

“During the sixteen years when Justice Sutherland served on this Court he exercised a profound influence on the development of constitutional law, and especially on the interpretation of the Fourteenth Amendment. . .

“In a time when it had become the fashion to classify men by labelling them, Justice Sutherland was labelled a conservative. . . . He saw in the encroachments of government on the freedom of the individual, the perils of the oppressive exercise of governmental power which he held it was the design of the due process clause to prevent. He gave vigorous expression to these views in a series of opinions which stirred widespread public discussion of some of the most fundamental problems of constitutional government. . . . Let it be said that the so-called conservative temper of these opinions was not inspired by any antagonism to progress in the law, but rather by the emphasis which Justice Sutherland placed on the constitutional protection of the few from the tyranny of the many. Indeed, these opinions were but steps in the process of finding solutions of what perhaps has been the greatest problem of constitutional interpretation throughout the twentieth century, the need to bring into proper balance the competing demands, on the one hand that constitutional sanctions shall safeguard the individual from the abuse of power by the majority, and on the other that the Constitution be not so interpreted as to clothe the individual with power to restrict unduly the welfare and progress of the community as a whole ”

And then the chief justice concluded—and let me interpolate that I was privileged to attend those services as a member of the Committee on Resolutions, and I have never heard Chief Justice Stone speak with deeper emotion and sincerity

“The time will come when it will be recognized, perhaps more clearly than it is at present, how fortunate it has been for the true progress of the law that, at a time when the trend was in the opposite direction, there sat upon this bench a man of stalwart independence, and of the purest character who, without a trace of intellectual arrogance, and always with respectful toleration for the views of colleagues who differed with him, fought stoutly for the constitutional guaranties of the liberty of the individual.”

Many years after I listened to those words by Chief Justice Stone, my friend, Phil Neal, dean of the University of Chicago Law School, telephoned me to ask if I would be interested in interviewing the brightest scholar he had known in his many years of teaching at Stanford and Chicago. I of course arranged to meet the young man and tried my best to get him to come with our firm. He decided, however, to practice in his home state of Arizona, and this he did, with distinction, as a member of one of the state’s leading law firms, until this university persuaded him to become the first dean of its new law school

You know what has happened since.

Rex Lee, it has been a privilege to know you and to follow your brilliant career. You come to us from the highest office a practicing lawyer can hold in this nation—or in the world. If Justice Sutherland could be with us today, he would, I know, rejoice at your selection as the first occupant of the chair established in his honor. He would appreciate your brilliant scholarship and achievements, but most satisfying of all to him, beyond any doubt, would be your unqualified integrity, strength of character, and dedication to those great principles of freedom and democracy which Justice Sutherland so greatly cherished and so stoutly defended.

Lee Returns As First Occupant of Sutherland Chair



The “prodigal son” is coming home. Rex E. Lee, founding dean of the J. Reuben Clark Law School and solicitor general of the United States from 1981 to 1985, began teaching constitutional law at the Law

School the fall of 1986. Lee has accepted an appointment to an endowed professorship at the Law School named in honor of George Sutherland, a BYU graduate who served as associate justice of the United States Supreme Court from 1922 to 1938.

Lee officially left his post as solicitor general on May 31, 1985. Since then, he has spent the bulk of his time working as a partner with Chicago-based Sidley & Austin in their Washington, D.C., office. However, Lee has been involved in various activities at the Law School.

On various sojourns to Provo this past year, Lee has lectured at a symposium on the religion clause of the First Amendment, taught several



sessions of constitutional law, interviewed students for positions with Sidley & Austin, lunched with the Law Women, and most significantly, directed the introduction to law course offered to beginning first-year students. In his opening session with first-year

students, Lee was interrupted by an entourage of Law School faculty bearing gifts and presenting an “ode to BYU’s prodigal son.”

Returning to Provo as the Sutherland honoree, Lee will spend most of his time at the Law School. However, he is still involved in some appellate work for Sidley & Austin. “I can do that as well from Provo as anywhere,” Lee said.

In a public statement, BYU President Jeffrey Holland said that BYU was delighted to have Lee back. “Rex is a superb teacher and will give the students special insights into the most challenging questions of constitutional law.”

*Judging from press reports, Lee considers his time at the solicitor general’s office to have been successful. “We won a lot more than we lost,” he said. According to Lee, his greatest accomplishment as solicitor general was his victory in *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983), which eliminated Congress’ use of legislative vetoes to control executive action. The case was heavily publicized.*

Among other successes as solicitor general, Lee persuaded the Supreme Court to tighten rules on standing, narrow the scope of the Exclusionary Rule, and allow the government to be more accommodating to religions without violating the First Amendment’s Establishment Clause.

*Lee’s biggest disappointment, he said, was his loss in the 1983 abortion decisions, *City of Akron v. Akron Center for Reproductive Health*, 462 U.S. 416 (1983).*