment in the Fifty-ninth Congress came later, when he was named, on June 28, 1906, on the Statutory Revision Committee. This was succeeded in March, 1907, by the Joint Congressional Committee on the Revision and Codification of the Laws of the U. S.

The work of this committee had been carried on for nearly ten years by a commission, originally appointed to revise and codify the penal laws of the U. S. After an expenditure of over \$300,000, its report was transmitted to Congress in December, 1906. But the work was destined to continue twenty years longer before the U. S. Code was enacted. However, the first two titles to be completed, the Criminal Code and the Judicial Code, were enacted into law through the efforts of Senator Sutherland and Senator Heyburn, of Idaho.

The Penal Code became a law on March 3, 1909, in the closing hours of the Sixtieth Congress. It had taken weeks of work in the committee and days of debate and explanation on the floor of the Senate. By request Senator Sutherland contributed to the North American Review a comprehensive resume of the results accomplished by the Committee, and to the New York Independent magazine a briefer article from a different viewpoint. In the latter he stressed the necessity of greater care in making laws. Some laws he termed not unconstitutional, but "substantially bad;" another was characterized as "simply inane," the example being the provision requiring members of a court-martial to "behave with decency and calmness." The enormity of the task was thus summarized:

"The bill, as it finally passed the Senate, consists of 342 sections and is comprehensive and coherent revision and compilation of all purely penal laws now to be found in the Revised Statutes of 1878, the First and Second Supplements thereto, and volumes 32, 33, and 34 of the Statutes at Large. This revision will become the primary and authoritative source of the criminal law, and will obviate the necessity on the part of the courts and bar and the people of searching through the various volumes just enumerated.

"The Penal Code will constitute a very marked and important improvement over the existing fragmentary, scattered, confusing and conflicting statutes. It will still fall short of being a complete code."

In June 1908, the Chicago convention, which Senator Sutherland had attended as a delegate, nominated William Howard Taft for President. The Republican state convention at Salt Lake City selected Senator Sutherland to serve as its Chairman, and his colleague, Senator Smoot, was endorsed for a second term, and was reelected by the unanimous vote of the Republicans in the State Legislature.

Senator Sutherland's work on the Criminal Code earned him a place on the important judiciary committee in the Sixty-first Congress. In matters of general legislation, both in the committees and on the floor of the Senate, his counsel and support were sought and appreciated.

And his influence in the administration of public affairs immensely increased. In April, 1908, he had supported the amendment of Senator Piles to the naval appropriation bill, authorizing the construction of four battleships instead of two. In May, 1909, he participated in the debate on the tariff bill. Though an ardent Republican, and a strong advocate of the principle of protection, he did not discuss questions of policy, but rather the constitutional phases of the income-tax proposition, which had been submitted by Senators Bailey of Texas and Cummins of Iowa in the form of amendments. He defended the decision of the Supreme Court of the United States in the Pollock case, to the effect that a general income tax is a direct tax under the Constitution and, to be valid, must be apportioned among the several states. He analyzed the language of the Constitution, the history and circumstances leading up to and surrounding the adoption of the taxing provisions, the practical construction of the language and the prior decisions of the Supreme Court. Referring to the Supreme Court as "the greatest court this world has ever seen," he concluded his speech on May 17th:

"In the year 1895, when the Pollock case was decided, its members were as magnificently equipped in learning and ability as any who have sat in that august tribunal before or since. It is apparent from the reading of this case and the opinion upon the rehearing, that they gave to the question more careful consideration by far than was ever given to it in any preceding case. If the effect of their decision is to set aside the prior decisions of the court for a hundred years, we may be sure those judges did not do that for light or trivial reasons."

The history of the Sixteenth Amendment discloses that less than two months later Congress submitted the question to the states, by its resolution of July 12, 1909.

Between President Taft and Senator Sutherland there grew up a close and warm friendship that was to increase through the coming year. In January, 1910, with Senator Elihu Root, of New York, and others, he was named on the commission to investigate the Ballinger-Pinchot trouble. This, together with their joint service in the Senate and their similar opinions on constitutional questions, marked the inception of another close personal friendship.

