Charles K. Wiggins, *George Turner and the Judiciary Article*,


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George Turner And

by Charles K. Wiggins

A two-part article considers the creation of the Washington courts and the remarkable man who led the way.

Part I: A Character From Plutarch

George Turner was the most outspoken, articulate and controversial delegate to the 75-member Constitutional Convention of 1889. Although his formal education was limited to a total of eight months in a one-room schoolhouse, Turner was appointed Supreme Court Judge of Washington Territory at age 34 and served with distinction. Turner did not hesitate to oppose the most powerful corporate interests of the day, and they in turn opposed him and his political aspirations before, during and after the Constitutional Convention. In later years, Turner served in the United States Senate and assisted in resolving several international disputes. This brief article cannot paint an adequate portrait of Turner's legal acumen, his love for the Constitution and the law, and his passion for defending the underdog, all more fully described in the biographical sketches listed at the end of this article. Fellow delegate Austin Mires attributed to Turner "the first rank in the way of ability," and criticized his fellow delegates for growing "very jealous of the overshadowing ability of George Turner..." Another contemporary eulogized Turner as a "warrior lawyer of a pioneer day who lived characteristically and intently in the search for justice through forensic combat."

This remarkable man was the chairman of the committee which drafted one of the more noteworthy articles of the Washington constitution, the judiciary article. Delegate T. L. Stiles of Pierce County, who also served on the judiciary committee and was later elected Supreme Court judge, observed:

Among the meritorious provisions of our constitution which had any degree of novelty at all, I pronounce the judicial system first. Not many of the states have constitutional courts, and still fewer of them have undertaken to define the jurisdiction of their courts by a higher law. The judiciary article was the first debated by the Constitutional Convention, at greater length than any issue other than the disposition of the tidelands. Turner also played an important role in debates over other issues, including his unsuccessful battle to establish in the constitution a commission to regulate the railroads, but that story must be told elsewhere.

From One-Room Schoolhouse to the Supreme Court Bench

George Turner was born in Missouri on February 26, 1850 to a hard-working frontier family with neither formal education nor the means to educate their own children. Turner's formal education aggregated eight months in a one-room school in Lebanon, Missouri. Even this rudimentary education was interrupted at age 11 by the outbreak of the Civil War. Turner's father and older brothers all enlisted in the Union forces, and young George found a place as a messenger boy in a military telegraph office. After the war, George joined his brother, Colonel W. W. B. Turner, ten years his senior, in Mobile, Alabama. Turner read law under his brother's supervision and was admitted to the bar in 1869 at the age of 19.

Turner became active in Republican politics during Alabama's reconstruction era. He was associated with Alabama's notorious carpetbag senator, George E. Spencer. By 1874, the tide had turned against the Alabama Republican Party, which retained the support of the vast majority of the black population, but that of only a few whites. Turner campaigned for election as attorney general of Alabama, but lost the election to a Democrat. Senator Spencer was defeated in 1877, and Turner then became the Republican leader in the state. Turner headed the predominantly black Republican delegations to the Republican national conventions in 1876 and 1880, earning him the gratitude of Presidents Grant and Arthur.

Arthur appointed Turner Justice of the Supreme Court of Washington Territory
on July 4, 1884, an apparent reward for Turner's services to the Republican Party in Alabama and to Arthur's faction in particular. Turner's appointment violated a plank in the Republican platform of 1884 which declared that, "appointments by the President to offices in the territories should be made from the bona fide citizens and residents of the territories wherein they are to serve." Given his background, George Turner hardly seemed a fit candidate for Supreme Court judge. Turner determined to make a favorable impression on the people of Washington at his first Court appearance on October 6, 1884 at Goldendale, Klickitat County, but his plan went awry:

He came down from Spokane to the Dalles, Oregon. Having passed a comfortable night at the Umatilla House, at 6:00 a.m. he started by buckboard stage for Goldendale. He had a grip containing his night clothes and a change of linen, and, ever careful to maintain the dignity of his office, he wore a plug hat and a Prince Albert coat, the latter being protected by a linen duster. The sun was bright and all other signs promised a beautiful day. The judge seated himself by the driver. Soon it began to rain; it penetrated the duster, the Prince Albert, and, the Judge thought, even his skin. It rained all day, and the young Judge was chagrined to find that every inhabitant of Goldendale was out to see the first judge ever to hold court in their town, crawl bedraggled from the stage.7

