

HATTON W. SUMNERS
HIS LIFE AND PUBLIC SERVICE

An extended biographical sketch

By: Elmore Whitehurst

Forward

As indicated by the subtitle, this is not a definitive biography of Hatton W. Sumners, but an extended biographical sketch, written with the hope that there may not be wholly forgotten with the passing of those who knew and loved him, the remembrance of the vital, original personality and the record of the major accomplishments of this extraordinary man who served his day and generation wisely and well.

I was a freshly minted Bachelor of Arts at Southern Methodist University in 1927, still lacking several months of being 21 years of age, when the brashness of youth I had the temerity to ask Congressman Sumners for a job as his secretary. He replied that he required a stenographer. Knowing that he was going to Europe for the summer, I told him that I would undertake to learn shorthand and typing sufficiently to be able to take and transcribe his dictation by the time he returned to Dallas in the fall.

When he returned he told me he would give me a month's trial which would have to be without pay. At the end of the month he told me, "You haven't drawn any salary, and you are worth every cent of it." Nevertheless he took me to Washington and thus began my close association with him which lasted until his death in 1962; first as his secretary for 3 years, then for 7 important years (1932-1939) including the early Franklin D. Roosevelt years, as chief of staff of the House Judiciary Committee of which Mr. Sumners had become chairman, next as a co-worker in government when with his support I was appointed by the United States Supreme Court to be the Assistant Director of the newly created Administrative Office of the United States Courts, and finally as a trustee of the Hatton W. Sumners Foundation which he established.

Early in my association with Mr. Sumners I adopted the habit of making notes of some conversations in which he was engaged and I was present, and of preserving copies of significant letters, documents, and memoranda. Frequently the memoranda were in his atrociously illegible handwriting which by dint of much effort I finally learned to translate fairly well. My thought was that sometime in the future this material might become desirable for reference, and although the collection and note keeping could not be done on any systematic basis because of the unyielding pressure of official work, much of this writing has been drawn from that material.

Elmore Whitehurst.
1978

1. Early Life

Originally he was William Hatton Sumners, but he switched the order of his given names with this explanation:

"I found shortly after I went to practicing law that nobody could ever get my surname right. I was called all sorts of things – Summers, Somers, Summer, and other variations. But the name 'Hatton' was distinctive enough that nobody got confused on that. I didn't want to sign my name 'W. Hatton', so I decided

to switch the initials and write out 'Hatton' in full."

His father was Captain W.A. Sumners, a Confederate veteran, who named his son in honor of General Hatton, commander of the brigade of Tennessee troops in the Civil War until he was killed in action.

He was born near Fayetteville, Lincoln County, Tennessee, May 30, 1875, the second of three children, the older being a brother who became a country doctor with a large family, and the younger a sister who married but had no children. His mother before her marriage was Anna Elizabeth Walker. He was deeply devoted to her and often said she was a wonderful woman.

Always interested in the origin of surnames, he said that the name "Sumners" came from "summoners", the officials in England who summoned people to court.

He did not know a great deal about his ancestors. His father wrote him a letter in 1907 in which he said:

"My Grandfather, Jno. Sumners, with three brothers, Joseph, Abraham or Abram & Isaac came from North Carolina in the latter part of the 18th century or the early part the 19th century to Davidson County Tennessee. Jno. Abe & Isaac moved (sic) thence to Lincoln County, Tennessee previous to 1810." . . .

"The Sumners originally came from Scotland to Ireland, from Ireland to America. They were old school Presbyterians, a true type of Scotch Irish."

For a while Captain Sumners with the assistance of his wife and her sister, operated a male and female academy in Tennessee. Then he turned to farming.

The life of a small farm boy in Tennessee during the period of the aftermath of the Civil War was not an easy one. Cares and responsibilities came early to the young Hatton, even in his boyhood. One time he commented: "I never had a toy. My father never bought me a toy," with a note of sadness in his voice. Again, he said, "When I was child I was always tired – so tired." This wistfully, and with a tone which conveyed the impression that he felt again the tired bones of the little child who crept away to bed long ago. His father, he said, was a believer in the gospel of hard work for everybody. There was never any playtime for the boy, and when there was no work to be done, his father made work for him to do.

Even at an early age he thought deeply. He recalled that one time when his mother had given him a whipping she asked him why he had done what he had done. He thought that a very foolish question for her to be asking. Did she want him to lie about it?

The experiences of his early life gave direction to his life work. During the depth of the depression in 1932-1933, when he had been in Congress for 20 years, he wrote:

"When I was a boy on a Tennessee farm my family and my neighbors were the victims of an economic tragedy, in some respects senseless as to cause and in all respects senseless as to effect.

"I know exactly what is the feeling of these people being driven from their homes by the lash of these conditions. That thing happened to us. I know exactly what it means to these country children whose fathers, under the strain, are breaking in health

as well as in fortune and who must assume the responsibility of a family's care under these conditions. That was my own experience.

"A part of my ancestry came from Scotland via Ireland and for generations before I was born lived in the mountains of Virginia, Carolina and Tennessee. The inherited clan instinct has always been strong in me as I saw the blind futile struggle of the people of the country.