Several times, in the senate debates, Senator Sutherland suggested a comprehensive theory of the sovereign rights of the nation. In March 1910, he presented the matter in an article in the North American Review, under the title "The Internal and External Powers of the National Government." Power over internal affairs was defined as "federal," and that over external affairs, as "national." He urged upon the states the responsibility of dealing with their own problems, as a constitutional duty as well as a constitutional right; and he deplored the tendency of the government to legislate respecting the domestic evils, such as child-labor, for example, over which it had no authority.

Legislation he deemed in harmony with the Constitution he supported as strongly as he opposed that which he considered infringed it. On March 2, 1910, he outlined his reasons for supporting the bill to establish postal savings depositories. He enumerated eight reasons for considering the legislation beneficial, and he defended the bill as within the contemplation of the Constitution.

"The words of the Constitution have not changed in meaning, but their application and scope have broadened. They apply to new conditions, new things, new activities which have arisen since the Constitution was adopted. A Constitution incapable of adaptation to the constant growth and constant change of a progressive and constantly changing people would be a useless and an impossible contrivance, serving only to hamper and not to promote the development of a free people.

In March, 1910, the Joint Committee on the Revision of the Laws, after more than six months continuous work on the Judiciary Code, reported the bill, consisting of 273 sections, divided into 13 chapters. In general, the changes were formal, due to codification and revision of the Revised Statutes of 1878 and subsequent legislation; but the bill proposed one step long advocated and needed in the growth of the federal judiciary. This combined the jurisdiction of the district and circuit courts in the district courts, and abolished the circuit courts. The Judicial Code was enacted into law March 3, 1911.

Senator Sutherland took an active part in the debate on the Mann-Elkins bill, creating the United States Commerce Court. This administration measure, warmly supported by President Taft, was enacted into law on June 18, 1910; but it was destined to a short and stormy career. Senator Sutherland opposed its abolition, in 1912, and especially the attempt to abolish the offices. Although President Taft's veto continued the court's existence for a short time longer, its end came shortly after the opening of the Sixty-third Congress.

In the autumn of 1910, Senator Sutherland sought renomination. He received the unanimous endorsement of the Utah Republican Convention, and was reelected by the state legislature, receiving the unanimous vote of its Republican members. In the succeeding Congress, he became a member of the Foreign Affairs Committee, which membership he retained during his second term. And in December, 1910, he was considered by President Taft in connection with the vacancies then to be filled in the Supreme Court. Newspaper reports indicate that a westerner, familiar with mining contests and litigation in the Eighth District, was sought, and that the choice lay between Senator Sutherland and Circuit Judge

Van Devanter, of Wyoming. At this time the latter was appointed.

In the Sixty-second Congress, an important and special undertaking fell to the lot of Senator Sutherland. He was named, in April, 1911, to fill a ^{ca}vancy in the Commission created by Congress on June 25, 1910, to investigate the subject of employer's liability and workmen's compensation. On May 10, 1911, the reorganized commission, of which he was elected Chairman, commenced hearings at which the question of the constitutionality of the proposed legislation was fully discussed; and these hearings were followed by others at which the general practical questions involved were discussed. Then followed the drafting bill, and further hearings with reference to its provisions, and finally a report to President Taft, on February 2, 1912. The latter approved the commission's report and transmitted it to Congress; and the bill was approved and reported by the Judiciary Committee of the Senate, and that of the House, with some amendments. In magazine articles, in public addresses, and in speeches in the Senate, Senator Sutherland brought the pending legislation before the country. It had the endorsement of the American Federation of Labor, and it passed ~~by in the~~ Senate by a vote of 64 to 15. In the House, it passed with numerous amendments by a vote of 218 to 81, but so late in the session that when it was returned to the Senate a few hours before the final adjournment it was killed by a filibuster.

The history of the Seventeenth Amendment also demonstrates Senator Sutherland's influence in constitutional matters. On May 23, 1911, he outlined his position with reference to the joint resolution then pending

favoring the proposition in its general aspect but opposing the phraseology of the resolution as it had passed the House of Representatives on the ground that it failed to carry out the intent of the Constitution as respects the supervisory control of Congress. His proposed amendment prevailed in the Senate, and in the conference with the House, and subsequently was ratified by the states.*

The lengthy impeachment trial of Judge Archibald of the Commerce Court brought from Senator Sutherland the suggestion that trials of minor importance might be held by the Judiciary Committee of the Senate.

