

## Jeremiah C. Sullivan, Hoosier Jurist

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In the history of the United States it is noticeable that among those around whom the breath of political scandal never lingered, whose lives were distinguished by a universal acclamation for their spotless integrity and blameless character, were eminent judges of our higher courts and great lawyers who attained a national reputation for their legal powers without sacrificing their standard of ethics. John Marshall, Joseph Story, James Kent, Joseph Hopkinson, William Gaston of North Carolina, and Thomas Grimke of South Carolina were noble examples in their profession. On such a roll of honor may be placed the name of Jeremiah C. Sullivan, who was a justice of the Supreme Court of Indiana from 1837 to 1846. He was a soldier and a father of soldiers, a shrewd lawyer, a learned and able judge, but above all else a deeply religious gentleman.

He was a native of the Valley of Virginia, where at Harrisonburg, on July 21, 1794, occurred his birth. His father, Thomas Sullivan, son of a distinguished Irish barrister of the Roman Catholic faith, was born in Ireland in 1761. Coming to America in 1784 he married Margaret Irwin in Augusta County, Virginia, March 29, 1791. Of his boyhood, Jeremiah informed his son: "I was once almost as weak as you are, but I passed through the *trial* & obtained good health."<sup>1</sup> The future Indiana judge was sent to William and Mary College for his formal education. After serving in the War of 1812, during which he rose to the rank of major, he returned to Virginia to study law. He was admitted to the bar in 1816, but, like Henry Clay and many other illustrious lawyers, he felt that Virginia was not only crowded but even overrun with legal talent, so decided to find a career in his profession in the distant backcountry where opportunity was rife, able lawyers not so plentiful, and business fairly brisk. On his way to Louisville, he stopped at Cincinnati where he heard of the chances for success which were offered by Madison, Indiana, a new and

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<sup>1</sup> Judge Jeremiah C. Sullivan to his son, Algernon S. Sullivan, July 1, 1845, in the Judge Sullivan Collection, Indiana Historical Society, William H. Smith Library, Indianapolis.

growing town on the banks of the Ohio. He arrived there in the fall of 1816. His parents came the next fall and a year later Charlotte R. Cutler arrived from Virginia to be his wife. The two were married at Madison on July 28, 1818.<sup>2</sup> He entered whole-heartedly into the affairs of the town, and during his early life was an active Free Mason. He was elected in 1818 Grand Orator of the Grand Lodge of Indiana.

Young Major Sullivan soon won the confidence and esteem of his fellow townsmen. In less than four years after his appearance, he was elected to the General Assembly as one of the representatives from Jefferson County for the session of 1820. Indiana had been admitted to the Union only four years previously and this was but the fifth session of the new state's Assembly. The House convened on November 27 at Corydon, then the capital, and elected William Graham as its Speaker. The young legislator, Jeremiah Sullivan, soon found himself involved in ample work as he was appointed to the ways and means committee, the judiciary committee, the military committee, the committee on the establishment of the state seminary, and the select committee on Clark's land grant.<sup>3</sup> He was chairman of the committee of the whole when it studied the governor's message on domestic manufactures and the state of the currency.<sup>4</sup> He introduced a resolution to appoint a committee to inquire into the expediency of providing a poor house for each county,<sup>5</sup> and proposed an amendment to the bill on taxation to exempt the working tools of a mechanic from taxation.<sup>6</sup>

The most important act of this Assembly was probably that which finally resulted in the designation and naming of the state capital in its present central position. To find a suitable name was a perplexing problem for the legislators, and, for a time, each new suggestion met with blank silence or derisive laughter. Some favored one of Indian origin, that of Tecumseh being best liked. The name of Indianapolis

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<sup>2</sup> All the dates are taken from the *Family Bible*. Miss Cutler was born on May 10, 1799.

<sup>3</sup> *Journal of the House of Representatives of Indiana*, 1820, pp. 13, 14, 20, 21, 62, and 86.

<sup>4</sup> *Ibid.*, 23.

<sup>5</sup> *Ibid.*, 95.

<sup>6</sup> *Ibid.*, 142.

occurred to Sullivan; it seemed especially appropriate in the eyes of the scholar because the Greek word for city, *polis*, meant "center of." He and Samuel Merrill sought out Governor Jonathan Jennings to obtain his approval and support, after which they introduced a resolution in the Assembly.<sup>7</sup> Although at first, this name was greeted with howls of mirth it was finally adopted, to the disgust and amazement of many newspaper editors.<sup>8</sup> At this session, the legislature approved the payment of \$48.48 to Sullivan for his services as prosecuting attorney for Jefferson County in collecting \$808.00 from the sheriff.<sup>9</sup> The House also considered a resolution to be sent to Congress favoring the admission of Missouri, but it was not adopted, probably because it contained a clause condemning slavery. Among the bills finally passed was one to build a state prison, one to build a poor house in Knox County, and two for the improvement of financial conditions.

