

HISTORICAL DATA OF THE IOWA BAR

By W. R. C. KENDRICK*

A prominent Iowan once said: "If we believe in the future we must know the past." No better thought could express the importance to every member of the Iowa bar, and all other Iowans, of knowing the facts connected with the early history of the state and the conditions under which the pioneer lawyer practiced his profession.

Prior to the year 1833, the vast area west of the Mississippi river and north of the state of Missouri was a trackless wilderness inhabited by Indians and wild beasts, except for a few squatters along the west bank of the Mississippi and venturesome white men who crossed the "Great River" in search of minerals and furs. Then on June 1, 1833, the federal government opened this territory for permanent settlement, but the influx of new settlers was slow, and those who came remained largely in small settlements along the Mississippi river from Keokuk to Dubuque. The villages were mere collections of wooden buildings, built with logs hewn from virgin timber; the streets just trails filled with stumps and brush, and surrounding the village stood a primeval, impenetrable wilderness. Law and organized government were unknown.

It was in such surroundings that the first semblance of a court trial was held. In May, 1834, a man by the name of O'Connor shot and killed a man by the name of O'Keaf near Dubuque. O'Connor was apprehended, charged with murder, and taken to Dubuque, and the first trial for murder in what is now Iowa was held in the open air beneath the wide spreading branches of a large elm tree. A man by the name of Lynch was the presiding judge. An army captain by the name of White was appointed prosecuting attorney, and another

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army captain by the name of Bates from Galena, Illinois, who happened to be present, was selected by the accused as his attorney.

Twelve men from among the bystanders were selected as jurors, and these men seated on some logs comprised the jury. The prosecuting attorney asked the accused if he was satisfied with the jury. The accused replied that he had no objection to any of the jurors, but insisted that there was no law in the country by which he could be legally prosecuted. The objection was quickly overruled and the trial proceeded. After the witnesses had been examined the attorneys addressed the jury. Following their arguments the jury retired, and after an hour's deliberation returned a verdict of guilty, recommending that the accused be hung, which recommendation was promptly complied with on the same day. It was in this atmosphere that the pioneer Iowa lawyer began the practice of his profession.

THE TERRITORIAL ORGANIZATION

Soon thereafter the real political and judicial history of Iowa began. The Iowa country was organized by act of congress approved June 28, 1834, and attached to the Territory of Michigan. Then on April 20, 1836, congress organized the Territory of Wisconsin and made Iowa a part thereof. This arrangement was of short duration, for by act of congress approved June 12, 1838, the Territory of Iowa was formed, with Burlington the seat of government. So, within the brief space of only five years, Iowa advanced from the stage of a trackless wilderness, inhabited only by the red men, to the dignity of an independent, organized government of white men. Up to this period very few white settlers had moved into the territory, the population being approximately 12,000, and Burlington was a small hamlet of 300 inhabitants.

Scarcely any lawyers had located here, and many of those entered or purchased land close to the larger settlements and divided their time between tilling the soil

and practicing law. Burlington, the seat of territorial government, had only two lawyers actually residing within its limits, in addition to Charles Mason, who had been appointed chief justice of the Territorial Supreme Court, and at the first session of the Territorial Supreme Court, held at Burlington on November 28, 1838, only twenty attorneys presented themselves for admission to practice. They were David Rorer, James W. Grimes, Henry W. Starr, William H. Starr, James W. Woods and M. D. Browning, of Burlington, but only David Rorer and James W. Grimes actually resided in the city; Stephen Hemstead and B. Ruch Petrikin of Dubuque; Philip Viele and Alfred Rich of Fort Madison; G. W. Teas and J. B. Teas of Mt. Pleasant; S. C. Hastings, R. P. Lowe, Stephen Wicher, Irad C. Day and T. S. Parvin of Muscatine; and William B. Conway, Isaac Van Allen and Charles Weston of Davenport.

There were a few other lawyers practicing in the Iowa Territory when established but not many. Among them were: Thomas S. Wilson of Dubuque, Daniel F. Miller of Keokuk, Edward Johnstone and Hugh T. Reid of Fort Madison, and George G. Wright of Keosauqua. Many of the foregoing gained distinction, both in the practice and on the bench, and were honored as few men have been honored. Reputable authority has declared that Charles Mason and James W. Grimes were two of the greatest lawyers in Iowa history.