And in November, 1911, he warmly indorsed the arbitration treaties proposed by President Taft. In this connection he addressed a joint meeting of the American Academy of Political and Social Science, the Pennsylvania Arbitration and Peace Society, and the National Committee in Support of Arbitration Treaties, held on December 13, 1911, at the Academy of Music in Philadelphia.

The death of Justice Harlan, of the Supreme Court of the United States, in October, 1911, caused the press once again to mention the name of Senator Sutherland as a possible successor.

In December 1912, President Taft appointed him as a member of the Industrial Board, created by Congress "to investigate the relations between capital and labor."

But although his services on the committees on Indian Affairs, Irrigation and Mines and Mining, had been of importance to Utah and other western states, and his work in connection with the revision of the Penal and Judicial Codes had demonstrated his keen legal ability, *The history of the amendment will be found in the opinion of the Chief Justice in *Newberry v. U. S.*, 256 U. S. 258, 264-265.

and his speeches on constitutional problems had marked him with the qualities of a statesman, it remained for a single address in the Senate, delivered July 11, 1911, to give him a national reputation.

The popular government movement, sponsored by Senator Bourne, of Oregon, and approved by Senator Owen of Oklahoma, had been gaining sway. The recent admission of New Mexico and Arizona, with the consequent submission of their constitutions for the approval of Congress, brought the question of the initiative, the referendum and the recall to the attention of the Senate. These provisions were incorporated in the Arizona Constitution. In a speech of some length, Senator Sutherland sounded the keynote of an opposition movement that was to attract the attention of the nation. It is impossible to summarize the address in this memorandum; suffice it to say that with few exceptions the newspapers of the country commented upon the speech, many of the leading papers printing it in full. More than a million copies were circulated. The Pittsburgh Gazette Times made the following comment:

"It was pronounced by many persons the best speech delivered at this session of the Senate on any subject. It was conceded by all to be one of the best in the Senate's history. At the end of the unusual sight was witnessed of senators crowding around the Senator from Utah to shake his hand and congratulate him.

"The address indicated a profound acquaintance with the principles of government and the development of the representative system. It revealed ripe scholarship and intimate knowledge of constitutions and laws such as might be expected of a man who came so near to a seat on the Supreme Bench of the United States."

The main opposition was directed against the recall provision in its relation to the judiciary, and it was for this reason that President Taft vetoed the statehood bill.

His remaining services in the sixty-second Congress may be shortly stated. He was Chairman of the Committee on Public Buildings and

Grounds, and among other provisions, the annual appropriation act included funds for the preliminary work in connection with the Arlington Memorial Ampitheatre, the original bill for which he had introduced in 1908. As a member of the sub-committee on Privileges and Elections, he attended hearings in Milwaukee in the investigation of the Election of Senator Stephenson, and on March 27, 1912, he addressed the Senate on this question. As a member of the Foreign Relations Committee, he supported the Panama Canal Act in 1912, and, two years later, strongly opposed the repeal of the provision exempting coastwise shipping of the United States from the payment of tolls. As a member of the Judiciary Committee, he opposed the Webb-Kenyon bill prohibiting the transportation of intoxicating liquors in interstate commerce. President Taft vetoed this bill but it was repassed in the closing days of the Congress.

He strongly supported President Taft for renomination for a second term. He was a delegate at the Chicago convention, and at all times he opposed Roosevelt and supported Taft in the fullest degree. Roosevelt's suggested recall of judicial decisions was especially unacceptable, and his conduct at the convention unsupportable. As spokesman for the committee, Senator Sutherland notified James S. Sherman, on August 21, 1912, of his nomination as the Republican candidate for Vice-President. And as the temporary chairman of the Republican State Convention at Salt Lake City, he opened the Utah campaign. Utah and Vermont alone gave electoral votes to Taft.