Sullivan did not serve again in the legislature, although later he made an unsuccessful race against William H. Hendricks for Congress. His family was increasing and he found it necessary to work hard at his private practice to provide for their wants.<sup>10</sup> He did not altogether give up public office, for, in October, 1829, he served as agent for Indiana to meet an agent from Ohio to confer upon building part of the proposed Wabash-Erie Canal in Ohio, as it had been found that navigable points on the rivers could not be united without building part of the canal in the neighboring state. He and Willis Silliman, the agent from Ohio, met in Cincinnati and agreed that Ohio should take part of the land grant offered by Congress for building the canal and at the same time dig the part of the canal which had to run through that state.<sup>11</sup>

<sup>7</sup> William W. Woollen, *Biographical and Historical Sketches of Early Indiana* (Indianapolis, 1883), 367. This information was found in a letter from Sullivan to Governor Conrad Baker.

<sup>8</sup> One of these editorial comments was quoted in *ibid.*, 367.

<sup>9</sup> *Journal of the House*, 1820, p. 71.

<sup>10</sup> Seven daughters and five sons were born to the Sullivans: Thomas L. was born September 8, 1819; Margaret, March 25, 1822; Algernon, April 5, 1826; Charlotte, April 24, 1828; Jeremiah, October 1, 1830; and Eliza, July 28, 1832. Not all of the children lived. His father died January 23, 1827.

<sup>11</sup> Logan Esarey, *History of Indiana* (2 vols., Indianapolis, 1915, 1918), I, 406.

Two years later, James Blake asked Senator John Tipton if he could obtain the office of United States District Attorney for their mutual friend, "Major Sullivan." Blake told Tipton that because of "some facts that have been developed" Samuel Judah had not been made the candidate for the senatorship, and rumor had it he would either resign or be removed from the office of district attorney. Blake added that as Senator Tipton knew of Sullivan's qualifications he would say nothing about them, but assured him that the appointment would not only gratify himself but would also render general satisfaction.<sup>12</sup> Although Judah was dismissed from his office, because he had criticized President Andrew Jackson, Sullivan did not receive the appointment. Nevertheless, he was by this time recognized as one of the most distinguished lawyers in the state.

It must have occasioned little surprise when Governor David Wallace sent in Sullivan's name to the state Senate for confirmation to the vacancy in the state Supreme Court, created by the death of John T. McKinney, who died in May, 1837. At the same time the Governor nominated Isaac Blackford and Charles Dewey, who were confirmed unanimously by the forty-six members voting. The vote on Sullivan, however, was twenty-five in the affirmative and twenty in opposition.<sup>13</sup> At the time of his appointment he was forty-three years old.

The cases which came up to the Supreme Court generally were upon such prosaic matters as slander, libel, trespass, and the other usual legal problems. It may be said that while Blackford, Dewey, and Sullivan were upon the bench together, Indiana's Supreme Court stood in high regard throughout the country, as they were thought to be among the ablest to occupy this bench. In the fall term of 1837, Sullivan delivered twelve decisions of the court. He held, in the action of *Case v. Winship*, that if a man made an absolute sale of goods and continued in possession of them as the visible owner, with the consent of the buyer, the sale

<sup>12</sup> J. Blake to John Tipton, December 10, 1832, Tipton Collection, Indiana State Library.

<sup>13</sup> *Journal of the Senate of Indiana, 1837*, pp. 117-18.

was prima facie fraudulent as to creditors, and that a case where goods had been mortgaged formed no exception to the general rule. He felt that such conduct would enable the defendant "to impose upon mankind by false appearances." Nor would he admit parol evidence in extenuation.<sup>14</sup> In another case decided during the same term, he declared that a lower court had been in error in not allowing the defendant to question a juror under oath as to whether he had formed an opinion upon the case. Concerning this he said: "We regard the law as being now well settled, that it is a good cause of challenge to a juror that he has expressed an opinion. . . . The difficulty is in determining how proof of such an expression of opinion is to be obtained—whether by extrinsic evidence, or by questions put to the juror on the *voire dire*?" Although a juror could not be required to admit something which might tend to his dishonor or discredit, the judge thought that this would not occur in such a case. He held that in civil cases the rule of misbehavior did not hold, and the juror could admit that he had formed an opinion without being guilty of misbehavior or anything dishonorable.<sup>15</sup>

Sullivan wrote fourteen opinions during the May term of 1838. In one he held that an action for slander could be tried in Indiana for words spoken in another state, as the action was transitory, and the defendant's liability followed him wherever he went. It was not necessary that the slander be committed in the county in which the trial was held. The defendant had maintained that he had a right so to speak as the plaintiff had stolen a horse in Kentucky, but Judge Sullivan stated that justification in slander required the same kind of proof to maintain it that was necessary to convict the plaintiff of the crime.<sup>16</sup> Nor, in a suit against a husband and wife, for words spoken by the wife, was evidence of the husband's efforts to prevent the circulation of the slander admissible in mitigation of damages.<sup>17</sup>

Naturally many cases of trespass in the young and

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<sup>14</sup> 4 *Blackford*, 424.