"While my family had advantage over our neighbors in culture and education these people of the hills were my people. I felt everything they felt and shared everything they suffered in the blind futile tragic struggle of those times. Even then they looked to me and trusted me for leadership and advice."

The future Congressman moved with his family from Tennessee when he was eighteen years of age. His father, who had failed financially in Tennessee, thought that he could do better in Texas. They went to the then small town of Garland in Dallas County because they had relatives who had come to Texas earlier and had settled there.

After selling out in Tennessee the Sumners family had little money left when the debts were paid. Hatton brought a freight car load of horses which he peddled over North Texas. While engaged in traveling about riding one horse and leading two or three others for sale, he nearly froze on one occasion. It was near Waxahachie. A vicious "Norther" blew in. Sumners knew he was freezing. He reached the point where the numbness made him feel a comfortable warmth. He wanted to stop and rest, but knew if he stopped moving he would never start again. His eyelids froze over his eyes, and he could scarcely see. He fought on until finally he reached shelter and was able to warm himself.

He was always a good trader. He said that when he was a boy he would swap anything, a knife, a skunk pelt, or whatever else an impecunious farm boy might possess, and doubtless he always made a profit. His trading ability, combined with habits of thrift forced upon him by the necessities of his early life laid the foundation for the comfortable fortune of his later years. He made foresighted investments in real estate. If he had devoted himself to business he could easily have become a very wealthy man. But, as he put it, while he served in Congress he had no other paymaster than the Government.

He was sometimes accused of being stingy. Part of that was due to his fondness for repeating stories told on himself such as one about an old black man who asked him for quarter. Sumners, according to the story, searched his pockets, and then said that he would be glad to accommodate his friend if he had a quarter, but that he had none, to which the mendicant replied: "Mr. Sumners, cap'n suh, please look in your pockets again, 'cause ef you ever has had a quarter you still got it."

Also he repeated the story that one spring morning he started to Texas from Washington by automobile. After he had been gone for half an hour, one of his secretaries, looking at her watch, remarked that it was safe then to go out for a coffee break because he had been gone long enough to be beyond the ten cent zone and would not be telephoning back to the office.

Fiorello LaGuardia was a Member of Congress and a member of the Judiciary Committee before he became Mayor of New York. LaGuardia told that he went with Sumners to San Francisco as a member of a subcommittee to investigate the conduct of a Federal Judge. LaGuardia was in the habit of ordering breakfast sent up to his room. After Chairman Sumners had examined the committee expense vouchers he

started inviting LaGuardia to go with him on early morning walks and invariably steered him into a cafeteria for breakfast. Later LaGuardia as Mayor of New York appointed a member of the Judiciary Committee to be a New York magistrate with the comment that serving under Sumners was the finest training one could have for a judicial position.

Judge Sarah T. Hughes said that on one occasion Mr. Sumners, escorting her to a White House reception, walked her, dressed in her evening clothes, from the hotel to the White House and back, instead of hiring a taxi.

Recollections of how hard money had been to come by in his early life made it impossible for Sumners to enjoy spending it on himself, and he detested waste, private or governmental, but he was generous to many in need of assistance. During the depression he opposed the demands of the veterans' bonus marchers who swarmed into Washington, but he quietly went to the Salvation Army headquarters and made a substantial contribution to help in meeting the immediate needs of the impecunious veterans.

Perhaps a score or more of young men and women owed the opportunity to secure an education to a loan, made without security, which only Sumners and the student concerned knew had been made. No one was pursued for repayment, and not many of these loans were repaid.

Sumners was almost completely self educated, his formal education having ended with one year in the Garland High School. One summer, while he walked behind a plow, in order to occupy his mind he carefully worked up a speech on George Washington which he memorized and perfected by delivering it at length to the uncomplaining mule pulling the plow. The high school in those days devoted Friday afternoons to having students practice public speaking by making speeches to each other. It happened one Friday that young Hatton was called on unexpectedly, and gave his George Washington speech. It was a sensation, and gave him a considerable local reputation which would have been secure, he said, if he could have stopped then. But regrettably, he continued, he was never able to reach that peak again.

He obtained a job paying \$25 per month clerking in a Garland grocery store, and with \$85 he saved he went to Dallas. There in his words he "finished up reading in a lawyer's office the books taught in the University law school", and gained admission to the bar in 1897. To save room rent while he studied he slept in the lawyer's office.

The usual struggles of a young lawyer to get started were his. One of the things which he did was to make a deal with a boarding house keeper to collect delinquent accounts and take his fee in meals.

In 1890, when he was barely 25 years old, Sumners was nominated and elected prosecuting attorney of Dallas County. He had gone to his friend, W.R. Harris, and suggested that they should support another man for the office. Mr. Harris replied that he was a young man just getting started in the practice of law and could not afford to "bet on a dead horse", but that if Sumners would himself become a candidate Harris would be glad to support him. Sumners agreed to think this over and decided to make the race. The victory was essentially a triumph of the young men of that day over the entrenched gambling interests. The Young Men's Democratic Club organized support for Sumners. His Garland friends sent representatives over the county in his behalf.