Despite this inauspicious beginning, Judge Turner soon distinguished himself by his hard work and legal reasoning. He sufficiently impressed territorial lawyers that he was able to weather the political storm which swept over Republican officeholders when Democrat Grover Cleveland became President in 1885. Alabama Democrats sought revenge on Turner for his role in reconstruction politics, campaigning to have him removed from the bench.8 Most of the lawyers in Judge Turner's district supported Turner in this battle, regardless of their political affiliation. The bar association of Spokane County adopted a resolution commending Judge Turner, vouching for his integrity, and recommending that he be retained in office.9 A prominent Democratic attorney of Spokane, L. B. Nash, wrote to the attorney general in defense of Turner:

We want lawyers, not politicians. We have been greatly outraged in the past in this Territory in the appointments of judges — with a few rare exceptions.

... Upon creation of the Fourth Judicial District about one year ago, George Turner of Alabama was appointed thereof ... We like him. The Bar, I think, without exception, are highly pleased with him and desire that he be retained in office until the expiration of his commission. In this I fully concur, for he has proved to be first, a thoroughly educated lawyer; second, his mind is eminently judicial; third, he is a well-bred gentleman; fourth, he is entirely fair and of strict integrity; fifth, he makes his Court pleasant for attorneys and has no favorites. In short, he possesses more good qualities for a judge than one would expect to find in one appointed to fill his place.10

President Cleveland retained Judge Turner. Turner resigned from the Court in early 1888, presumably to embark in the private practice of law and to engage in politics.

When the delegates convened on July 4, 1889 for the Constitutional Convention, the eastern Washington Republicans favored Turner for chairman, or president, of the Convention, while the westside delegates favored John Hoyt of Seattle. Turner publicly protested that he was not a candidate, but tacitly allowed H. W. Fairweather, delegate from Sprague, to conduct his campaign. The Seattle Times described the decorum with which judges Hoyt and Turner conducted their campaign for the presidency:

The two leaders treat each other with grave courtesy and can occasionally be seen pacing the street together with slow and judicial tread; for though both are off of the bench, they have not lost that dignity and repose of manner, which men who have long served the public in a judicial character generally acquire. Judge Turner is especially a very solemn man, with large and penetrating black eyes and a constrained manner of speaking; a deep thinking man, I should say, who though he is not lean as Cassius was, is a foeman worthy of a good man's steel.

Hoyt and Turner never talk politics when they are together, and the fight for the chairmanship is a tabooed subject between them. Turner, it must be remembered, is not and never has been a candidate. He is, however, in the hands of his friends, who can do with him what they will. This is a delicate distinction which will be appreciated by politicians, though it will perhaps not be altogether clear to the laity.11

Hoyt and Turner discussed the chairmanship long enough for Turner to decide to withdraw his own name and sup-
port Hoyt for election. In a caucus of Republican delegates, Turner gracefully nominated Hoyt, explaining that although he had been mentioned as a candidate for president, "he believed that a majority of the Republican delegates favored another gentleman, and recognizing the eminent fitness of that gentleman he hoped his friends would do as he intended to do and cast their ballots for Judge Hoyt."12

Several of Turner's supporters refused to accept defeat and joined forces with the Democratic delegates in an effort to defeat Hoyt's election. The dissident Republicans schemed to vote against Hoyt on the first ballot, forcing a second one. In turn, the Democrats agreed that they would vote the second time around for any good candidate besides Hoyt. This scheme depended on a secret poll, which would disguise the defecting Republicans on the first ballot, and the Democrats on second. The convention agreed to a secret ballot by a vote of 38 to 34.

Turner nominated Hoyt, again praising him as "eminently fitted" to perform the duties of president of the Convention or any other office. C. H. Warner, of Whitman County, the territorial Democratic chairman, was also nominated, as was S. G. Cosgrove, an independent delegate from Colfax County. The ballots were collected in hats and were called out one by one and piled on the table before the counters. For a time, the outcome was in doubt, with Cosgrove showing surprising strength and Warner and Judge Hoyt proceeding neck and neck. The last few votes, however, put Hoyt over the necessary majority.

