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HATTON SUMNERS AND THE 1937 COURT-PACKING PLAN

by Anthony Champagne

On the way back to the Capitol after Franklin Roosevelt had announced his court packing plan, Hatton Sumners, chairman of the House Judiciary Committee, announced to the other Congressional leaders in the car, "Boys, here's where I cash in my chips." Sumners' opposition, given the great power of House committee chairmen in those days, was one reason that the initial fight over the Court packing bill would be in the Senate.¹

The plan was too much for the conservative Sumners. He felt that such a proposal gave the president dictatorial powers. Yet the plan came as no great shock to Sumners. He had realized prior to its announcement that Roosevelt and the Court were on a collision course. In fact, he had earlier concluded that new and younger blood was needed on the Court. The Court, Sumners felt, had been acting improperly. He had been angered in particular by its decision declaring the Municipal Bankruptcy Act unconstitutional. That act had come from his committee and he felt the Court's reasoning was both unrealistic and untenable. But Roosevelt, Sumners felt, had gone too far.²

Sumners had feared such an extreme proposal for quite some time. Indeed, his committee was already becoming congested with proposed statutory changes and constitutional amendments, all designed to restrict the Court. Such proposals were both dangerous and unnecessary, he felt. In January 1937, he wrote Roosevelt's aid, Marvin McIntyre, that public opinion was now moving in the "right direction" and was a "natural force which seems to originate out of an instinct of governmental self protection and is more to be depended upon just now to move the Judiciary out of the field of policy fixing across the fence into its own natural territory than any words which we can add to our laws." But, he warned McIntyre, there was danger that extremism would take hold. Wrote Sumners, "Somebody has got to know the road and how to guide or we may pile up in the ditch. There has got to be somebody around who appreciates that there are times when the foot should be shifted from the accelerator to the brakes"³

With the court packing proposal, Sumners became a self-appointed brakeman. All that was necessary legislatively, Sumners felt, was a decent retirement system for the judges. While resigning judges could collect full salaries until their deaths, resignation meant loss of judicial status, which meant salary cuts could be imposed. Without judicial status those salaries would also be subject to income taxes. Van Devanter and Sutherland, Sumners learned, wanted to retire if their pensions could be

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secure. Sumners therefore proposed the creation of the new position of "retired justice." Retirement, rather than resignation, meant that judicial status would be maintained and thus there was constitutional protection from salary cuts and from the income tax. However, this retirement bill had been defeated on the floor of the House. Rather than support Court-packing, Sumners decided to try again to pass the "retired judges" bill.⁴

Such a decision was, of course, a direct affront to Roosevelt, but, the stern judiciary chairman had no fear of the president. Sumners had been in the House since 1913 and had represented the Fifth Congressional District, the Dallas, Texas, area, since 1915. He was a self-educated man, rising from poverty to read law and then to become a Dallas District Attorney, a Congressman-at-Large, and finally, Fifth District Congressman. Sumners had served on the Judiciary Committee from his first term in Congress and was chairman of the committee after the Democrats regained control of the House in 1931.⁵ He was far from being one of Roosevelt's men. While his relationship with the president was cordial at first, a major conflict had erupted between the two men in 1934 when the attorney general submitted anti-crime legislation that was referred to the Judiciary Committee. Instead of cooperating with the administration and issuing a favorable report on the bills, Sumners delayed action on them because he considered them to be poorly drafted. An angry Roosevelt telephoned Sumners and demanded to know when action would be taken. When Sumners told the president that the legislation should not be reported in the form submitted, an angry FDR asked Sumners, "How would you like to have your committee taken away from you?" Sumners shouted into the phone, "Who in hell is going to do it?" and hung up on Roosevelt. Later a calmer FDR gave Sumners the pen that had been used to sign the revised crime legislation.⁶ The incident proved Sumners' independence from Roosevelt long prior to the court packing plan.