Dallas at that time was just beginning to emerge from the

"Wild West" stage to become a great city. Sumners' election thrust him into immediate battle with the professional gamblers. They tried to bribe him and failed. His life was threatened. Two years later by wholesale voting frauds he was defeated for reelection. But he was not stopped. The following election he was again successful and served a second term.

Sumners' native shrewdness contributed to his success as a prosecutor. This incident is illustrative. A number of chickens were stolen from a neighborhood in one of the small towns of the county. A suspect was arrested in Dallas in possession of a large number of chickens. The problem was to identify the fowls as the ones which had been stolen. The young prosecutor instructed a deputy sheriff to take the chickens to the town and release them at dusk in the area from which they were believed to have been taken. After a few moments of bewilderment the released chickens divided themselves into separate flocks and scurried off to their accustomed roosting places. That was enough for the jury. The thief was convicted on the evidence of the chickens.

Sumners drafted and persuaded the Texas Legislature to pass a law to prohibit gambling in the marketing of agricultural products. His work attracted the attention of Col. Frank P. Holland, the publisher of FARM AND RANCH, a widely read and respected periodical. As Sumners said, "I was retained by FARM AND RANCH as sort of general counsel for Agriculture." The magazine sent him to Europe to study agricultural conditions there and write for publication a series of articles on his observations, and to go to Washington to testify before Congressional committees with regard to problems of farmers.

His professional reputation began to grow. He represented cotton farmers before the State railroad commission, and procured a saving in freight rates for them which Col. Holland stated amounted to more than a half million dollars per year, a substantial sum in those days.

At Texas A&M College the students went on strike against the President of the institution. Mr. Sumners undertook to represent them at hearings regarding the controversy. Again he was successful. The President was dismissed from office and Sumners won the undying gratitude of the students who made him an honorary member of their alumni association.

As a result of reapportionment, and the failure of the Legislature to redistrict the State, Texas, in 1912, gained two seats in the national House of Representatives to be filled by election from the State at large. Hatton W. Sumners, supported by FARM AND RANCE, entered the race of more than 20 candidates for the two seats.

Not robust, of only medium stature, and weighing not more than 150 pounds, he said that he knew he did not look like a candidate for Congress and realized that the burden of proof was on him. He stumped the State. One story he told on himself was that he visited a small town in West Texas in which lived a strapping big cowman who had never seen Sumners but who was a red hot Sumners man. A friend who was introducing the candidate about town pointed out this rancher and called him over to meet his candidate.

"This is the man you have been whooping it up for", the friend said. The big man looked down on the candidate, small in size by comparison, dressed in a rumpled suit, and with his tired face showing the strain of campaigning.

"Is your name Sumners?" he asked incredulously.

"Yes, sir" was the enthusiastic reply.

"Not Hatton Sumners?", with disillusionment in his voice.

"Yes, I am."

"Well, I'll be damned", remarked the cowman, turning on his heel and walking off.

In this campaign, Mr. Sumners recalled years later, he learned the value of a small audience. On a hot day he entered a small town in Red River County. Only a few loungers were in sight. After he had gone around the square, shaking hands with the storekeepers, the candidate walked over to the small group of idlers.

"Boys", he told them, "I'm going to make you a speech if you will listen to me, and it will be a good one, too."

He commenced to talk and soon a few more people drifted over to see what was going on. Then a few more, until by the time he had finished he had a good little crowd.

Then a man who Sumners subsequently learned was Sheriff, stood up and said, "Boys, he made a good speech, and I move we carry this County for Hatton Sumners."

Sumners related with obvious pleasure that he carried the County by 500 votes over all his opponents.

After the battle was over and the votes were counted Sumners was found to be one of the two men at the top of the heap. So, when President Woodrow Wilson at the beginning of his first administration called the Sixty-Third Congress into Special Session the following spring, Mr. Sumners answered the call. So also did Sam Rayburn, the future Speaker, newly elected from the Fourth Congressional District. Sumners and Rayburn traveled to Washington together on the train.

2. The Freshman Congressman

"A man has to learn to be a Representative just as he must learn to be a blacksmith, a carpenter, a farmer, an engineer, a lawyer, or a doctor", said Speaker Champ Clark in a speech in the House in 1916 which was widely reprinted. "It is an unwise performance for any district to change Representatives at short intervals", the Speaker continued. "A new Congressman must begin at the foot of the class and spell up. Of course, the more brains, tact, energy, courage and industry he has the quicker he will get up. If he possess these qualities, and if his constituents will keep him in the House, he is as certain to rise as the sparks are to fly upward. No human power can keep him down. It is only fair and rational to assume that every Representative's constituents desire to see him among the 'topnotchers'.

"No man should be elected to the House simply to gratify his ambition. All Members should be elected for the good of the country. The best rule, it seems to me, is for a district to select a man young enough to learn and to grow, with at least fair capacity, industrious, honest, energetic, sober, and courageous, and keep him here so long as he discharges his duties faithfully and well. Such a man will gradually rise to high positions and influence in the House. His wide acquaintance with Members helps him amazingly in doing things."