**Turner's Later Career: Senator, Arbitrator and Counsel for the United States**

Just as he had never shied from conflict in his younger days, Turner remained the focus of controversy throughout the rest of his long and distinguished career. He unsuccessfully sought election to the Senate in 1889, 1891 and 1893.13 Washington's first senators were John B. Allen of Walla Walla and Watson Squire of Seattle. Allen had been elected to the House of Representatives in 1888, but went to Congress instead as a senator after Washington's admission to statehood.14 Watson Squire had been appointed Governor of Washington in 1884, serving capably and promoting statehood until his replacement in 1887 by a Democratic appointee, Eugene Semple of Oregon.15

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Turner mounted a major battle in the Legislature of 1893 to take Allen's place in the Senate. (Until the twentieth century, senators were elected by state legislatures.) The campaign was complicated by an intense rivalry between Seattle and Tacoma, Seattle favoring Allen and Tacoma George Turner.18 The Legislature deadlocked, ballot after ballot failing to produce a majority.17 Turner reportedly offered to withdraw if Senator Allen would also retire, but Allen enjoyed the support of Governor John McGraw, and counted on a gubernatorial appointment if the Legislature failed to reach a majority.18 The Legislature adjourned without electing either candidate, and McGraw appointed Allen to the vacancy. The Senate, however, after protracted debate, refused to seat Allen and Washington was left with only one senator for two years until John L. Wilson of Spokane was elected in 1895.19

Turner's opportunity came in 1897, when the Populist Party and the free-silver movement decimated the Republican ranks. Turner had become moderately wealthy through mining investments, particularly the LeRoi Mine in British Columbia, and he enthusiastically embraced the free-silver movement.20 Turner left the Republican Party when the national convention declared for the gold standard in 1896: he formed a free-silver Republican organization. He was joined by Senator Squire, whose term was to expire in 1897. Washington's silver Republicans, Populists, and Democrats simultaneously held their state conventions in Ellensburg, and Turner played an important part in bringing about a fusion ticket.21 The three parties allocated statewide political offices among themselves; then each party nominated its own candidates for the positions allocated to it.22 The Populists commanded the greatest strength and received the preponderance of nominees, including the governorship. The fusion ticket carried the state, giving the Populists clear control of the Legislature.23 Unfortunately, no agreement had been reached at Ellensburg as to the election of a United States Senator to succeed Senator Squire. The Populists could have elected a Populist candidate, but they were unable to agree among themselves. After a one-week deadlock, a fusion caucus finally chose George Turner, who was elected by a substantial fusion majority on the next day.24

Turner served a single term in the U.S. Senate and battled against U.S. imperialism in the Philippines. He argued that the Constitution did not confer any power on the federal government to acquire territories to be held and governed permanently as colonies.25 He argued that it was politically and morally wrong for the United States to assume ownership of the Philippines, declaring in a speech on the Senate floor:

> Liberty knows no clime, no color, no race, no creed... The first fundamental of all liberties is the right to select your own form of government and your own rulers. The best of all governments is a tyranny if imposed on the governed without their consent.26

Turner earned the respect of President Theodore Roosevelt, who appointed him as one of three "impartial jurists of repute" who were to meet with three British jurists to settle the long-standing boundary dispute between Alaska and Canada. Roosevelt probably selected a senator in order to convince the Senate to ratify the arbitration treaty, and he selected a Northwesterner in order to influence the opinion of the Northwestern states in favor of the arbitration.27 The tribunal decided the main points in favor of the United States, and Turner gained the respect of his fellow arbitrators and the gratitude of President Roosevelt.28

Turner failed to win a second term in the Senate in 1903. Prosperity had returned to the state of Washington, and the Populists and silver Republicans were gone from the scene, leaving the Republican Party with an overwhelming majority in the Legislature.29 In 1904,
Turner was the Democratic candidate for governor, and campaigned vigorously on a platform of railroad regulation. 20 1904, however, was also a Republican year, with Theodore Roosevelt sweeping the state and carrying the Republican gubernatorial candidate, Albert Mead, to victory. 31 Despite Turner’s unsuccessful campaign, the next Legislature enacted a railroad regulatory commission by a large majority; it was signed into law. Thus, Turner indirectly helped to bring about a railroad commission, for which he had vigorously but unsuccessfully contended 15 years earlier in the Constitutional Convention.