<sup>15</sup> *Maize v. Sewell*, 4 *Blackford*, 447.

<sup>16</sup> *Offutt v. Earlywine*, *ibid.*, 460.

<sup>17</sup> *Yeates & wife v. Reed & wife*, *ibid.*, 462.

growing state came before the court. In this same term, May, 1838, Judge Sullivan declared that when a court of limited jurisdiction exceeded its rightful powers all concerned were liable to the party injured. Therefore, a justice of the peace who issued a writ of domestic attachment, without requiring bond to be filed according to the statute, was in error and liable. He, the party procuring the act, and the officers who executed the decision were all in trespass.<sup>18</sup> In *Summy v. Mulford*, he declared that if a person erected a mill dam across a water course and so caused the land of another to be overflowed, without first taking out a writ of *ad quod damnum*, he could not by subsequently taking out such a writ, have the damages assessed under it and then by tendering the amount of the assessment, avoid an action by the parties injured for the damages sustained.<sup>19</sup> In a celebrated case, now widely quoted as authority in commentaries and textbooks, the Hoosier justice maintained that although the title may come in question it was not essential to an action in trespass *quare clausum fregit* that it should. In the case of the *State v. Newton*, the defendant had entered a school section, cut down and carried away lumber, and as a defense had sought to show that the state did not have title to the land and so could not sue. Sullivan stated that although the grant of section sixteen was not to the state but to the inhabitants of the respective townships in which the lands were located, yet the state might have acquired, subsequently to such grant, a sufficient interest in the land to maintain the suit.<sup>20</sup>

The Constitution of Indiana at this time provided that the judges of the Supreme Court be appointed by the governor, with the advice and consent of the state Senate, and serve for a period of seven years. With the close of the November term of 1845, the terms of all three judges expired. Governor James Whitcomb immediately sent to the Senate the name of that veteran jurist, Isaac Blackford, who had already served almost three decades, and his appointment was promptly confirmed. He failed, however, to send

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<sup>18</sup> *Barkelov v. Randall & another*, 4 *Blackford*, 475.

<sup>19</sup> 5 *Blackford*, 201.

<sup>20</sup> *Ibid.*, 455.

in either Sullivan's or Dewey's name but instead sought to fill their places with others, and at once a furious controversy began to rage throughout the state, as charge followed charge and accusations were hurled from all sides.

Governor Whitcomb nominated several Democrats, but each of them was rejected. No settlement having been made at the time of the Assembly's adjournment, the Governor made pro tem appointments. The Whigs accused the Governor of not appointing Sullivan and Dewey because they were not Democrats, as Blackford was, and because he wished to obtain his own election to the United States Senate and thought to do so by pulling certain wires, by flattering certain powerful individuals, such as editors, and by holding these positions as rewards. An article in the *Madison Republican Banner*, signed "Lex," reported that the members of both branches of the legislature petitioned him to continue both men on the bench, but that in spite of this the Governor made eight different nominations, all of whom were known as violent partisans, generally editors, and that all were rejected. The legislators, according to this writer, went home twice to ascertain the sentiment of their constituents and finding that it corresponded to their own, renewed their petition.<sup>21</sup> Two weeks later the same writer charged that the Governor's action was unconstitutional, as two of the judges held their commissions at the will of "James Whitcomb alone," and one of these against the will of the Senate, three times expressed.<sup>22</sup> The editor of the *Indiana State Journal*, published in Indianapolis, accused Whitcomb of prostituting the power of appointment of the Supreme Court for purposes of partisan aggrandizement.<sup>23</sup> A few months previously, this paper stated that the session of 1844-1845 was notorious for its "wire-working and intrigue," and that the contest between the Governor and the Lieutenant-Governor for the senatorship was the cause of the conflict. In the same issue it was stated that the successor of Sullivan, Samuel E. Perkins of Wayne County, was a young editor with a limited law practice, who only a year before had

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<sup>21</sup> *Republican Banner* (Madison, Indiana), July 8, 1846.

<sup>22</sup> *Republican Banner*, July 22, 1846.