Following Speaker Clark's formula, Hatton W. Sumners started his long ascent to a commanding position in the House of Representatives. The glamour of Washington wore off fast for him. He once wrote:

"Of course there are degrees in human capacity, but there is not enough difference between the capacity of the greatest and that of the average person to justify any self-respecting person to engage in the pathetic spectacle of hero worship of a human being. When I first went to Congress I had some foolish notions about people I had been reading about, but when I discovered I can take care of myself with any of them I lost all my adoration

for human ability and human achievement.”

Mr. Sumners had upon his shoulders the responsibility for the support of his mother and father as long as they lived. He did not ever marry. With singleness of purpose he devoted his time and energy to public service.

His quietly effective method of operation quickly manifested itself. Some years later he described how he secured the passage of his first bill.

“During my first session in Congress it was desired that Dallas be made a port of entry. I introduced the bill. I was told it was necessary to get the approval of the Treasury Department, and that it would require ten days to get a reply. I took a copy of the bill and went in person to the Treasury building. In two hours I was on my way back to the Capitol with the approval in my pocket. Mr. Clark was Speaker. I explained the bill to him and told him I was a new man, and asked him how to proceed. He promised me recognition next day to call the bill up. The next day things were in a jam. I saw that and went up to the desk and asked him privately what he wanted me to do about it. He said he could not recognize me then. I could have gotten in a row claiming I have been promised recognition, and possibly gotten on the front page of the papers, but the chances are I would not have gotten the bill through. The next day I got recognition though there were many members begging to get in ahead of me, and afterward Mr. Clark told me of all the new members who came in with the Wilson administration I was the first one to put a bill through to final passage.”

He was contemptuous of publicity seekers who, as he said, were willing to jeopardize the success of the thing they claimed to be working for in order to get credit for making the attempt.

Election to Congress did not cause Sumners to forget his background or lose interest in the problems of farmers. His first major speech, which attracted considerable attention, was entitled “The Consumer’s Interest in the Economic Problems of the Farmer and the Duty of the Government to Aid in their Solution”, delivered less than 10 months after he had taken his seat.

At first he was given minor committee assignments, but within a few years he had his choice of membership on the Committee on Agriculture or the Committee on the Judiciary. He chose the Judiciary Committee because he believed that there he could help bring about greater recognition of the city man’s involvement in the economic difficulties of the producers of agricultural products.

3. The Judiciary Committee

Dating back to 1813, the Committee on the Judiciary has always been a major committee of the House of Representatives.

Its first chairman, Charles Jared Ingersoll, was the son of one of the signers of the Declaration of Independence, and through the years its membership rolls have sparkled with the names of great lawyers and distinguished statesmen, including three Presidents of the United States, many Governors of States, and scores of judges, law teachers, and attorneys nationally renowned for eminence at the bar. Traditionally, the committee is composed entirely of lawyers.

In 1898 a writer on Congressional committees had this to say of the Judiciary Committee:

“It has held its way steadily among the other Committees as always a favorite. The nature of the subjects with which it has been charged has constantly drawn to it the best legal talent in

a body so largely composed of lawyers as is the House, has given to its membership a long list of the brightest names in the annals of American Statesmanship. Owing to the non-partisan character of its duties, it has held among its fellows, whether viewed in the committee room or upon the floor, the palm for examples of united action by great parties for one framing of laws.”

Although he was a minority member of the committee, Sumners soon attracted attention and his influence with his colleagues grew as they learned to appreciate his acumen and integrity. With turnovers incident to each succeeding election he moved up the seniority ladder until he became the ranking minority member.

An interesting sidelight on his growing reputation as a constitutional lawyer concerns an incident which leaked out of the committee. A Federal district judge appealed to Chief Justice William Howard Taft to have certain procedural legislation enacted to meet an inconvenient practice in his district. The Chief Justice had one of the Associate Justices prepare a bill, and it was transmitted to the Judiciary Committee. The committee, all but Sumners, voted to give it a favorable report. Sumners insisted that the court by its nature already had inherent power to do what the bill proposed, and gave notice of a minority report. The next morning the Associate Justice was back with a brief showing that Sumners was right. The bill was recalled, the action of the committee was reversed, and Sumners was jokingly referred to as the only man who had overruled the Supreme Court and gotten away with it. Thus began a happy association between Sumners and the justices based on mutual regard and respect.

When the business of the Supreme Court had increased to the point that legislative relief had to be found, a bill limiting the obligatory jurisdiction of the Court was prepared and submitted to Congress where it was referred to the Judiciary Committee. The justices directed the Chief Justice to request Sumners to take charge and put the bill through to passage notwithstanding he was a member of the then minority party. Chief Justice Taft wrote to thank him:

Monday evening

Feb’y 3, 1925

SUPREME COURT OF THE UNITED STATES

Washington, D.C.

Dear Mr. Sumners:

I write to thank you most earnestly for the real aid which you have given in securing the passage of the Supreme Court Bill. Without the time you spent on the Bill to familiarize yourself with its provisions and the influence you exerted among your colleagues to prove its usefulness, I do not think it would have been possible to get the measure through. I would like to say this to you and to say further that I shall always be glad that my interest in the Bill has given me the opportunity of knowing you and of beginning a valued friendship.