In 1910, Turner again served his country with distinction, acting as one of the leading counsel in a dispute over fishing rights on the Grand Banks of Newfoundland before the permanent court of arbitration at The Hague. 32 Turner died on January 26, 1932, a few weeks short of his 82nd birthday. 33 Austin Mires, a fellow delegate to the Constitutional Convention and a lifelong admirer of Turner, paraphrased Marc Antony’s eulogy of Caesar, stating at Turner’s funeral, “Thou art the ruins of one of the noblest men that ever lived in the tide of times.” 34 Another of Turner’s contemporaries, Judge James Geraghty, also borrowed a classical metaphor, and described Turner as “of the Roman mold—a character from Plutarch.” 35

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1 Speech by Austin Mires, Ellensburg State Normal School, July 11, 1923 (original text on file with City of Ellensburg Public Library).
2 Diary of Austin Mires, August 6, 1889 (WSU Library).
6 Johnson, George Turner of Supreme Court of Washington Territory, 44 Or. Hist. Q. 370 (1943).
7 Id., 44 Or. Hist. Q. 371-72.
8 Id., 44 Or. Hist. Q. at 383.
9 A Character from Plutarch, supra, 18 Wash. L. Rev. at 171.
10 George Turner of Supreme Court of Washington Territory, supra, 44 Or. Hist. Q. at 384-85.
11 The Seattle Times, July 5, 1889.
12 Spokane Falls Review, July 6, 1889.
13 Background of a Statesman, supra, 34 Pac. N.W.Q. at 252.
15 Id. at 2029-38.
17 Id.
18 Tacoma Union, February 1, 1897.
19 Id.
20 Background of a Statesman, supra, 34 Pac. N.W.Q. at 253.
21 Id.
23 Id. at p. 110.
24 Id.
26 Id., at p. 371.
27 Id. at p. 381.
28 Id. at 345-36.
29 Background of a Statesman, 34 Pac. N.W.Q. at 264.
30 Id. at 264-65.
31 Id. at 266.
32 United States Senator and Counsel and Arbiter for the United States, supra, 34 Pac. N.W.Q. at 386-87.
33 Spokane Spokesman Review, January 27, 1932.
34 Mires’ Diary, January 28, 1932, Washington State University Library.

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Note on Sources

I have extracted the debate over the judiciary article from contemporary newspaper articles, drawing most heavily on the Seattle Post-Intelligencer, the Tacoma Morning Globe and the Spokane Falls Review. Claudius O. Johnson wrote a series of articles on George Turner: George Turner, a Character from Plutarch, Part I, 18 Wash. L. Rev. 167 (1943), Part II, 19 Wash. L. Rev. 18 (1944); George Turner of Supreme Court of Washington Territory, 44 Ore. Hist. Q. 370 (1943); George Turner, Part I: The Background of a Statesman, 34 Pac. N.W.Q. 243 (1943); Part II: United States Senator and Counsel and Arbiter for the United States, 34 Pac. N.W.Q. 367 (1943).
George Turner and the Judiciary Article

Part II: The Constitutional Convention of 1889
Creates a Judiciary for Washington

by Charles K. Wiggins

Having surveyed George Turner’s remarkable career, we now focus on the controversies and points of view surrounding the genesis of our court system.

George Turner was appointed in 1884. He served as a judge in the four district courts that came to the capital once a year to sit as the Supreme Court. Originally, this meant that the judge who tried the case sat on the Supreme Court in review of his own decision, but with the addition of a fourth judge, Congress provided that the judge who had tried the case in the lower court should not sit in review of it. Each district judge held terms of court at different places within his district. The Enabling Act also provided for probate judges and justices of the peace. From the first territorial code of 1854, the Legislature abolished all distinctions between actions at law and suits in chancery, providing for one form of action known as “civil action.”