After the establishment of the Territory of Iowa, the list of practicing lawyers grew steadily. Many of these were young men, educated in eastern schools, and fired with the spirit of adventure, moved west. Some were more experienced lawyers from other states who thought they saw greater opportunities in the new territory, while others were young men of the territory who obtained a legal education by studying law in local law offices.

The practice of law in territorial days was extremely difficult. The population was small and clients were scarce, the population of the entire territory in 1840

being only 43,112. Their aggregate wealth was very small and their domestic conditions primitive. A large majority of their habitations, in both villages and country settlements, consisted of a single room for the use of a whole family, not greater in size on the average than sixteen or eighteen feet square, and constructed from logs cut from the trunks of small forest trees. The barest necessities of life were alone attainable. The common comforts of civilization were very rare. Luxuries were impossible, and social, religious and educational opportunities were very meager.

Attorneys fees were paid mostly in merchandise, and the following incident will illustrate that fact. A man had been arrested for stealing a rifle. The attorney he employed to defend him asked a young lawyer to assist. During the trial the rifle stood by the one and only door to the court room. The man was acquitted and immediately left the court room and took the rifle with him. When the older attorney saw that the rifle was missing he turned to the young lawyer and asked: "Where is the rifle?" To which the young lawyer replied: "The defendant took it with him when he left the court room." The older lawyer then said: "That was to be my fee for clearing him."

LAW LIBRARIES LACKING

But lack of clients and cash fees were not the only problems with which the territorial lawyers were confronted, for there were no law libraries worth mentioning and scarcely any law books. The library of the average lawyer of today contains more law books than there were in the entire territory. So, the lawyers of that period had to rely largely upon their natural ability, oratory and wit in the trial of law suits. A good illustration of this fact is found in a case where the prosecuting attorney was having a difficult time in securing the desired answers from a rather obtuse or wary witness relative to the kind of whiskey he had purchased. Finally the witness was asked "how it tasted." The

court, in response to an objection, ruled the question to be improper and inquired of the attorney, in some asperity, why he put such question, "Well, your honor," replied the attorney, "I was unable to make the witness tell what kind of liquor he bought, but I thought if he would tell how it tasted, the court would be able to determine for himself." The ruling of the judge was thereupon reversed.

ABLE LAWYERS AND JURISTS

But notwithstanding the difficulties and hardships under which the territorial lawyer labored, this period produced some of the ablest and most profound lawyers and jurists in the history of the state. They were: Charles Mason, chief justice of the first Territorial Supreme Court, considered the ablest member of the court and one of the great lawyers in the history of the state. David Rorer, said to be the best lawyer at the territorial bar. James W. Grimes, one of the brainiest men Iowa has produced, and also served as governor and in the United States senate. Henry W. Starr, one of Iowa's ablest lawyers in his day. Also, Thomas S. Wilson, Stephen Hempstead, S. C. Hastings, R. P. Lowe, George G. Wright, William G. Woodward, Jonathan C. Hall, John F. Kinney, Joseph Williams, Edward Johnstone, Daniel F. Miller, George Greene, and many others that history has canonized in the memory and hearts of the people of Iowa.

Although the territorial pioneers were engaged primarily in making a living, they took a keen interest in the activities about them, and that period was one of the most colorful in the history of the state. Throughout this period the population grew from 22,859 to 102,000 as pioneers poured in from the twenty-seven states of the Union.

The dominant political issue between 1840 and 1846 was the achievement of statehood. As early as 1839, Governor Lucas suggested statehood, and the first constitutional convention was held in 1844 at Iowa City, the

then capitol. The constitution adopted at the convention was rejected by the people when congress deprived Iowa of the Missouri river as a boundry. A new constitution was adopted in 1846 with the present boundaries and accepted by congress. On December 28, 1846, President James K. Polk signed the bill elevating Iowa to the dignity of statehood. On that date only 33 counties had been established, and two-thirds of Iowa still lay beyond the frontier. The red men still lived along the Missouri and in northern Iowa. Although Iowa held promises of rapid development in 1846, few there were a century ago who could peer through the mist and forecast the future greatness of the Hawkeye state. Fortunately there were strong, able men who guided Iowa in the important transition from a territorial status to that of statehood. In Robert Lucas, John Chambers and James Clark, the territory had been governed by a triumvirate of executives of rare ability. Augustus C. Dodge, who had served as delegate to congress between 1841 and 1846, was later twice elected United States senator, proof positive of the high regard in which he was held both in Washington and at home. Charles Mason, chief justice of the Territorial Supreme Court, was a man of rare brilliance, and his two associates, Joseph Williams and Thomas S. Wilson, were able jurists and solid thinkers.