Though not a member of the American Bar Association at the time, he was invited in March 1912 to address that organization. His sub-

ject, "The Courts and the Constitution," (August 28, 1912) referred to the growing attacks on the judiciary; and the Association at the Milwaukee meeting formally went on record in opposition to the recall of judges and of judicial decisions.

The remaining four years of his term in the Senate were as a member of the Republican minority. President Wilson called the Sixty-third Congress into session at once, and, with the exception of an absence due to illness in 1915, Senator Sutherland's time was well filled.

In the first session of the Sixty-third Congress, he was successful in his opposition to the Gallinger amendment to the sundry civil appropriation bill, which had for its object the exempting of labor organizations and farm associations from the operation of the Sherman Anti-Trust Act. He supported the resolution for an investigation of conditions in the West Virginia coal fields; and he participated in the debate on the Democratic tariff bill, addressing the Senate at length on September 5, 1913.

As a member of the Committee on Privileges and Elections, he submitted a minority report, concurred in by Senator Dillingham, in opposition to the seating of Blair Lee, of Maryland. Both in his report and in his subsequent address in the Senate, he discussed the application of the Seventeenth Amendment.

As a member of the Suffrage Committee, he became the champion of women's rights in the Senate, addressing that body in support of equal suffrage on February 18, and March 4, 1914. And in the 1916 election campaign, he obtained from Charles E. Hughes a favorable

declaration on this subject. He introduced and sponsored in the Senate the Susan B. Anthony resolution, speaking in its favor on July 20, 1916; but the Nineteenth Amendment was not submitted to the states until after his retirement from the Senate.

As a member of the Judiciary Committee, he participated in the debate on the Clayton Act, and he opposed the creation of the Federal Trade Commission, on the ground that the legislation was neither beneficial nor constitutional. On the prohibition question, he participated in the debate on the bill relating to the District of Columbia. His position was set out on January 18, 1915:

"I believe in prohibition. I believe that the people of this country would be far better off if no intoxicating liquor were permitted to be sold or used at all. I think that would be an ideal condition, because I think intoxicating liquor has done precious little good in this world, and it has done an infinite amount of harm. It is possible that in some cases it may be useful as a medicine; but I for one, would be glad to forego whatever small benefit may result from its use as a medicine in order that we might accomplish the great good that would result from the abolishment of its use altogether. But it is one thing, Mr. President, to pass a law declaring for prohibition and it is quite another thing to enforce it.

". . . To my mind, the ideal way to deal with the liquor question is by local option, because when you have a community which votes in favor of prohibition under the local-option plan you have behind your vote the force of a sentiment which will bring about at least the measurable success of the law.

". . . It is just one of those laws that is most difficult to administer against public sentiment."

He supported in a speech on December 23, 1913, the seamen's bill, with its object the safeguarding of life at sea, the relief of the sailor from involuntary servitude, and the betterment of his condition; and he aided in its passage in the Sixty-fourth Congress.

He was especially opposed to the "Ship-Purchase bill" which failed of passage in the Sixty-third Congress, but later as a war measure became a law, pointing out in his addresses that it would bring the government into competition with its own citizens.

He participated in the debate on the Philippine Bill, which granted autonomy to the Islands, but he opposed the suggestion that the United States should relinquish sovereignty while at the same time guaranteeing the independence of the Islands, and he maintained that the nation had a responsibility over the Philippines that it could not shift.

As a member of the foreign relations committee, he approved President Wilson's forceful note to Germany, with its statement of the international law involved in the sinking of the Lusitania. His address, delivered March 7, 1916, in the Senate on the armed ship issue, received nationwide comment and general approval, - though probably as much as anything else it contributed to his defeat in the fall election. In reference to this speech on "submarine warfare" and the foreign policy of the administration, the New York Sun made the following comment:

"Since the Sixty-fourth Congress assembled there has been no utterance about the war more logical, lucid and courageous. It was virile with a healthy, inspiring patriotism; eloquent without being oratorical. In short a notable speech. Concerning the proposal to warn Americans not to travel on merchant ships armed for defence Mr. Sutherland said the unanswerable thing:

'I shall never give my consent to the issuance of a formal and official notice such as has been proposed, which, if not heeded, would, without minimizing out duty in the least, have the affect of embarrassing and weakening out moral standing if we should once more be under the sad necessity of seeking reparation for the destruction of the lives of our people.'