The Oregon constitution of 1857 established county courts of probate jurisdiction and limited civil jurisdiction, similar to the probate judges and justices of the peace in Washington Territory. Oregon’s circuit courts were courts of general jurisdiction, holding terms of court in different counties, just as the Washington territorial district courts held terms of court throughout their districts. The California constitution, by contrast, established a court of general jurisdiction in each county, always open and without terms of court.

The Portland Oregonian published a model constitution by a prominent Seattle attorney, W. Lair Hill, on July 4, 1889, the opening day of the convention. The Hill constitution strongly influenced the convention delegates. Hill, who had practiced law in both Oregon and California, urged the adoption of the California system, which swept away the common law or itinerant circuit court system which still prevailed in Oregon.

I am forced to the conclusion that [the California system] is in many ways preferable; better adapted to the expeditious transaction of business; better adapted to the correct, just and uniform application and administration of the laws; better enabling the court to give its attention and its energies to the enforcement of rights and redress of wrongs, instead of wasting a large share of both in the settlement of technical questions touching the relations of the various courts to each other, of the judges to the courts themselves, of the proceedings and judgments of court to the beginning and end of terms, and the like — all of which we lawyers were wont to consider as things important, if not essential, to the orderly conduct of judicial business, until California took hold of the subject with a strong hand and intelligent purpose, and demonstrated that much of what we had supposed to be necessary to judicial procedure is useless rubbish, and that a good
deal of what we thought promotive of justice is obstructive of it.\textsuperscript{9}

Turner believed that the superior court system brought the courts "within easy reach of everybody and a sure speedy action on all cases..."\textsuperscript{10} He defended the system against the charge that it was too expensive to have a superior court judge in every judicial district, pointing out that co-\textsuperscript{ining civil, probate and criminal matters would save the salaries of separate judges.}\textsuperscript{11}

The judiciary committee chose to establish each court and its jurisdiction within the body of the constitution. Delegate Hoyt of Seattle, a former territorial Supreme Court judge, proposed leaving the jurisdiction of the court to the Legislature.\textsuperscript{12} Turner responded that this was not a matter of legislation, but of establishing a principle of government, and Hoyt's proposal lost by a decided vote.\textsuperscript{13}

The delegates vested the Supreme Court with original jurisdiction in a few instances, and appellate jurisdiction in all other cases except for civil actions seeking to recover $200 or less.\textsuperscript{14} The phrase "appellate jurisdiction" eliminated centuries of archaic procedural niceties which distinguished between a "writ of error" in a common law proceeding and "review by appeal" in a proceeding in equity.\textsuperscript{15} Hill had proposed that the Supreme Court have "jurisdiction to revise the final decisions of the Superior Courts..." Hill never explained what he meant by "revision" superior court decisions, but implied that circuit courts such as the Supreme Courts of Washington Territory and the United States exercised "revisory jurisdiction" over decisions of individual justices sitting as trial judges. Hill's proposal for revisory jurisdiction came from the Oregon constitution\textsuperscript{17} and survives in the Washington constitution's provision for extraordinary writs necessary and proper for the Supreme Court's "appellate and revisory jurisdiction."\textsuperscript{18} The judiciary article abandoned the territorial practice under which the judges of the Supreme Court had both tried cases and then sat in banc on appeal from one another's judgments. He perceived "substantial unanimity" that vesting the functions of both original and appellate jurisdiction in the same judges was "manifestly objectionable in principle and inconvenient in practice;"\textsuperscript{19} as evidenced by the women's suffrage cases described in an earlier article in this series.