A fawning biographical sketch described this independent chairman as "quiet", as "studious", as "kind", and "gracious." His advice is described as being sought by all in power.⁷ The real Sumners was a more complex and considerably less attractive personality. Most offensive was Sumners' closeness with money. He spent hours hunting for the cheapest laundry to clean his clothes, tried sleeping in his office to save on hotel bills, and would not travel by taxi unless assured the party with him would pay the fare.⁸ Even Sam Rayburn, who was quite kindhearted in his opinion of the Sumners — they had briefly been room mates in their early Congressional days — became disgusted with Sumners' stinginess. At one luncheon meeting, Sumners refused to order a meal since he would have had to pay; instead he nibbled food from Rayburn's plate, eventually leading the usually reserved Rayburn to burst into profanity.⁹

It was not love for Sumners but his control over the Judiciary Committee through the chairmanship that made him a leading opponent of the plan in the House. Nevertheless, Sumners remained relatively quiet

in his opposition to the plan. He was bombarded with letters and telegrams, both in support and in opposition to the plan. Yet Sumners' firm reply was noncommittal, promising only to give the legislation the consideration it deserved.¹⁰

Rumors began to circulate in Dallas that a deal was in the making between Sumners and FDR by which Sumners would get a Supreme Court appointment in exchange for supporting the court-packing plan and reporting the bill.¹¹ It may well be that Sumners secretly desired a judgeship¹², but he denied the rumor.¹³ Finally, all chance of a judgeship was destroyed when Sumners addressed the House on July 13, 1937. In his speech he shattered the assumption that the Court bill would pass the House if it passed the Senate. Instead Sumners claimed he would keep the bill in his committee. Calling for national unity, Sumners expressed concern for presidential power. He argued that nature, helped by the retirement act, would solve the problems with the Court. Said Sumners:

As soon as we take the lash from the heads of these judges over there, some of them will retire. I mean that as a fact. Everybody knows it is a fact. What is the excuse, then, for this bill being pressed any further? To save my life, I cannot figure it out.¹⁴

That night Joe Robinson, the Senate Majority Leader and champion of the plan in the Senate, died, but claimed the *Dallas Dispatch*, the Sumners challenge was more important in defeating the plan than was the death of Robinson.¹⁵

After the Court packing plan died, Sumners offered an analysis of the crisis: Both Roosevelt and Woodrow Wilson, he argued, were unable to see when a crisis had passed and when the American people wished to take power from the executive.¹⁶

NOTES

¹Joseph Alsop and Turner Catledge, *The 168 Days* (New York, 1973), 67-68; William E. Leuchtenburg, "Franklin D. Roosevelt's Supreme Court 'Packing' Plan," in Harold M. Hollingsworth and William F. Holmes, eds., *Essays on the New Deal* (Austin, 1969), 78.

²Elmore Whitehurst, *The Life and Public Service of Hatton W. Sumners* (n.p., 1981), 28. Whitehurst served as Sumners' personal secretary from 1927 until Sumners left Congress.

³Hatton Sumners to Marvin McIntyre, January 12, 1937. Hatton W. Sumners Papers, Box 76, folder 3.1, Dallas Historical Society.

⁴Alsop and Catledge, 40-41.

⁵Whitehurst, 24; *Nashville Banner Magazine*, February 14, 1937, 2. Hatton W. Sumners Papers, Box 132, file 1.24, Dallas Historical Society.

⁶Whitehurst, *The Life and Public Service of Hatton W. Sumners*, 25-26.

⁷*Nashville Banner Magazine*, 2.

⁸Dale Miller interview by Anthony Champagne, July 13, 1980. Even Elmore Whitehurst discussed this miserliness, although he attempts to present it in a favorable light. Whitehurst, *The Life and Public Service of Hatton W. Sumners*, 6.

⁹Cecil Dickson interview by Anthony Champagne, June 29, 1980.

¹⁰The enormous number of letters and telegrams along with Sumners form reply, can be found mostly in Boxes 76-84, Hatton W. Sumners Papers, Dallas Historical Society.

¹¹J.C. Thompson to Hatton Sumners, February 11, 1937. Hatton W. Sumners Papers, Box 76, folder 3.27, Dallas Historical Society.

¹²Whitehurst, *The Life and Public Service of Hatton W. Sumners*, 29.

¹³The passage in the letter that discusses the rumor is circled. At the bottom of the letter, a response was begun in shorthand and then it is written, "of course the rumour you refer to is ridiculous."

¹⁴*New York Herald Tribune* (Late City Ed.), July 14, 1937, 1. Hatton W. Sumners Papers, Box 132, folder 1.1, Dallas Historical Society.

¹⁵*Dallas Dispatch*, July 17, 1937, unpaginated clipping. Hatton W. Sumners Papers, Box 132, folder 1.2, Dallas Historical Society.

¹⁶Whitehurst, *The Life and Public Service of Hatton W. Sumners*, 30.