<sup>23</sup> *Indiana State Journal* (Indianapolis), July 1, 1846.

made application to practice law in the Supreme Court. The editor declared that his examination for that privilege had been a joke, and gave sample answers from it, one of which read: "I cannot tell. . . not having practiced in the Supreme Court, my attention has not been called to it . . . I will look [it up] tomorrow."<sup>24</sup>

Another editorial in the *Republican Banner* was entitled "Whitcomb's Mendacity." According to it, the Governor had stated in a recent speech at Evansville that the reason he had not renominated Sullivan was because the latter "had become too aged and infirm to discharge the duties of his office!" and that he had, therefore, preferred younger and more active men. The editor wondered what the citizens of Jefferson, Switzerland, Jennings, and Scott counties would say about this, knowing that Sullivan was, comparatively speaking, a young man, even younger than the Governor, while Judge Dewey had almost arrived at manhood when Sullivan was born.<sup>25</sup>

While Governor Whitcomb was assailed, while his ears rang with denunciation, Sullivan's were filled with words of praise and comfort. As long before as 1842, Pleasant Hackleman, editor of the *Rushville Whig*, had remarked that "amid the ruin and desolation which surrounded Hoosier affairs, they have only one thing to be proud of, and that is their Supreme Bench. This is an ornament to American jurisprudence."<sup>26</sup> The *Indiana State Journal* pointed out that while these three men were on the bench their decisions were held in the highest esteem and were regarded as good law in every state.<sup>27</sup> In almost the same words the *Republican Banner* paid tribute to the court, saying,

No one has ever been heard to question their [Dewey and Sullivan] integrity or ability . . . which reflects a signal honor to the state and themselves. The Reports of our Court were esteemed among the best and of the highest authority.<sup>28</sup>

An Evansville correspondent for the latter paper, sign-

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<sup>24</sup> *Ibid.*, March 18, 1846.

<sup>25</sup> *Republican Banner*, July 22, 1846.

<sup>26</sup> *Indiana Daily Journal*, June 7, 1842, as quoted in Esarey, *History of Indiana*, I, 525.

<sup>27</sup> *Indiana State Journal*, March 18, 1846.

<sup>28</sup> *Republican Banner*, July 8, 1846.

ing himself "Flagellum," after reporting Whitcomb's speech in Evansville in which the Governor made the declaration concerning Sullivan, said that the Judge was a man

with an unimpeachable character, a name unsullied, even by the breath of malice, [he] possesses at this moment, as vigorous a mental and physical constitution as any man in the bounds of the State. His habits of business . . . are of the most indefatigable and unwearied description. The decisions of the bench of which he was a prominent member, stand among lawyers in the first class of this country. In his private life, those who have most access to him, know him to be one of the most studious men in the West, constantly occupying every leisure moment in the study of his profession, with no other avocation, to withdraw him from it. . . . Judge Sullivan's fair fame is a portion of the heritage of the State. . . .<sup>29</sup>

While tempers were at a white heat over the affair, it is interesting to note what the two principal figures involved in this vortex of political maneuvering thought of it. Judge Sullivan's emotions are revealed in a confidential letter to his son in which he mentioned that there was a great deal of anxiety at the capital concerning the course the Governor would take in regard to Dewey and himself. He then added:

Nothing has yet transpired from which I can judge what his course will be. One thing is certain, however, and that is, I am in the hands of a kind Providence who will I believe take care of me; and whether I am on the Bench or at the Bar, my bread and my water will be sure. I therefore give myself no distressing thoughts about it.<sup>30</sup>

A year later, in mentioning the subject to his son, he remarked, "I have not yet learned what is to be my fate, as it regards the Judgeship. I have reason to apprehend that the Governor will not nominate me, and what will follow, I don't know. I however feel very easy about it."<sup>31</sup>

Judge Dewey, in a letter published in the *Republican Banner* of February 10, 1847, charged Governor Whitcomb with bad faith, declaring that the latter had promised, in the presence of witnesses, to renominate him, but had forgotten about this pledge when it became convenient to do so.

Despite all the outcry, however, Perkins finally secured the place, both Sullivan and Dewey being forced out. An

<sup>29</sup> *Ibid.*, July 22, 1846.

<sup>30</sup> Judge Sullivan to his son, Algernon S. Sullivan, December 18, 1844.

<sup>31</sup> *Idem* to *idem*, December 12, 1845.

impartial investigator is forced to the conclusion that the weight of evidence reveals Governor Whitcomb was not only acting against the best interest of the state, but was also playing politics for his own personal advancement. Jesse D. Bright, of Madison, however, was elected to the United States Senate, so Whitcomb did not secure the coveted place at this time, although he was later successful.

During his term of office, Judge Sullivan wrote nearly three hundred decisions of the court; in the November term, 1838, he wrote the fewest, ten; while in the November term, 1843, he wrote the largest number, twenty-seven. Although the court reporter noted that Sullivan "in consequence of indisposition" was absent until the tenth day of the November term, 1845, which was his last, he still managed to write eighteen of the court's decisions. The Governor's statement that Sullivan was too old for his position was ridiculous, for when he retired from the court he was but fifty-two. His judicial opinions revealed a vast fund of legal learning and research, and were, in general, well written, brief, to the point, and well documented with authorities. Of them a contemporary, William W. Woollen, wrote:

It was while a judge of this court that he earned his fame . . . [as] he graced and honored the place. . . . Sullivan was the ablest writer [of Blackford, Dewey, and he] . . . His opinions . . . are models of legal composition. . . . [The] grace and perspicuity in his style [are] but seldom found and had he chosen to be a writer of legal books he would unquestionably have won a reputation even exceeding that which he earned upon the bench.<sup>32</sup>

This learned judge was also a remarkable father and, while concerned with the grave problem of writing legal decisions, found time to advise and direct his son, Algernon, who was attending Hanover College. In his letters he told his son how to conduct his daily life, how to conserve his health, even how to write letters, and, in them, he revealed his own character in all its fineness.<sup>33</sup> In one he discussed the good effects of fasting, saying that good men in all ages had fasted frequently. His deep religious convictions and his fervent patriotism were repeatedly expressed. Although

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<sup>32</sup> Woollen, *Biographical and Historical Sketches*, 368.

<sup>33</sup> Selections from a number of Judge Sullivan's letters are printed, *post*.

his beliefs were strong, he sometimes revealed a calmness and tolerance that do not always accompany such strong convictions. When their minister lectured on the points of difference between "the Romish & Protestant churches" he observed that some thought that the minister was too severe.<sup>34</sup>

In some agitation, the judge wrote to his son Algernon, on December 2, 1844, that the Reverend Erasmus D. McMaster, who was president of the college at Madison, had been chosen president of Miami University, at Oxford, Ohio, and was determined to accept the position. If this change were made, he thought it would be a death blow to their own college, and that his son might as well follow the educator to Oxford. A week later he informed his son that he had received a letter from Doctor McMaster, resigning his place and asking about the propriety of leaving by February. The educator left for Miami University, and Algernon followed him there for his senior year. The same year that the Judge lost his office, the son was graduated. He then took up the study of law and later moved to Cincinnati to practice. After a few years he went to New York City and continued in his profession.

Another son, Thomas, was a member of the Assembly when the fate of the judgeship was a much discussed subject. Of his reaction to the controversy, the Judge wrote:

Tommy sat with me an hour or two on Saturday night. He seems already to be disgusted with public life. He says he has seen more corruption & dishonesty during the last 10 days of his life than he ever saw before. I think he has probably spoken the truth. There seems to be great doubt who will be elected Senator. My fate is also uncertain. . . .<sup>35</sup>

The strife engendered by the dispute over the Supreme Court, however, soon vanished into insignificance. It was overshadowed by the greater conflict in which the entire country soon found itself as a result of the declaration of war against Mexico on May 13, 1846. The Whigs charged that the Democrats brought on the war simply to add more territory to the nation and to aid the system of slavery.

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<sup>34</sup> Judge Sullivan to Algernon S. Sullivan, May 9, 1845.

<sup>35</sup> *Idem* to *idem*, December 9, 1844. (Thomas married Laetitia Smith, the daughter of Senator Oliver H. Smith, on November 16, 1842).

Thomas Sullivan immediately raised a company of men from Madison and vicinity of which he was made captain. He was soon in Mexico, where he, like a large number of American soldiers, caught a fever which almost incapacitated him.<sup>36</sup>

Judge Sullivan, in common with most Whigs, opposed this war from beginning to end. Under the signature of "Col. Pluck," he wrote a series of articles for the *Republican Banner* concerning it. Previous to the declaration of war, in campaign speeches at Madison, Senator Jesse D. Bright and Congressman Thomas J. Henley had ridiculed the idea of war with Mexico, then presaged by the administration's policy, and had declared that if it did come they would clean out Mexico with a regiment of women, armed with broomsticks. These extravagant promises became the target of Sullivan's pen, dipped in rich satire.

In a letter to the *Banner*, printed on May 27, 1846, Sullivan praised the editor for being one of the wise men who had lifted up their voices "against the unholy measures which have brought about the present state of affairs." He stated that it was a war which would have been avoided if the administration had been in competent hands. He asked if the "democratic leaders who have been foisted into office by the cry of Texas glory" would now share in the dangers, if they were as willing to shed their blood in defense of Texas as they had been to spend their breath. Throughout this letter he recurred constantly to the warning of the Whigs on the consequences of the annexation of Texas, and like a refrain ran the words, "Where are Thos. J. Henley, and James G. Reed, Jesse D. Bright, and Michael G. Bright?" Following this cry, he said:

Are you ready to meet the foe; or would you prefer to keep away from danger, and pass paper resolutions, and make stump speeches abusive of the Whigs. . . . [I] believe that you do not like the *smell of Gunpowder*. . . . The "Halls of the Montezumas" are to be trodden by our victorious soldiery. Do not your gallant souls burn within you to be of the number who shall revel there? Or would you rather stay out of "harm's way," and tread the Halls of the American Capitol? . . .