The delegates vigorously debated whether the Supreme Court should have three judges, as proposed by the committee, or five, as recommended by a minority report.\textsuperscript{20} Two concerns emerged during the debate in the committee of the whole:\textsuperscript{21} The delegates felt that a larger bench would be less susceptible to corruption and bribery; several delegates expressed dissatisfaction with the close collegiality on the three-judge territorial Supreme Court. Other delegates favored three judges on the ground of economy. Delegate Ralph Oregon Dunbar of Klickitat County rejected the plea of economy:

There will be great questions to be decided within the next few years, and we want a court strong in number and learning. It was easier to control three men than five. All a corporation would have to do would be to control one man in a
Griffitts of Spokane echoed Dunbar's sentiments, exclaiming, "In God's name, do not leave the courts in a careless condition." Sullivan of Tacoma added his opinion that the territorial bar had lost confidence in a bench of three judges, "notably by reason of its following the lead of one man who had thrown out cases repeatedly upon small technicalities, some of which had been carried to the United States Supreme Court, and by that court put back again upon the docket." Stiles of Tacoma explained somewhat more diplomatically, "It is not, as has been intimated, that a widespread suspicion of the judges individually pervades the minds of the lawyers, but chiefly that the feeling of good fellowship which was inseparable from a small number of judges had had its effect upon the decisions of the court, and from this had come many of the ill-judged decisions of that court." 

Neither Sullivan nor Stiles had referred by name to any individual judge, but Turner apparently felt compelled to defend the Court:

Several delegates here, and several gentlemen admitted to the privileges of the floor, have been members of the Supreme Court of this territory, and for myself, from my reading and my experience, I declare that for ability, integrity and judicial learning, it will compare favorably with any other court in the country. It has done anything in its career worthy of serious criticism. There have been exciting questions that have excited adverse criticism, but no court can escape this. I do not care to sit silent under these circumstances and listen to such criticisms upon that court as have been made today.

Buchanan, the "thrift Scotman of Ritzville," defended the three-judge court. Buchanan had been born in Glasgow, Scotland, immigrated to Wisconsin in 1850, and to Washington in 1885. He was 69 years old, a farmer, and was by at least one account "venerated as the sage and father of the body in which he sits so influential a part." Another reporter characterized Buchanan's speeches as "quaint and solemn, but with a voice, accent and manner that always attracts the undivided attention of the members." He opined that the lawyers must be very suspicious of each other when they said that corruption might creep in among any of their number, even on the bench. Buchanan discounted any fear of corruption, and thought that five judges would have a "soft snap." Buchanan responded to the criticisms of the three-judge territorial Supreme Court: "The trouble now is that the present court gets together and sits upon each other's decisions, and so any reference to the present court is no argument, for the present court is in no way analogous to the proposed Supreme Court." Griffitts' proposal for five Supreme Court judges prevailed on the vote of 44 delegates.
Browne of Spokane, the delegates also authorized the Legislature to increase the number of judges from time to time, and to allow the court to sit in separate departments.

The election of judges sparked debate on several issues. The delegates appeared to agree with Lair Hill that judges should be elected, and that the executive appointment of judges is "inconsistent with the spirit of Republican government." Hill reported the answer of a "gentleman who had considered the subject pretty thoroughly" to the suggestion that appointed judges were abler and more independent:

That is a lawyer's view of it, and possibly it is correct, though I doubt it. At all events, correct or incorrect, it is immaterial; for the people of this republic have concluded that their courts of justice are of sufficient importance to warrant their being brought into conformity with republican institutions; and they are not going to allow anybody hereafter to force upon them better judges than they think they need.

Only one delegate, Buchanan of Ritzville, argued for appointment rather than election of judges. Buchanan began his speech by characterizing the selection of judges as "perhaps the most important subject that will come up before us." He expressed concern that judges might be elected by the "rabble": "If they are nominated in political conventions they will be selected for their ability to strengthen the ticket rather than for their character." Buchanan disavowed any concern about corruption among appointed judges, although he acknowledged that even in this convention there might be a few men who could be bought. When the chairman called Buchanan to order for making assertions derogatory to the delegates, Buchanan joked, "I cheerfully withdraw them. I did not think any gentleman here thought they applied to him." Buchanan's motion lost by a decided vote.

Warner of Colfax proposed minority representation on the Supreme Court — if two judges stood for election, each voter could vote only for one, if three stood for election, a voter could only vote for two, and so on.