With real respect and best wishes,

Sincerely yours,

Wm. H. Taft

That friendship endured for the remainder of Taft’s life.

4. Impeachments

Misconduct by judges raised the crusading spirit in Hatton W.

Sumners, and he was never more effective than when denouncing a Federal Judge who had been false to his trust. Once he was almost carried away by his own oratory when he accused a defaulting judge of taking "the cold cash hot from the hand of his former law partner".

He is the only Member of Congress since the beginning of the Government to the present time to serve as a manager on the part of the House of Representatives to conduct three impeachment trials before the United States Senate.

In the first case the accused judge resigned while the trial was in progress.

At the second trial the attendance of Senators was sparse. A majority of Senators voted for conviction, but the vote was a few short of the 2/3 majority required by the Constitution for removal from office. After the trial was concluded, Sumners approached one of the Senators who had voted not to convict, and asked him:

"Senator, when you were practicing law, and lost a case, did you ever go to members of the jury and ask why they voted as they did?"

"Yes" was the reply.

"Then, will you tell me why you voted against conviction in this case?"

"Well, I just did not have time to sit on the floor and listen to the evidence, and I won't vote to convict anybody when I have not heard the testimony."

This enraged Sumners almost to the state of speechlessness when he thought of the time, energy, and Government money which had been spent in vain in conducting the investigation and bringing the impeachment to trial. He vowed it would not happen again.

In the third case Judge Halsted L. Ritter, of the Southern District of Florida, was the respondent. When the House was getting ready to call upon the Senate to sit again as a Court of Impeachment in 1936, Sumners quietly called upon the Senate leaders, reminding them of what had happened before, and warned that if it happened this time he would denounce them on the floor of the House. When the case came to trial the attendance of Senators was greatly improved. The defendant judge was convicted and removed from office.

The Senate had upheld Sumners in the contention which he had made for many years that impeachment under the American system of Government is not a criminal trial but an ouster suit, and that a judge can be removed not only for the commission of an indictable criminal offense, but also because of misbehavior in office not amounting to a crime.

The impeachment article, drafted by Sumners, upon which the Senate found the respondent guilty, charged: "The reasonable and probable consequences of the actions or conduct of Halsted L. Ritter, hereunder specified or indicated in this article, since he became judge of said court, as an individual or as such judge, is to bring his court into scandal and disrepute, to the prejudice of said court and public confidence in the administration of justice therein, and to the prejudice of public respect for and confidence in the administration of justice therein, and to the prejudice of public respect for and confidence in the Federal Judiciary, and to render him unfit to serve as such judge."

In making the closing argument on behalf of the Managers on the part of the House, Sumners told the Senators sitting as a Court of Impeachment.

"We do not assume the responsibility, members of this distinguished court, of proving that the respondent in this case is

guilty of a crime as that term is known to criminal jurisprudence. We do assume the responsibility of bringing before you a case, proven facts, the reasonable and probable consequences of which are to cause the people to doubt the integrity of the respondent presiding as a judge among a free people.

"We take the position, first, that justice must be done to the respondent. The respondent must be protected against those who would make him afraid. But we take the position that when a judge on the bench by his own conduct, does that which makes an ordinary person doubt his integrity, doubt whether his court is a fair place to go, doubt whether he, that ordinary person, will get a square deal there, doubt whether the judge will be influenced by something other than the sworn testimony, that judge must go."

After this first hand experience with the cumbersome impeachment process, Sumners sought for alternatives to accomplish the removal of erring Federal Judges. Article III, Section 1 of the Constitution provides that the judges "shall hold their Offices during good Behavior..." As a result of his studies he reached the conclusion that "good Behavior" as thus used presents a justifiable issue, and that legislation constitutionally could be enacted which with suitable safeguards would provide for the setting up of a court of judges to try the issue, and to enter a judgment of removal from office of a judge whose conduct it found to be inconsistent with "good Behavior".

The House of Representatives passed the Sumners Trial of Good Behavior Bill, but it languished and died in the Senate Judiciary Committee. Doubts as to its constitutionality were expressed. Senators who were reluctant to sit as members of a Court of Impeachment appeared to be equally reluctant to divest themselves of any part of their responsibility to do so.

There has not been an impeachment trial before the Senate during the more than forty years which have elapsed since the Ritter trial. But now, with double the number of Federal judges in office as compared with 1936, with prospects of even larger numbers to be appointed in the future, and with the Senate ever more pressed with grave problems of national and international importance, a serious student of the machinery of our Government must with apprehension consider the possibility that at any time the United States Senate could be called upon to set aside its other business for a month or more while the entire body sits as a court to determine whether a relatively obscure Federal district judge in a distant State has conducted himself in such a manner as to bring disrepute on his court. Dusty files are being researched, and the Sumners bill may yet be resurrected.

5. Lawyer for Congress

When Hugo L. Black, later Mr. Justice Black, was Senator from Alabama he was the vigorous chairman of a Senate investigating committee in the early nineteen thirties. The committee subpoenaed documentary evidence relating to an investigation of air mail contracts. Those who had control of the evidence, upon the advice and with the assistance of their lawyer, McCracken, tore up the documents and threw them in the trash of a downtown Washington office building from which they were later rescued and pieced together at great effort.