RECOGNIZED AS EMINENT LAWYERS

The advent of statehood ushered in the "Golden Age" in the history of the Iowa bar, which period extended to the turn of the century, for during that period Iowa produced great lawyers, orators and statesmen, many of whom reached the pinnacle of fame and made Iowa the toast of the nation. In that distinguished group we find such eminent layyers as John F. Dillon, Samuel F. Miller, Chester C. Cole, Samuel J. Kirkwood, James Harlan, Nathaniel M. Hubbard, Joseph W. Blythe, H. H. Trimble, William H. Seevers, James Hagerman, Frank Hagerman, Francis Springer, L. C. Blanchard, W. I.

Babb, James W. Bollinger, George W. McCreary, Emlin McClain, Smith McPherson, Joseph C. Knapp, Oliver P. Shiras, William B. Allison, David B. Henderson, Leslie M. Shaw, John H. Gear, John F. Lacey, W. E. Blake, J. F. Wilson, Jonathan P. Dolliver, Albert B. Cummins, William S. Kenyon, Robert G. Cousins, Martin J. Wade, Horace M. Towner, George D. Perkins, William P. Hepburn, Francis M. Drake, James W. Good, Emmet Tinley, and many others.

Of all the great lawyers of Iowa none has conferred a more substantial and enduring honor upon her name, nor more justly deserves to be embalmed in her history than John F. Dillon. Judge Dillon was recognized as one of the great lawyers in the nation, and was regarded as one of the most profound jurists of the American bar.

Samuel F. Miller was the first Iowa lawyer to serve as a member of the Supreme Court of the United States, and has the distinction of being considered the greatest constitutional lawyer the nation ever produced, excepting, always, John Marshall.

Nathaniel M. Hubbard was one of the shrewdest railroad attorneys in the United States. He had a keen mind and was resourceful and cunning. For a quarter of a century he was one of the men behind the scenes at every important political convention held in Iowa, and it was often said that it made no difference who was Governor de jure, since Judge Hubbard was always Governor de facto. He was a total abstainer, and once said to a friend who offered him a drink of whiskey: "If you ever drink such stuff, always drink a little less than the others do, so that you will have sense enough left to pick up the secrets that fools babble about in their cups."

William B. Allison was the dean of the United States senate, and controlled more influence on proposed legislation than any other member of that august body.

And Jonathan P. Dolliver was one of the most forceful and eloquent orators of his time. It is recorded that when a young man he came from West Virginia to Iowa, bringing with him hardly more than a law diploma, a robust body and a ruddy face. He located in Fort Dodge, and in a scrumpy office began to wait for clients. But paying clients were scarce in those days, and in order to make a living he spent part of his time working on the highways. While laboring on the highways and waiting for clients he went about making political speeches. He affiliated with the Republican party and spoke for the party wherever two or three were gathered together. His eloquence was so effective that within two years after his arrival the strangers among whom he was sojourning made him their city solicitor. One of the leaders in the Republican party thought he saw a prophet concealed in this man Dolliver and introduced him to the Iowa members of the Republican national committee, who were continually scanning the horizons for young men who could make speeches. The Iowa members of the committee and other leading Republicans of the state saw such possibilities in young Dolliver that he was named temporary chairman of the Republican state convention in 1884. Realizing that the speech required of him would either make or break him, Dolliver prepared himself thoroughly. As he sat on the platform waiting to be introduced he faced an audience made up of picked Republican leaders of Iowa, and in one of the boxes, as their guest of honor, sat Gen. William Tecumseh Sherman. As he gazed back into the upturned, expectant faces a wee small voice inside of him kept saying, "Be brave, this is your chance." Dolliver then took renewed courage and resolved that he would make a supreme effort to speak as he had never spoken before, for he knew that for him the gates of fame stood ajar, and he was unafraid. And when he began to speak he delivered the sentences he had rehearsed with the spontaneity of an extemporaneous speech. At once he captured his audience and they picked him up and car-

ried him through his speech on the wings of their applause. The speech abounded in wit and humor mingled with pathos. It bristled with epigrams and phrases that sounded like slogans, and when he finished he was greeted with thunderous applause and shouts of "Wonderful!" The next morning Dolliver found himself famous, and the Associated Press spread the news all over the nation that a new orator had been found in an Iowa cornfield. It was in this speech that Dolliver told the delegates that Iowa would go Democratic when hell went Methodist. But years later there must have been trembling in hell in fear that the saying of the young and impetuous prophet might be fulfilled.