Michael Graham Bright, ah! he will not lag behind. He has held a lucrative office for the last four years, obtained by party servitude, and has become very rich, his friends say. It is even said that *he is*

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<sup>36</sup> *Republican Banner*, January 13, 1847.

the owner of 10,000 acres of land on the line of the Canal intended to be constructed from *Terre Haute*, to *Evansville*, according to the provisions of the "*Butler Bill*." It is also said that he gave only \$10,000 for the land, cash up. Having made his fortune out of the office alluded to, does not gratitude to his country and party call loudly for his services in the field, and is he not too magnanimous to refuse. . . .

"Col. Pluck's" next letter, of June 3, 1846, was replete with skillful and humorous thrusts that must have caused the victims to grow hot with wrath. He asked these "Democratic leaders" to take a part in the fighting, saying: "I would not give a copper for their speeches and paper resolutions; we can do without them. We want no flashes of wit, nor paper wads. It is the flash of gunpowder, and the whiz of the leaden ball that are needed at this time." He spoke of Henry Clay's "Raleigh Letter," and noted that Henley had called Clay a fool; that the former had laughed "as men without brains often do, at the language of wisdom and experience as uttered by Mr. Clay. . . ." Through a long paragraph he spoke of the "brave and chivalric Henley, the Sagacious Henley, the sapient Henley," and finally ended with this gibe:

'Tis true we should lose a great deal of wisdom and eloquence in Congress if these "stars" should fly off to the South; but still, Congress could, perhaps, get along without them, and I am not sure the army can. And besides, they agreed to take "the contract," and as men of honor? (save the mark,) they should remember the promise and perform it. I long to see Thomas Jefferson Henley and Jesse David Bright mounted on their charges, and bearing down on the Mexicans, with their arms aloft extended, like Eternal Jove, "when Guilt brings down his thunder." What havoc, and carnage, and blood, and glory.

A letter of June 17, 1846, continued along the same lines:

My soul is on fire. I long for a revel in the "Halls of the Montezumas." What shall I do, Mr. Editor,—what *shall* I do? . . . The wreath that would adorn my victorious brow, is reserved for those pinks of chivalry, Henley and Bright!! I have heard it—*whispered*—that neither of them was very fond of going where there was danger,—but that can't be true, . . . It is a slander on Thomas Jefferson Henley and Jesse David Bright.—Shame on Whig or Democrat that would make such an insinuation. I am looking out, every day, to see Henley and Bright pass by our city, puffing like two steamboats running a race—swearing, that if they can only find out where Mexico is, they will do the job. . . . They are a little *too slow*.

. . . Mr. Baker, a Whig member from Illinois, has gone home to volunteer . . . and Mr. Yell . . . has started off *yelling*, for Mexico. . . . Bright's *bellowing* would have been as terrific as Yell's *yelling*, and both united, what yelling, and groaning, and bellowing, there would have been in Mexico. . . .

In his next article he answered "Civis" who had written in the preceding issue of the *Madison Courier* that it would never do for men occupying high stations to desert their posts. According to this man, Sullivan said, the legislators were to plan, that is, do the wind work, while the people should carry out the plan, that is, do the fighting.<sup>37</sup> Finally, on July 8, 1846, "Col. Pluck" declared that he was off to Mexico, to see how the war was being conducted, and to perform "deeds of noble daring." Stating that his soul despised such "*things*" as Henley, Bright, and Whitcomb, he proclaimed that "Governor Whitcomb, the man without a soul" could not hold him back and keep him boiling in the sun until he decided whether he would accept money from banks to clothe and feed him. Then, late in September, there appeared another letter from the sarcastic Colonel, pretending to come from Mexico, at Taylor's camp. He avowed that his thirst for glory continued unabated, but that he did not think there was any particular glory to be gained in fighting for Texas and slavery, and California and slavery; that although there were opportunities for individual valor, most of the soldiers felt they could gain as much glory by fighting an army of women. To his mind it was shameful that a member of Congress from a free state would be willing to annex Texas for the sake of extending slavery. He noted with indignation that the troops from Louisiana had gone home while those from free states were left to defend "Texas and slavery."<sup>38</sup>

In this last article, he wrote of the silence of Bright in Congress, concluding that since "at home he was such a prodigious fellow to blow he must be reserving his wind for Mexico." It is true that this Indiana Senator was somewhat silent at this session, but he surely would have done considerable "bellowing" had he known that Sullivan was the

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<sup>37</sup> *Weekly Courier* (Madison, Indiana), June 20, 1846; *Republican Banner*, June 24, 1846.

<sup>38</sup> *Ibid.*, September 16, 1846. These statements, of course, are typical of Whig propaganda of that time.

author of these articles. Although in opposite political camps the two were warm friends. Sullivan was careful, therefore, to hide his identity, even, it is said, going so far as to have the articles copied by another before sending them to the office of the paper. Soon after the above mentioned letter appeared, the editor of the *Banner* promised that another would soon arrive from Mexico, but that of September 16 seems to have been the last. Of course, Sullivan was not in Mexico. He obtained his information about the campaign from the newspapers or from the letters of his son, Captain Thomas L. Sullivan.