The Senate summoned McCracken before it, tried him for contempt of the Senate and sentenced him to 10 days in jail. He sought a writ of habeas corpus directed to the Senate Sergeant at Arms, Chesley W. Journey, his contention being that the

Senate had power to punish for contempt only for coercion to compel obedience whereas the respondent in this case by destroying the evidence had put it beyond his power to comply with the subpoena; therefore the Senate's action was punishment qua punishment which was beyond its powers. On appeal to the Court of Appeals of the District of Columbia this view prevailed by a 3 to 2 vote and a review was sought in the Supreme Court.

Mr. Sumners was requested by the House leadership to appear before the Supreme Court in the case as *amicus curiae*, friend of the court, to present the views of the legislative branch of the Government that the Senate had acted within its powers. The House of Representatives was concerned because the powers of the two houses with respect to punishment for contempt being the same, the judgment of the Supreme Court would be equally binding upon the House of Representatives as upon the Senate. He did so. The Court upheld his position in *Jurney v. McCracken*, 294 U.S. 125, and the lawyer served his ten days in jail.

This was the second time that Hatton Sumners had represented the legislative branch of the government as *amicus curiae* before the Supreme Court in cases involving constitutional questions. The first had been in what was known as *The Pocket Veto Case*, 279 U.S. 655. Mr. Sumners' contention was that the President had no power under the Constitution to "pocket veto" a bill at the end of any session of a Congress except the final session. A contemporary Washington columnist wrote of his argument:

"Lawyers say that Representative Hatton W. Sumners, Democrat, of Texas, made before the Supreme Court this week one of the finest pleas the bench has listened to in many a day. He appeared as the ranking minority member of the House Judiciary Committee to argue against the legality of the "Pocket Veto" – the system by which the President can procrastinate an act of Congress into non-existence. The court was deeply interested in Sumners' delivery, amid a typical Southern drawl, of a series of uncommonly well marshaled facts and arguments."

The Court held against Sumners' view. However, nine years later Chief Justice Charles Evans Hughes in *Wright, Petitioner v. U.S.* quoted at length with approval from Sumners' argument in the *Pocket Veto Case*. Although the same question was not directly involved, perhaps the Court had some second thoughts with regard to the correctness of its previous decision.

In *Edwards v. United States*, 286 U.S. 482, Mr. Sumners again appeared before the Court, taking the position, with which the Court agreed, that the President has power under the Constitution to sign a bill at any time within ten days after the final adjournment of a Congress.

In 1934 a bill reported by the House Judiciary Committee was enacted into law permitting financially distressed municipalities and political subdivisions to make agreements for the composition of their indebtedness under the bankruptcy power of the Constitution. The Supreme Court in a 5 to 4 decision, *Ashton v. Cameron County Water Improvement District*, 298 U.S. 513, held this Act to be unconstitutional. A substitute bill was reported by the Judiciary Committee and enacted.

When this second Municipal Bankruptcy Act came before the Supreme Court, Mr. Sumners made an oral argument before the Court in support of its constitutionality. The Court agreed that the Act was constitutional, *U.S. v. Bekins*, 304 U.S. 27.

A sidelight to this case is that the Solicitor General, representing the Government, intervened and appeared in the suit

between private parties to take a direct appeal from the District Court to the Supreme Court to defend the constitutionality of a Congressional enactment under attack, doing so under authority of an Act which had been sponsored by Sumners, 50 Stat. 751. This was the first time that the provisions of the Sumners Act had been invoked.

6. Roosevelt and Sumners

When Franklin D. Roosevelt was inaugurated President of the United States on March 4, 1933, Hatton W. Sumners was already beginning his second Congressional term as Chairman of the House Judiciary Committee. At first the relations between the two were cordial. Sumners supported legislation proposed by the new President as far as he conscientiously could, but he wore no man's and no party's collar. John N. Garner had already found that out in the previous Congress. As Speaker he tried but failed to persuade Sumners to introduce a prohibition repeal amendment and bring it before the House on the first day of the session without previous Hearings before the Judiciary Committee. Sumners told him flatly that was no way to amend the Constitution of the United States.

In 1934 the Attorney General sent to the House a number of hastily drafted bills to authorize the Federal government to enter new fields to deal with various aspects of the crime problem. The bills were referred to the Judiciary Committee. The Roosevelt Administration wanted prompt action. The Committee was deliberate. Impatience grew. It is well documented that Roosevelt called Sumners on the telephone and demanded to know when the crime bills would be reported by the Committee. Mr. Sumners replied that he did not think they ought to be reported, at least in the form in which they had been submitted.

Asked the President angrily, "How would you like to have your committee taken away from you?"

Replied the Chairman, "Who in hell is going to do it?", and banged down the receiver.

However, this incident was smoothed over and from the White House Sumners received this letter dated June 7, 1934:

Dear Hatton:

You have given so much of your time and effort to the recent legislation in connection with crime suppression that I thought you might like to have the pen I used yesterday in signing: H.R. 7353, An Act granting the consent of Congress to any two or more States to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime, and for other purposes.