But the great Iowa lawyers of the past did not reach the top of their profession by way of a path of roses, for they, too, won success the hard way. Each and every one of them, in the early stage of their practice, experienced discouraging hardships and bitter disappointments, but confidence in themselves and faith in the future brought ultimate success. So, to the young lawyer of today, who might feel that the future offers no promise of a successful career in the legal profession, we say, know the past, have confidence in yourself, and believe in the future.

Permit us to pay tribute to the many notable lawyers who, in the past forty-seven years, have graced the history of Iowa, but we cannot attempt to review all the illustrious names that adorn its annals, and, therefore, we leave it to future historians to record their achievements.

TERRITORIAL LIBRARY FOUNDED

No history of the Iowa state bar would be complete without including a record of the birth and growth of the Iowa state law library, the origin of which antedates the admission of Iowa as a state. The law library was originally a part of the territorial library which was later merged in the Iowa state library. Therefore, the history of the Iowa state law library commences with

the act of congress dividing the Territory of Wisconsin and establishing the territorial government of Iowa. That act was approved June 12, 1838. It appropriated \$5,000.00 to be expended by and under the direction of the governor of the territory "in the purchase of a library, to be kept at the seat of government, for the accommodation of the governor, legislative assembly, judges, secretary, marshal, and attorney of said territory, and such other persons as the governor and legislative assembly shall direct."

In 1838, Robert Lucas, ex-governor of Ohio, was appointed governor of the new territory, and Burlington was chosen as the seat of government. Governor Lucas brought with him, as his private secretary, a brilliant young scholar and lawyer, Theodore S. Parvin, who, on the tenth day of April, 1839, was appointed librarian of the territorial library. Thus, Theodore S. Parvin became the first librarian of what is now known as the Iowa state law library. Mr. Parvin assisted Governor Lucas in the selection of the books for the new library, and the \$5,000.00 appropriation was used to purchase 1519 books on miscellaneous subjects, of which 449 were law books, legal documents and periodicals. That small collection formed the substructure of the present law library with approximately 140,000 volumes; and it is a matter of pride and satisfaction to Iowans that away back in 1839 Iowa's first territorial governor had the far-sightedness to call to his aid as librarian a student of both literature and the law, and that the pioneer library of Iowa included not only law reports, but also standard works of literature, science and law.

PIONEER STATE LIBRARY ESTABLISHED

The First General Assembly of the state of Iowa early undertook the task of providing for "the management of the state library, and the election of a state librarian," and on February 15, 1847, an act was approved establishing a state library. The law library continued as a division of the state library from that date down to

the regular session of the Forty-eighth General Assembly, when an act was approved on February 13, 1939, establishing the Iowa state law library as a separate unit of state government, and in the same act created the legislative reference bureau as an integral part of the law library, all under the supervision and direction of the law librarian.

LAW LIBRARY RANKS HIGH

Today the Iowa state law library is one of the largest and finest state law libraries in the United States, and also ranks among the top most complete collections of legal reference in the world. The present available records disclose that, in the matter of number of volumes, the Iowa library is exceeded only by the Connecticut state law library, and then only by a small margin. Stacks and stacks of law books, legal documents and periodicals line the library shelves, ranging from a copy of a code 4,000 years old to the latest codes, session laws and court reports of all the states. Nearly complete sets of statute laws of the entire Anglo-Saxon world, and many in a foreign tongue, can be found there.

This library possesses complete files of the reports of all of the United States courts, all the principal reporter systems, numerous special legal reference works, and late editions of textbooks covering the entire range of legal subjects. The library contains the most complete set of report of legal and bar associations in the world; also, a complete set of the briefs and arguments in the Iowa Supreme Court. In fact, everything in law has a place on the library shelves.

RARE DOCUMENTS INCLUDED

Among the valuable works contained in the library are numerous, rare and priceless books describing the laws of almost every age and time, some of which volumes cannot be found anywhere else in the world. Among the rarest of those works is the Code of Hammurabi, which is the oldest code of laws in the known world.