Soon the war came to an end, Thomas returned home, as did several other soldiers who felt convinced that their brave deeds fitted them for the presidency, and the country settled down to an uneasy, fitful peace. Thomas soon moved to Memphis; Algernon, having passed his bar examination, went to Cincinnati to practice; Jerry, a third son, joined the navy, and by 1850 had "a full midshipman warrant on the sloop-of-war, Warren." The Judge still had over twenty years of life remaining, and although they were spent in private life, each year was a busy one, fully occupied with business at the bar, while during campaign years he actively entered the lists.

When Algernon went to Cincinnati his father gave him a letter to Judge John McLean, whom Sullivan informed his son was "a good Judge & an excellent man, & loves to be *thought so*."<sup>39</sup> Judge Sullivan had little time for leisure as he was almost constantly engaged in grave cases, some of which were important in the legal history of the state. He, Samuel Judah, and Abner Ellis were retained by the Wabash Navigation Company in a "very heavy case," for which Sullivan received a fee of \$250, while counsels for the plaintiff were the celebrated Joseph G. Marshall and Randall Crawford. This was the historical Culbertson case, which went from court to court.<sup>40</sup> He was one of the attorneys in the important McNaughton and Cassily case, as well as in the Godman Patent case. His effort in the last named case,

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<sup>39</sup> Sullivan to his son, Algernon S. Sullivan, April 27, 1849.

<sup>40</sup> Oliver H. Smith, *Early Indiana Trials and Sketches* (Cincinnati, 1858), 231-34.

he told his son, was applauded by competent judges. "That made me vain," he exclaimed. Although he did not succeed in winning his point entirely, still he claimed to be "not much dissatisfied."

Politics also kept him engaged to a limited extent. In 1850, delegates to the Constitutional Convention were elected. Sullivan attempted to block the nomination of a Whig candidate, William M. Dunn, a personal friend, because he was the son-in-law of J. F. D. Lanier, who had vast interests in state banking and railroads. The Judge feared that the time would arrive when corporations would dictate legislation, and so wished to see a delegate chosen from Jefferson County not under such influence. His desire was frustrated for Dunn was sent to the convention. After the adoption of the constitution he wrote an article, supposed to be the reflections of a man in a barber chair, ridiculing the provision which prohibited the immigration of Negroes and their employment in the state.

President Zachary Taylor's death led Judge Sullivan to remark to Algernon: "God seems to have a controversy with our nation. We cannot foresee the consequences of Gen. Taylor's death. At present it looks like a chastisement, but it may be that He who sent it, designs it for good."<sup>41</sup> When General Scott visited Madison, Sullivan made the speech of welcome. He thought the reception passed off very well, and that Scott made friends by his visit. Immense numbers from the country were present. He reported that the General was highly pleased, but Sullivan thought his own reception speech was badly reported by the papers, although he made it "*without much embarrassment*."<sup>42</sup> That same month his son, Thomas, wrote his father that Tennessee was bound to go for Scott. The Judge felt, however, that there was no hope of doing anything for their candidate in Indiana. He thought that if Ohio and Pennsylvania went for him there would be hope of his election.<sup>43</sup> But this was not to be.

The next presidential election deeply stirred Sullivan. A rumor that his son Algernon intended to support the Demo-

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<sup>41</sup> Sullivan to his son, Algernon S. Sullivan, July 12, 1850.

<sup>42</sup> *Idem* to *idem*, October 5, 1852.

<sup>43</sup> *Idem* to *idem*, October 30, 1852.

cratic candidate caused him some dismay. "I heard to my utter astonishment & dismay a few days ago," he wrote, "that you intended voting for Buchanan! Certainly it cannot be so. If you are so conscientious about [not] voting for Fremont, why not vote for Fillmore?"<sup>44</sup>

Naturally the Judge found time for relaxation and vacations. The entire family attended Jenny Lind's concert at Madison, and of this he wrote: "The girls were charmed, but your Ma & myself thought we had heard better singing, & had seen prettier girls."<sup>45</sup> During the summer of 1852 and again the following year, he and Mrs. Sullivan took a trip to New England. At Hartford he met the Speaker of the Canadian Parliament, Sandfield MacDonald. Hearing that Algernon was to go to London, the Canadian informed the Judge that the son must stay with him and that his visit would be made pleasant. In the meantime Jerry was still in the navy and his father wrote to him:

I often sit down & indulge in fancying that you may, at some day, be a distinguished man in the navy, . . . and I sometimes fancy that you may be in a situation . . . to do good by aiding missionaries & other good people in Foreign lands, in spreading the Gospel, and extending the boundaries of civil & religious liberty.<sup>46</sup>

The Judge had his office now at the corner of Second and West streets, and he began to feel that time was taking its toll, for although he could labor from morning till night he noted that he was becoming more cautious in everything. Too, he found in 1857, that his earnings would amount to but \$1500.00 while a few years before they had reached from \$2200 to \$2400.