Here it is, and with it I send my personal and sincere appreciation.

*Very sincerely yours,
Franklin D. Roosevelt*

The Department of Justice conceded that the crime bills had been substantially improved by the consideration they received at the hands of the Judiciary Committee before they were reported.

Then came the "Court Packing Bill".

7. The Court Packing Bill

February 5, 1937, was a critical date in the life and career of

Hatton W. Sumners. That morning he responded to a call to attend a conference at the White House. With him in the cabinet room a group assembled including Vice President Garner, Senator Robinson, of Arkansas, the majority leader in the Senate, Senator Ashurst, the Chairman of the Senate Judiciary Committee, Speaker of the House Bankhead, Sam Rayburn, the majority leader of the House, and members of the cabinet. None knew just what he was there for except for Attorney General Homer Cummings.

President Roosevelt entered the room and with apparent pleasure announced his recommendation that legislation be enacted affecting the Federal Judiciary including a provision to authorize the President to appoint an additional justice of the Supreme Court for each justice failing to retire within 6 months after having reached the age of 70, to a total of 6. Then leaving the astounded men, Mr. Roosevelt went off to a press conference.

On his way back to the Capitol, Mr. Sumners made to his associates his often quoted statement that here was where he was going to "cash in", which, of course, meant an irreparable break with the demanding President, his party chief.

The decisions of the elderly conservative majority of the Supreme Court in holding unconstitutional key components of his New Deal legislation such as the Agricultural Adjustment Act and the National Recovery Act had exasperated Roosevelt. Sumners had foreseen the threat of approaching conflict between the Chief Executive and the Court which would be detrimental to the country. He had observed that they were following collision courses, and realized that the time had come for an infusion of new and younger blood on the Court. He had seen among the legislative casualties the first Municipal Bankruptcy Act from his own Judiciary Committee held unconstitutional by a one vote margin on grounds which he thought were completely unrealistic and untenable. In order to ease the transition he had secured the passage of legislation which would make it easier for elderly justices to leave the bench by retirement and remain judges instead of by resignation which put them beyond the pale of any constitutional protection. But he could not acquiesce in this blatant attempt to force the Court to the President's point of view. He would not introduce the Bill in the House. Another member did so.

Shrewdly, Sumners agreed that the initial hearings on the legislation should be held before the Senate Judiciary Committee, rather than the House Committee, if indeed he did not engineer that course. In any event the hearings grew long, the weather became hot, tempers became short, and participants in the struggle on the Senate side of the Capital were becoming exhausted while nothing happened on the House side. Many House members were privately grateful to Sumners for not having to go on record on the politically explosive issue.

With strategic timing, Sumners, on July 13, rose to tell a packed House of Representatives in his unique, quiet way that the Supreme Court had begun to adjust its thinking to changing conditions; that there was already a vacancy on the Court waiting to be filled; and that there was not enough left in the controversy to warrant the havoc it was creating in the country; furthermore, even if the Bill should pass the Senate it would not be reported from the House Judiciary Committee. For all practical purposes this killed it. Why should Senators prolong the bitterly divisive struggle if the House was not going to act on the Bill anyway? That night Senator Robinson, who had worn himself out leading the Senate proponents, and had hoped for the

reward of a seat on the Supreme Court, was found dead of a heart attack in his apartment, with a copy of the Congressional Record in his hand. The fight to "pack" the Supreme Court was over. Gone also was any unexpressed hope that Hatton W. Sumners may have had deep in his heart for appointment to the Court. F.D.R. would not speak to him.

Tribute to Sumners poured in to his office from all parts of the country. The American Bar Association awarded him its Gold Medal for distinguished service.

Senator Borah, of Idaho, the day following the speech wrote him:

"Dear Sumners:

You had a delicate and difficult task to perform and you did it with fine judgment, good taste, and inspiring patriotism.

I do not think, Sumners, that those who urge this measure have given full consideration to the fact that we are not legislating for a period but we are in all probability legislating for decades and decades.

Your State will be proud of you for what you did and your country will always be indebted to you.

Congratulations! from you friend,

Wm. E. Borah"

A few days later a subcommittee of the Judiciary Committee was meeting and requested Chairman Sumners to meet with them. After the business was concluded conversation turned to a discussion of the recent development. Mr. Sumners requested one of the members of the Committee to read to those present the letter which he had received from Senator Borah, and said that he thought he appreciated that letter the most of all the congratulatory messages that had come to him.

He compared Roosevelt with Woodrow Wilson and said that both were unable to see when a crisis had passed and the American people were ready to withdraw power from the executive.

"Part of God's plan", he continued, "is to keep people from exercising too much power in order to develop responsibility on the part of all the people. To this end He makes it impossible apparently for one to exercise too much power without abusing it. With the possession of great power there goes its oppressive exercise.

"Every tyrant has put the yoke on his people's necks, the lash of slavery upon their backs, and scattered their bones over the face of the earth."