It was promulgated by Hammurabi, King of Babylon, 2,285 years before Christ, and chiseled in hieroglyphics in tablets of stone, set up in the principal cities of the kingdom so people might know what the laws were. The actual finding of the monument on which the code was engraved took place in December, 1901, by an expedition sent out by the French government, and a transliteration and translation of the code was made by Robert Francis Harper. A copy of this priceless document is contained in the Iowa law library.

The collection of exceedingly rare and priceless documents found in the library also includes the following:

Four volumes of the Domesday Book, the earliest record in England, started by William the Conqueror in 1080.

Year Book of Henry VII, printed in ancient Norman-French and bold English type in 1555. The volume is in the original leather binding.

Copy of the early Anglo-Saxon law published in London in 1577, during the reign of Queen Elizabeth, and containing the abridgment of the laws and decisions of early England.

Laws of Scotland from 1124 to 1707.

A Latin Corpus Juris Civilis in the original leather binding in which it was bound in 1604.

Institutions Juris, reciting in Latin the fundamentals of jurisprudence as evolved in the Roman Law, printed in 1553, and marked with wormholes in its original leather cover.

Code of Frederick the Great of Prussia, published in 1751. It is claimed that modern codes really began with this code.

The code of Napoleonic laws, issued by Napoleon in 1804. It is alleged that this code has influenced all the modern laws of the world, and is substantially in effect in the state of Louisiana at the present time.

The first edition of William Blackstone's Commentaries on the Laws of England, published in 1765, as well as early editions of Hume, Coke, Littleton, and other early writers of English law.

A digest of Roman civil law printed in 1528, and many other ancient and rare law books.

The most interesting of the Iowa law books contained in the library is the original volume of Bradford's Reports of the decisions of the Supreme Court from the organization of the Territory of Iowa in 1838 to December 1839. So far as is known, this is the only copy in existence, and is one of the rarest books in the United States.

The collection housed in the library is conservatively valued at \$1,000,000 and could not be replaced at twice that sum, if, indeed, it could be duplicated at all. This vast collection of legal reference is made easily accessible to the members of the Iowa bar, and to the members of the bar of other states who frequently visit the library in search of data unobtainable in their own state, by the modern scientific system of card index which makes it possible to locate any particular book or legal document instantly. Also, the system of classifying and cataloging the material, as perfected in the Iowa library, is one of the best, if not the best, in any state law library, and has been adopted by other states. In fact, the Idaho state law library adopted the Iowa system as the best in the nation, after the librarian of that state spent three years visiting the law libraries in all the states to find the best method of classification and cataloging in use. Cornell University at Ithaca, New York, has also adopted the Iowa system.

The library is serviced by a staff of highly trained, efficient and courteous assistants, each a specialist in his or her specific duties. The library is used constantly by members of the bar, public officials and the general public. Many lawyers and judges over the state make frequent requests for the loan of books, briefs and arguments in the supreme court, and other material found

in the library, and it is the policy of the staff to comply with such requests on the day they are received. The efficient management of the library has been recognized throughout the nation for more than a half century, and the high standing accorded its supervising officials may be gauged by the fact that one of its librarians, the late A. J. Small, was one of the founders and first president of the American Association of Law Librarians, an association whose membership includes members of the staffs of state, institutional and university law libraries throughout the country. And in this connection, it is proper to pay tribute to the man whose extraordinary ability and self-sacrifice made possible the preminence in the field of law libraries which the Iowa library now enjoys—A. J. Small, who served as state law librarian for more than 41 years. To him this magnificent institution, which holds a place of importance in the legal annals of the state equal to that attained by the historic law libraries of the ancient world, is, indeed, a fitting monument.

LOVED THEIR STATE MORE

Arkansas had no distinctive part in the march of events which culminated in the war between the states. It was one of the southern states and within its borders and among its people had grown up political and economic conditions similar to those in other southern states. The people of Arkansas were loyal to the Union, in the majority and to the heart's core. They loved the government that had been founded by their forefathers of the south and east, but they loved their state more because of its peoples' prospect for advancement and prosperity; the conditions were more domestic and economic than political. In the days of readjustment the men who had worn the blue and the men who had worn the gray and who respected each other for the scars they bore, put dead issues under their feet and stood shoulder to shoulder in the struggle for American supremacy in its broadest sense.—J. A. Smith, in *Arkansas Quarterly*.

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