The years following the close of the Mexican War witnessed much political turmoil, bloodshed, and outbursts of fanaticism, until finally the dam of pent-up hatreds burst and in the ensuing convulsion that shook the nation few homes escaped unscathed. The Judge was clearly in the anti-slavery camp; and as the Whig party disintegrated, he became a firm Republican. When the war broke out his son, Jeremiah,

<sup>44</sup> *Idem* to *idem*, July 9, 1856.

<sup>45</sup> *Idem* to *idem*, April 17, 1851.

<sup>46</sup> Judge Sullivan to Jerry C. Sullivan, January 3, 1849. A longer portion of this letter is given *post*, 263-64.

raised a company, of which he was made Colonel. After meritorious action he became a Brigadier, was mentioned in several reports for distinguished bravery, and after serving as Inspector-General of the District of Tennessee finally became Chief of Grant's staff.

In the meantime, Algernon had become a successful attorney in New York City. At the outbreak of the war, Seward had declared that the Confederate privateers would be treated as pirates, and notified all lawyers not to assume their defense. Algernon, who had a certain sympathy for the South, as he had married a Virginian, Mary Hammond, defied the Secretary of State and took the case of the "Piratesmen" in New York. When he sent to Richmond for copies of the commissions under which the men had sailed, he was arrested by Seward, accused of treason, and sent to Fort Lafayette. Seward claimed to have on file treasonable letters to southern men.<sup>47</sup> Algernon's father believed this work legitimate and soon through powerful influence secured his release, so his son was not brought to trial. The Judge continued to caution Algernon and his wife to be loyal and very cautious in their statements and conduct, to give up any sympathy with the South, and to avoid anything that might excite Secretary Seward.<sup>48</sup> He was also worried about his son Thomas in Tennessee whom he considered a strong Union man and therefore likely to get into trouble there. He offered to help hire a substitute for Algernon in 1863, because he did not think that this son could stand a campaign in the field.

The letters which the elder Sullivan wrote during the Civil War period give some information about conditions and sentiment in Indiana. Before the outbreak of hostilities, he noted that the farmers in many parts of Ohio, Kentucky, and Indiana were withdrawing their money from the banks and converting it into gold and silver; that southern money

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<sup>47</sup> A search in the Division of the State Department and the Division of the War Department of the National Archives has not uncovered these letters.

<sup>48</sup> Judge Sullivan to Mary M. Sullivan (wife of Algernon), September 14, 1861, September 16, 1861, and October 23, 1861; and Judge Sullivan to Algernon S. Sullivan, November 4, 1861, December 9, 1861, and December 19, 1861. Portions of these letters are printed, *post*, 268-71.

was leaving this part of the country; and that the bank men were worried. Although there were quite a number who sympathized with the South, the firing on Fort Sumter caused a strong outburst of feeling. He thought that four-fifths of the people would fight the South as they would an army of foreign invaders. Perhaps in this he permitted his own sentiments to influence his judgement. "We have petted the South too much. We have even licked the boots of her great men." But now, "If ever a set of men deserved the character of thieves, murderers, and traitors, the leaders of this rebellion deserve it, and deserve the doom of thieves and traitors." He asserted that the Northwest would never consent to the mouth of the Mississippi being within foreign and hostile boundaries. After the battle of Shiloh the river towns of Indiana were filled with wounded soldiers and the women of Madison met at the Sullivan home to prepare clothes and supplies. When the raids from Kentucky threatened southern Indiana the men began to drill and make preparations for the defense of their homes. Sullivan thought that General John H. Morgan and his raiders might have been destroyed had they come to Madison, but he feared that the town might also have suffered that fate. When riots broke out in New York over the draft he wrote that the law must be enforced if necessary with cannon and bayonets.<sup>49</sup>

Judge Sullivan survived the end of the war five years; he died unexpectedly at six o'clock on the morning of December 6, 1870. On that very day he was to have taken office as judge of the new criminal court of Jefferson County which had been created the year before. He worked to the end. His fellow-Whig, Senator O. H. Smith, stated that he stood high at the bar, being a fine lawyer of many years' experience in one of the first schools of practice in the state. "The purity of his life and character," continued Smith, "gave him a reputation when he took his seat upon the bench, that stamped his opinions with high authority."<sup>50</sup> Although Judge Sullivan did not rise high in the political firmament,

<sup>49</sup> Portions of the letters referred to in this paragraph are printed *post*, 273.

<sup>50</sup> Smith, *Early Indiana Trials and Sketches*, 145.

his voice had great weight with his party and with the public, particularly with the leaders of the Whig and Republican parties in the state. His best services to his fellow Hoosiers were rendered in their highest court, and he will be remembered as a strong and able lawyer, and as one of the great justices of Indiana.