The Democratic Congress had inserted a similar provision into the Omnibus Admissions Act to insure Democratic representation in the constitutional conventions of the predominantly Republican northwestern territories, and the Washington Democrats wished to perpetuate the custom on the Supreme Court bench. The Republican delegates uniformly opposed minority representation on the ground that politics should not be dragged into judicial elections, and that it improperly restricted the right of suffrage. The Democratic delegates uniformly favored the proposal on the ground that it protected the minority against encroachments by the majority. The Seattle PI. reported:

Nearly every one of the Democrats expressed his impressions, which were always for Warner's amendment, and almost all the Republicans had impressions by which they were led to believe the opposite way, and when the vote came to be taken it was found that there were 43 Republicans who were in favor of a nonpolitical bench and there were 24 Democrats who wanted one of their party always to sit in judgment on their cases in the Supreme Court.

Moore of Spokane offered a variation on the election of Supreme Court judges, proposing to divide the state into two districts, electing two judges from each district and a chief justice from the state at large. Moore argued that his proposal would make judicial elections more nonpartisan and avoid political trades in convention. Moore's proposal lost by a decisive vote.

The delegates debated reducing the judicial salaries proposed by the committee — $5,000 for Supreme Court judges, and $3,000 for superior court judges. Hoyt of Seattle thought the matter should be left to the Legislature, but Turner urged that these were principles of government which should be settled by the convention. Turner expressed some discomfort about the debate in view of "a suggestion by some of his zealous friends and in the public print that he was to be a candidate for the Supreme bench," but was able to bring himself to oppose any reduction of
salaries because he believed $5,000 to be the fair, just and reasonable sum.\textsuperscript{46} Delegates who favored a reduction in salary argued economy, while opponents urged that judges should be paid a fair salary so that they could be free of speculation and business interests. Buchanan approached the question in his own unique style:

There was another way of looking at it, and that was counting it by the day — $3,000 was about $10 per day, very good wages. $4,000 was $13.33 per day and $5,000 was $16.66 per day. It looks larger when it is looked at in this way. The average farmer in the state who works hard every day and has to pay his taxes toward these big salaries is satisfied if he clears $1 per day. A judge of the right kind who gets $3,000 or $4,000 is well paid. I will go $4,000 but not a cent more. I wish I had the education of some of you lawyers.\textsuperscript{47}

The delegates finally agreed upon $4,000 for Supreme Court judges and $3,000 for superior court judges.

The delegates debated whether the superior court judges should serve six-year terms, as recommended by the judiciary committee, or four years as the minority proposed.\textsuperscript{48} Turner defended a six-year term on the ground that judges would be tempted or swayed by public

\begin{quote}
\textit{\ldots the hardest task a judge has to perform is to deliver an opinion which he knows to be the law, but also knows is opposed to the feelings of the people around him.}\textsuperscript{50}
\end{quote}

opinion for a second term if the short term were adopted. Godman of Dayton replied that Turner’s concern about influence over judicial decisions was inconsistent with his argument that a court of three judges was sufficient and would not be corrupted because of its small number: “If a judge is honest he cannot be corrupted if he is on the bench for a long or a short term.”\textsuperscript{49} Turner denied any inconsistency:

He declared from personal experience that the hardest task a judge has to perform is to deliver an opin-
Eshelman's motion lost by a decided vote.

Crowley of Walla Walla urged that justice courts be abolished, quoting territorial judge Nash who observed that they "moved in a mysterious way their wonders to perform." Turner felt that justice courts were necessary, but quoted Nash again as saying that, "The only way to treat a justice court judge was to stand over him with a stuffed club and knock him with it at the first indication of waverin of the right track." 39

... If judges were to comment on the facts, juries might as well be abolished, for the judge could carry nine cases out of ten.

Suksdorf of Spokane moved to strike out the prohibition against judges commenting on the evidence. The delegates considered amending the section to provide that judges may state the testimony as well as declare the law. The former judges, Turner and Hoyt, both favored the amendment on the ground that, "As it stood the section was likely to embarrass the judge. It was necessary to refer to the facts in order to make the law plain to the jury." Moore of Spokane also favored the amendment on the ground that, "Judges should be active factors, not mere figureheads, in the trial of cases." Buchanan, who never hesitated to challenge the legal profession, agreed with the amendment because he thought, "The judge ought to be allowed to protect the jury from lawyers who tried to befuddle them when they were on a doubtful case." 40