"The Proposition advanced by Germany that 'a new engine of destruction' automatically modifies international law Mr. Sutherland disposed of in one incisive sentence: 'My own view of the matter is that the new weapon must yield to the law and not that the law must yield to the new weapon.'

". . . As to warning our citizens out of Mexico where they had a right to be, and against exercising the right, sanctioned by the Supreme Court of the United States, to sail on merchant ships of a belligerent, armed for defence or not, Senator Sutherland spoke the thought of Americans of spirit and intelligence when he said:

'Instead of forever telling our citizens to run I should like for once to hear somebody bid them stand, with the assurance that their Government will stand with them. Instead of warning our own people to exercise their rights at their peril I would like to issue a warning to other people to interfere with these rights at their peril.'

"But quotations cannot do justice to Mr. Sutherland's sterling speech, informed as it is with a patriotism sane, philosophic and unafraid. Everybody should read it from beginning to end."

He was as busily engaged outside of Congress, when time permitted, as he was in legislative matters. In June, 1913, Columbia University, conferred upon him the honorary degree of Doctor of Laws. Michigan University, in 1917, and George Washington University, in 1921, have followed with similar honors.

On December 13, 1913, Senator Sutherland delivered an address at the annual dinner of the Pennsylvania Society, in New York City, responding to the toast, "The Law and the People." He was Chairman of the Republican State Convention, at Salt Lake City, on September 1, 1914, and his colleague, Reed Smoot, was nominated and elected to the Senate for a third term. On December 8, 1914, Senator Sutherland delivered an address before the Cleveland Chamber of Commerce on the subject of recent legislation, - especially reviewing the Clayton Act and the creation of the Federal Trade Commission.

When the American Bar Association, in December, 1914, was contemplating holding its next annual meeting in one of the western cities, Senator Sutherland suggested Salt Lake City, and successfully urged its selection by the Executive Committee. At this time he applied for membership in the Association; and he assisted the arrangement committee in preparing for the forthcoming meeting. With Governor Spry, of Utah, he made a welcoming address to the association on August 17, 1915. At this meeting, his friend and former colleague,

Senator Root, was chosen President of the Association, and Senator Sutherland was named on the Committee on Publications. This committee had charge of the recently authorized Journal, then in its first year.

He addressed the Missouri Bar Association, at Kansas City, on September 29, 1915, on the subject "The Constitutional Aspect of Government Ownership."

On September 1, 1916, he was elected President of the American Bar Association, at the Chicago meeting.

In June, 1916, he attended the Republican National Convention at Chicago, and in the succeeding election supported Governor Hughes to the extent of his ability. At the Utah convention, he was nominated for the Senate for a third term, his name being placed before the convention by W. H. Dickson of Salt Lake City. But Utah gave President Wilson a plurality of over 30,000 votes, and William H. King, Senator Sutherland's former classmate and law partner, whom he had defeated for the House of Representatives in 1900, was elected by a majority of over 24,000. Senator Sutherland took the defeat philosophically, less troubled over his own defeat than over the defeat of the national ticket. He summed the result up in a letter to Senator Lodge:

"We made the hardest and best fight possible. I was in the speaking campaign for eight weeks continuously, making an average of three speeches a day. Again and again in the various towns of the State I was told by my friends that I had many supporters among and Democrats and was advised to deal lightly with Mr. Wilson, but it is one of the pleasant reflections of the campaign that I nowhere took the advice but hammered with all my strength his vacillation, weakness and insincerity in every speech I made. I hope another four years of Mr. Wilson's flabby treatment of foreign affairs may result in reviving a little of the American spirit.

"My feeling over Utah is not only one of disappointment but of disgust that her people, usually so conservative, should have fled

to the Democracy at an appeal so false and cowardly as the one which seems to have swept the entire west for Mr. Wilson. However, we shall come back in 1920 as we did in 1900 after the silver deluge in 1896."