He had always had a hard time getting things into his head unless he could see them or they appealed to common sense, were reasonable. When he was little he was taught that God, without any disrespect, "got a kick out of being worshiped". He could not accept that, and his mother thought he was already well on the road to hell. With more observation he reached the conclusion that God wants to be worshiped not for the glory of God, He doesn't need that, but for the good of the people, to keep them from making gods out of other people and worshipping them.

"Little human beings who want people to look up to them are the funniest little microbes on earth."

A long time back a fellow member of Congress had pointed to one of the equestrian statues in Washington and asked him if he would not like to have one of those in his honor when he was through.

"No", replied Sumners. "If after this world there is oblivion, I

wouldn't know anything about it; if I go to Heaven I couldn't see it with a spyglass, and if I go to Hell I wouldn't be able to enjoy it. Besides, I like riding, but I don't want to be horseback riding for all time to come."

8. The Final Years

In answering a question put to him Mr. Sumners once said: "The only way to withstand the vicissitudes of politics through the years is to tie people to you with an affection which will cause them to stay with you even when they think you are wrong. No man can be right all the time."

How well he had vindicated that principle! Notwithstanding the recurrence of extremely controversial issues which had divided his district and terminated the political careers of many public figures, his people had consistently reelected Hatton W. Sumners to represent them. He continued his service during the period of the Second World War, loyally supporting the legislative measures required to win it.

In 1946 he was serving his 17th consecutive term in Congress. He had been elected Representative at Large in 1912. In 1914 he was elected from the Fifth District, and each two years thereafter had been reelected to represent it. In 1914 the district had consisted of Dallas, Ellis, Rockwall, Hill and Bosque counties. As population grew first Hill and Bosque were transferred to other districts, and later Ellis and Rockwall were also reassigned so that the district comprised Dallas County alone.

Only two of the 435 members of the House had been there longer than he, and a few others remained who had first taken their seats with Sumners on April 7, 1913. Now, he decided, the time was approaching for him voluntarily to retire. On March 11 he secured permission to place in the Congressional Record a statement which he had made announcing his intention not to be a candidate for reelection to the 80th Congress. Then he told his fellow members:

"I would like my colleagues to understand, as I have tried to make clear in this statement, that I have no purpose to retire from active service with reference to the grave problems which confront the country and with which the Congress has to deal. The contrary is true. I hope to be helpful, as a private citizen in bringing about a better understanding and better cooperation between the people and their representatives in Congress, and to help to bring about a readjustment of governmental power and responsibility between the Federal Government and the States, in line with our constitutional arrangement, and a renewal of the strength of our democracy. Since a democracy is an association of private persons engaged in the common undertaking of governing themselves, by the nature of democratic government, the strength that renews it and sustains it must come up from the people. As a private citizen, sitting in council with other private citizens, what I have learned here might be a value to them, in effectuating that renewal. With the Federal Government limited to Federal business, as I would try to help our people agree on, the Members of Congress, no longer exhausted and consumed by the details of matters of local concern, would have time to study national and international problems and to give that degree of research and meditation necessary to develop in Congress the high quality of statesmanship which is indispensable if we are to have safe guidance through the perils of these times.

"This has not been an easy matter to decide. Thirty-three years develop habits and strong intimate friendships which

weigh heavily in such decisions; but after the most careful examination of possibilities I have not been able to discover any way by which I could find the time to maintain myself in an elective office, discharge the duties of chairmanship of an important committee, attend to matters for a populous and aggressive district, plus general duties, and give to these other matters the time which they would require and which, at the moment hold first place, perhaps, among the things which must be done if we are to have a chance to win through the maze of great difficulties in which we are now involved.

"I am not quitting. I am merely shifting my efforts to the place where I feel I can be most useful, where the nerve center is, where the strength and hope of our democracy resides, the place from which our salvation must come if we are to escape the fate of other peoples no longer free."

Returning to Dallas, Mr. Sumners took up residence at Lawyers' Inn on the campus of the Law School of Southern Methodist University. There he became a source of wisdom, support and inspiration to many young law students who sought his advice and assistance.

For a while he served as Director of Research in Law and Government of the Southwestern Legal Foundation.

In 1949 he established the Hatton W. Sumners Foundation for the Study and Teaching of the Science of Self Government and thereafter willed to the Foundation the property which produces the income that enables the Foundation to carry on its efforts to fulfill the purposes for which it was created.

As he busily scribbled on a scratch pad one day, Mr. Sumners looked up to see Professor A.J. Thomas of the Law School watching him. With a smile he remarked to the Professor, "It is easier to read writin' that it is to write readin'." Nevertheless he adhered to his purpose to write a book in which he would set out his philosophy of self government, its nature, history and requirements, and in 1959 the book entitled *The Private Citizen and His Democracy* was published, when he was 84 years old. It was his final work.

Three years later, April 19, 1962, six weeks before his 87th birthday, Hatton W. Sumners died in Dallas. He was buried beside the graves of his parents in the old Garland cemetery, once a peaceful country graveyard, but now surrounded by stores, filling stations, garages and unceasing traffic.

His spirit continues to live in the lives, ambitions, and achievements of those who cherish the ideals of independence, freedom, justice and democratic self government in a Federal republic.

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