The lawyers who opposed the amendment wished to preserve a proper separation between the functions of judge and jury. Sullivan of Whitman did not believe that judges had any business with the facts: "After both attorneys had commented fully on the facts, the only effect of the judge doing so is to give him the last word, and to give one side or the other an extra attorney according to which side the judge happens to incline to." Dunbar of Goldendale thought that if judges were to comment on the facts, juries might as well be abolished, for the judge could carry nine cases out of ten. Griffitts of Spokane shifted the debate to a more personal plane, observing that the gentlemen who opposed the amendment did so because their own experience convinced them of the evil of allowing a judge to interfere in the facts. (The territorial judges had enjoyed the power under applicable federal statutes of commenting on the testimony.) Turner could not refrain from responding to Griffitts' allusion to his personal experience, probably because Turner's district had included Spokane, Griffitts' home:

Mr. Turner did not remember a case where a judge had induced a jury to render an erroneous verdict by what he had said on the facts, but he had known artful lawyers to try to get erroneous verdicts by false logic or misstatement and had seen the judge lead the jury back to the true position by a calm statement of the fact afterward. 41

The amendment failed and the section was adopted with the prohibition against judicial comment on the evidence. The committee of the whole overwhelmingly disapproved a proposal by the judiciary committee that the judges of the court could select a disinterested member of the bar to participate as judge in deciding any case in which a judge was disqualified from hearing the case. This provision was less important with the increase of Supreme Court judges from three to five. Sullivan of Whitman County criticized the provision as "un-American." The Post Intelligencer reported, "The obnoxious Section 23, providing for the substitution of a member of the bar in place of a judge of the Supreme Court when dis-
qualified in any case, was received with unanimous disapproval and was quickly expunged."69 Pro tem judges were allowed in the superior court, but only by agreement of the parties.70 Pro tem judges were not authorized on the Supreme Court until 1962, when the constitution was amended to permit judges or retired judges of courts of record to temporarily sit as Supreme Court judges.71

The delegates included several innovative features in the constitution. The judiciary article authorized the appointment of court commissioners in each county to perform "like duties as a judge of the Superior Court at chambers, subject to revision by such judge, to take depositions and to perform such other business connected with the administration of justice as may be prescribed by law."72 Appointment of court commissioners freed the judges to handle contested matters more efficiently. Delegate Sullivan of Tacoma proposed a new section requiring the Superior Court judges and the Supreme Court judges to report each year to the governor "such defects and omissions in the laws as they may believe to exist."73 Turner applauded the proposal as an excellent provision, and it was adopted.

Footnotes

3. Airey, supra at 271.
4. Airey, supra at p. 295.
10. Tacoma Morning Globe, July 17, 1889.
11. Id.
13. Id.
17. Oregon Constitution of 1857, Art. VII.
21. From time to time the convention delegates sat as a "committee of the whole" to allow unlimited debate on a draft article submitted to the convention.
23. Id.
25. Id.
28. Id.
31. Id.
32. Spokane Falls Review, July 19, 1889.
33. Seattle P.I., July 19, 1889.
34. Spokane Falls Review, July 19, 1889.
35. Morning Oregonian, July 4, 1889.
36. Morning Oregonian, July 4, 1889.
37. Spokane Falls Review, July 19, 1889.
38. Id.
39. Id.
40. Seattle P.I., July 19, 1889.
41. Seattle P.I., July 19, 1889.
42. Spokane Falls Review, July 19, 1889.
43. Id.
44. Spokane Falls Review, July 20, 1889.
45. Id.
46. Id.
47. Id.
49. Tacoma Morning Globe, July 20, 1889.
50. Spokane Falls Review, July 20, 1889.
52. Seattle P.I., July 20, 1889.
53. Id.
54. Spokane Falls Review, July 20, 1889.
55. Id.
56. Id.
57. Spokane Falls Review, July 20, 1889.
58. Id.
60. Spokane Falls Review, July 21, 1889.
62. Id.
63. Id.
64. Id.
65. Id.
66. Id.
68. Tacoma Morning Globe, July 19, 1889.
70. Journal, supra, Art. IV, § 7 at 102.
72. Art. IV, § 23.
73. Art. IV, § 25.