He returned to the closing session of the Sixty-fourth Congress, and applied himself to legislative matters until his term ended on March 4, 1917.

But he was not allowed to retire. On March 5, 1917, President Nicholas Murray Butler, of Columbia University suggested to him that he deliver a series of lectures, dealing with the Senate, under the Blumenthal Foundation. He accepted, but with the proposal that he be allowed to include the other branch of Congress, the House of Representatives. The lectures were not delivered until December, 1918, when they took the form of a discussion along broad lines of the extent and limitations of the external powers of the national government. They dealt especially with the government's war and treaty powers, concluding with a discussion of problems following the war, and they appeared later in book form, under the title "Constitutional Power and World Affairs."

Following the entrance of the United States into the World War, he devoted much of his time to the war activities of the American Bar Association; and its Fortieth meeting was held at its birthplace, Saratoga Springs, on September 4, 5, and 6, 1917. Senator Sutherland's address, as President, took for its subject, "Private Rights and Government Control." War resolutions were introduced by Elihu Root, and unanimously adopted. The annual dinner marked a departure from the usual custom, in that it was in honor of Mr. Root, who was referred to by President Sutherland as the Association's "most distinguished member, a lawyer of profound learning and great ability,

schooled in the best traditions of a noble profession." Walter George Smith, of Philadelphia, was elected as the new president of the association.

Senator Sutherland's retirement as President of the American Bar Association did not result in a retirement from active participation in its affairs. He attended the 1918 meeting at Cleveland, and while presiding over one of its sessions had occasion to introduce the speaker of the evening, Justice John H. Clarke of the Supreme Court of the United States. He attended other meetings, and served on various standing committees. And when the Bar Association accepted the invitation of its English brethren to meet abroad in 1924, he made the trip and in London replied to the Lord Chancellor's address of welcome. Later he wrote for the September-October, 1924, number of the West Publishing Company's Docket:

"The London meeting not only revealed our English brethren as generous and charming hosts but brought to all of us a realizing sense of kinship that will result in more firmly welding our friendship and bringing about a closer cooperation for our mutual good and the good of the world. . . The hospitality of our English friends was overflowing and perfect -- their welcome as outspoken as it was genuine. Forces of mutual good will were set in motion which must result in a community of lasting good fellowship for the advancement of those identical ideals of justice, private and public, which both of us have inherited and cherish."

His retirement from the Senate gave him an opportunity to return to the practice of the law, for, with but few exceptions, he had prepared or argued no cases, since 1905. As he stated in a letter, dated March 8, 1917:

"I have the feeling of one who is just beginning life anew the same sort of feeling, though not of course quite so acute, as I had when I began practicing law thirty odd years ago. I feel just a little bit lost after my political activity of so many years before getting into an activity of another sort. Before I begin practice in earnest I am promising myself a rest free from the sense of respon-

sibility. How long I will be able to bear up under it, I do not know, but if I can I should like to wait a year before settling myself in business. Since I was 12 years of age I have never had a real vacation with the exception of the trip to Europe."

But his legal services were at once sought, and his duties as President of the American Bar Association kept him busy. In the summer of 1917, he also prepared a short lecture on Price Standardization, for the Blackstone Institute of Chicago. Mention has been made of the Bar Association meeting in September. Early in 1918, with Judge John Barton Payne and Samuel Untermyer, he assisted Commissioner Roper of the Bureau of Internal Revenue in the reorganization of the government's legal bureau. And in the fall of 1918, he completed the Blumenthal lectures for Columbia University. By 1919, he was in active practice, and, having determined not to seek public office again, he decided to open an office in Washington. From then until his appointment to the Supreme Court in September, 1922, he was actively engaged in his law practice. This he confined generally to appellate cases, and the work of counsel. He was sought by former associates in Salt Lake City, in mining litigation; he appeared before the United States Railroad Administration and the Shipping Board in transportation matters, before the Treasury Department in tax litigation, and before the State Department in connection with international claims; but he always declined to appear in any but law matters, or to appear before committees of Congress.

He appeared in the Supreme Court of the United States in the October, 1919, term, in the cases of *Strathearn Steamship Co. v. Dillon*, 252 U. S. 348, and *Forged Steel Wheel Co. v. Lewellyn*, 251 U. S. 511. He argued the case of *New York Trust Co. v. Eisner*, 256 U. S. 345, wherein the federal estate tax was upheld. He also appeared in *Freder-*

ick v. Fidelity Insurance Co., 256 U. S. 395; Fidelity & Deposit Co. v. United States, 259 U. S. 296, and Fidelity Title Co. v. United States, 259 U. S. 304. With Col. Henry W. Anderson of Richmond, Va., he was appointed by the court as a trustee under the Armour and Swift companies stockyards' plan. And in November, 1920, he argued the ~~Vandalia~~ Coal Co. case, before the Indiana federal district court.

On February 24, 1920, he delivered the Washington birthday address at the University of Michigan. Taking as a title, "The Supreme Allegiance," he referred to that portion of Washington's farewell address which concerned the nation's foreign relations, and he discussed the broad features of the proposed League of Nations.

But he had been an ardent Republican too long not to take an interest in the national campaign in 1920. At first he took no active part, merely watching the candidacies of Wood, Lowden, Johnson and the others. To him it soon became clear that none of these would be nominated. Senator Harding had been his colleague in Congress, and had been Chairman of the 1916 National Convention; their friendship dated back to the Republican convention of 1912. And with the nomination of Senator Harding, Senator Sutherland made his headquarters at Marion, Ohio, and became the political adviser of the Republican candidate.

Mark Sullivan wrote toward the end of the campaign:

"In the various occasions that I have had of observing Senator Harding's entourage during the last three months, it struck me that there seemed to be three men who were obviously close to the senator's decisions and policies. In the field of thought and policy it was very apparent that the two men who were most in touch with Senator Harding were ex-Senator Sutherland of Utah and Richard Washburn Child of Massachusetts."

The overwhelming result, in the November election, was beyond his expectation, but none realized more than Senator Sutherland that it

was mainly a rejection of the democratic administration. And he turned his attention toward the problems that were to confront the new administration. Forecasts of the new cabinet suggested that he would enter the Harding cabinet as Secretary of State, because of his recognized ability in international questions, or as Attorney General. When the cabinet was announced, the press next assumed that he would fill the first vacancy upon the Supreme Court. Upon the death of Chief Justice White, he was mentioned in the papers as his possible successor.

Meanwhile there were other calls, for addresses and public service. Governor Nathan L. Miller, President of the New York Bar Association, requested him to deliver the annual address at their meeting in January, 1921. He chose for his subject, "Principle or Expedient," and his text was "A government of laws."

In November, 1921, President Harding named Senator Sutherland as the Chairman of the Advisory Committee to the United States delegation at the Conference on the Limitation of Armament. His ability in this field was demonstrated in this interesting work of an international scope, with its association with Root, Hughes, Lodge and Underwood; and he viewed the results of the conference as especially gratifying.

In March, 1922, the administration again sought his services, and he accepted appointment as Counsel for the United States in the then pending arbitration with Norway. He assisted in the preparation of the Government's written Counter-case and Argument, and during July and August participated in the oral arguments, which lasted more than six weeks, before the Permanent Court of Arbitration at The Hague. He was associated with William C. Dennis, the Agent of the United States, and was opposed by Walter I. Fisher, of Chicago, and Edward B.

Burling and George Rublee, of Washington, as Counsel for Norway.

He was in London, awaiting his steamer for the return voyage, when Justice Clarke resigned from the Supreme Court. President Harding on September 5, 1922, sent his name to the Senate for confirmation as an Associate Justice, and he was unanimously confirmed, in open executive session, without a reference to the Judiciary Committee. On October 2, 1922, at the opening session of the Court, Chief Justice Taft administered the oath of office, and Justice Sutherland took a seat on the bench.

The New York Times, September 10, 1922, reviews the career of the new Supreme Court Justice, and points out:

"There is more new interest, more of historic importance, in the appointment of ex-Senator George Sutherland to the Supreme Court than in any other designation of this generation, except possibly that of Chief Justice Taft, who is the first ex-President of the United States to sit in the court. In the first place Mr. Sutherland is the first man from his State to sit in that high court. Second, he is one of the few Senators or former Senators to take a place there. The last Senator to take an appointment to the Supreme Court was the late Chief Justice Edward Douglas White, who was appointed Associate Justice of the court in 1894, while he was one of Louisiana's Senators.

"The third point of interest is that Senator Sutherland is only the fourth of the seventy-three members of the court, during its 132 years of history, who have not been born citizens of the United States or in the Colonies which became states after the creation of the Republic. A fifth Justice was born of American parents while in a foreign country.

"But most important of all by far, are his high qualifications.
. . ."

"Not since 1793, or three years after the Supreme Court began its deliberations in New York City, under Chief Justice John Jay, has a man of foreign birth been appointed to the court, and not since 1806, during the first years of the long term of Chief Justice John Marshall has an Associate Justice of foreign parentage sat in the deliberations of the Supreme Court."

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It is impossible to review at length his service as an Associate Justice of the Supreme Court of the United States during the past six years. In number his opinions amount to more than 130. He has written seven dissenting opinions, generally concurred in by other Justices. His first opinion, *Ozawa v. United States*, 260 U. S. 178, involved the important question whether the naturalization laws applied to Japanese, and this was followed during the same term by the *Thind* case, 261 U. S. 204, relating to a Hindu. A case that received wide comment was *Adkins v. Children's Hospital*, 261 U. S. 525, holding the minimum wage law in the District of Columbia unconstitutional, -- Chief Justice Taft and Justices Holmes and Sanford, dissenting. In the cases of *Connally v. General Construction Co.*, 269 U. S. 285, *Frost Trucking Co. v. Railroad Commission*, 271 U. S. 583, and *Tyson & Brother v. Banton*, 273 U. S. 418, he has rendered the opinions of the court, holding state legislation unconstitutional. In other important cases, state legislation was upheld as constitutional: see *Packard v. Banton*, 264 U. S. 140; *Radice v. New York*, 264 U. S. 292; *Hygrade Provision Co. v. Sherman*, 266 U. S. 497. His opinions dealing with the Sherman and Clayton acts have been of especial importance; see *Binderup v. Pathe Exchange*, 263 U. S. 291; *Michaelson v. United States*, 266 U. S. 42; *Industrial Association v. United States*, 268 U. S. 64; *Anderson v. Shipowners Association*, 272 U. S. 359; and *Bedford Co. v. Stone Cutters Association*, 274 U. S. 37. In the field of taxation, he has written the majority opinions in three cases involving constitutional questions: *Texas Transport Co. v. New Orleans*, 264 U. S. 150; *Ozark Pipe Line v. Monier*, 266 U. S. 555; and *Louisville Gas & Electric Co. v. Coleman*, (April 30, 1928). Probably the most

far-reaching opinion rendered by the Supreme Court in recent years was his opinion in the Euclid zoning case, 272 U. S. 365.

To refer to more cases would be to minimize the more important. Suffice it to say that Justice Sutherland has had to deal with workmen's compensation laws (a familiar field to him), with questions involving the original jurisdiction of the Supreme Court, and (probably more than any other) with the subject of statutory construction. In an address before the Utah State Bar Association in June, 1924, he outlined in a personal way to his friends and former law partners and associates the nature and mechanics of the work of an Associate Justice.

Though never much of a "joiner" of clubs, his association has many times been sought. In 1920, he was elected a Trustee of the Carnegie Endowment for International Peace, and in 1921 he was elected a Vice-President of the American Society of International Law. In 1924, he became an honorary member of John Marshall Inn of the international legal fraternity, Phi Delta Phi. And in 1927, he was elected an honorary member of the Lawyers Club of the University of Michigan. He was a member of the National Republican Club of New York from 1912 until he became an Associate Justice of the Supreme Court; and he is a member of the Chevy Chase Club of Washington and of the Alta Club of Salt Lake City.

He participated in the memorial exercises in the Senate on February 27, 1909, in memory of Representative Powers, and on March 1, 1913, in memory of Senator Heyburn; and he presented the resolutions of the Bar of the Supreme Court at the exercises on December 17, 1921, in memory of Chief Justice White.