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## CENTENNIAL OF FEDERAL COURT IN IOWA

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A dignified official session of the Northern Iowa U. S. District Court, in observance of the Centennial of the holding of the first Federal court in Iowa, was presided over at Dubuque, on Saturday, January 7, 1950, by U. S. District Judge Henry N. Graven, in the courtroom of the Federal building. The program commemorated the first session of the Federal court held at Dubuque 100 years ago, though there was dispute as to the exact place in the city where it was then held.

The Rt. Rev. Msgr. M. M. Hoffman, of Dyersville, an authority on pioneer Iowa, stated that the initial meeting of the court was in the old Globe building on Sixth and Main streets.

However, records of the time indicate that all public affairs were held at the old courthouse of Dubuque county, then the largest public building north of St. Louis, claimed Attorney Robert W. Clewell, member of the board of governors, of the Iowa State Bar association.

The meeting was graced by presence at the judicial bar with Judge Graven, of Justice William A. Smith of the Iowa supreme court, and U. S. District Judge Carroll O. Switzer, Southern District of Iowa. Both officials, along with U. S. District Attorney Tobias E. Dia-

<sup>1</sup>The addresses herein are a condensation from the official transcript of the proceedings of the commemorative session of the U. S. District court of Northern Iowa, at Dubuque, January 7, 1950, taken by Official Federal Court Reporter Carl V. Riley, Dubuque, Iowa, and reported and edited for publication in THE ANNALS. The transcript in entirety is on file in the Manuscript division of the Iowa State Department of History and Archives. A sound recording was made of the addresses delivered at the session, and under order of court the discs were sealed in a container and placed in the vault of the Clerk of the court with proper noting in the records of such disposition.

mond, who also spoke, agreed upon the glorious history of the Federal court in Iowa. "I have never entered a courtroom, state or Federal, without believing that my client will receive fair and just treatment," Mr. Diamond said.

Two hundred persons were assembled at the commemorative court session, which was official in every respect. Most of these were judges, lawyers, officials and their staffs from all parts of the Northern district of Iowa.

An American Legion color guard stood at attention, the detail consisting of Edward B. Chase, George LaPrel, Eldo Block and W. E. Schaefer. Two Eagle scouts, Stanford Duffy and Alvin Rowe, gave the pledge to the flag.

#### A BRITON NATURALIZED

Preliminary proceedings consisted in naturalization of Mrs. Elsie May Johnson, of Brandon, Iowa, a former British subject, who took the oath of citizenship administered by Lee McNeely, court clerk. George E. Traut, vice commander of the Legion post, presented to her a miniature American flag. The new citizen was formally welcomed in an address by Henry Bregman, chairman of the Americanization committee, of Dubuque Post No. 6, American Legion, who said in part:

I appreciate perhaps more than anybody else in this courtroom your feelings today, Mrs. Johnson. I went through exactly the same experience that you are going through this morning. I was born in Europe. I had the privilege of coming to America as a small boy. This country has been very good to me. . . . I have lived in several of the European nations, where the words, "freedom, liberty and equality" were words only to be found in dictionaries. I did not know what freedom was. Nobody can possibly know what real freedom is until they come to the United States of America. Our country is built upon the principle of freedom, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, and that among these are life, liberty and the pursuit of happiness; and that congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech or the press. In short, our country and its citizens

believe in the dignity of man, the right of the individual. And our forefathers gave their lives and incalculable sacrifices to preserve these privileges to us.

I congratulate you that you were able to pass the examination for American citizenship. You are now—and take it from me, because I know—a citizen of the finest country in all the world. We are the wealthiest country, and we are the strongest country—but at the same time we are the most humble country. No other country has done so much for humanity—if there is any disaster, whether it be in China, Japan, or any place else, we are the first on the job with aid and assistance. That is our record of the past, and we will continue to do that . . . My parting message is, read good books and the newspapers, and know what is going on in the country—and exercise your right of citizenship. It has been a wonderful privilege to me to be invited into this Federal court of the United States to say these words. I am thankful.

#### ATTORNEYS ADMITTED TO PRACTICE

Three members of the Iowa bar were admitted to practice as attorneys in Judge Graven's court upon recommendation of sponsors. They are Morris E. Stark of Bode, Isadore Meyer of Decorah, and Robert L. Oeth of Dubuque, and the oath of admission was administered by Clerk Lee McNeely. These in turn were endorsed by T. E. Diamond, U. S. attorney, Northern District of Iowa; Judge George B. Richter, Thirteenth Judicial district, and John C. Oberhausen, member of the bar of Dubuque county.

The court praised the Dubuque county bar association stating that "without its full cooperation and help the commemorative program would not have been possible, to whom I am greatly indebted and to whom I wish to express my appreciation." He then presented John G. Chalmers, judge of the district court for the state of Iowa in and for Dubuque county, and president of the association, who spoke briefly, saying:

One hundred years ago today in the city of Dubuque, Iowa, was held the first Federal court session in the Northern district of Iowa. One hundred years is a long time when measured by the span of life of the ordinary man. During those one hundred years this court has stood as a bulwark for the rights, justice and equities of those who came before it and sought its jurisdiction.

He then introduced Henry C. Kenline, a member of the Dubuque county bar, as chairman of the proceedings of the session, and of the local committee which planned the centennial observance. Then Mr. Kenline first presented by way of introduction Lee McNeely, clerk of the U. S. district court for Northern Iowa, who first took office in 1912, and served in that office thirty-eight years; also Frank A. O'Connor of Dubuque, former U. S. attorney for the Northern district of Iowa, who received his commission in 1914; William F. Riley, of Des Moines, president of the Iowa State Bar association, and Anthony F. Schrup, postmaster of the city of Dubuque. Next were presented descendants of earlier court officials, being David S. Wilson, Miss Marjorie Wilson, Kate K. VanDuzee and Horace S. Poole, all of Dubuque, and Carl W. Reed, of Des Moines, son of the late Henry T. Reed, former U. S. district judge, himself a former judge of the state courts of Iowa, a member of the Iowa senate, and presently a member of the Iowa state commerce commission.

#### HOFFMAN PICTURES IOWA IN 1850

The first speaker introduced by Mr. Kenline was the Rt. Rev. Msgr. M. M. Hoffman, of Dyersville, author and historian, a member of the faculty of Loras college, Dubuque, occupying the chair of philosophy and ethics, who spoke as follows:

This day is another milestone in the long, rich, and glorious history of Dubuque. The first white settlement in Iowa, Dubuque is the only part which existed under five different flags. When Joliet and Marquette came down the river, the fleur-de-lis of the French monarchy was run up over this part of the country. In 1763, this Louisiana country was transferred to the Spanish kingdom, and the flag of Spain was unfurled here until 1800. But there was a short period in 1780, for a few months, when during the War of Independence, an English expedition was sent down from Canada, and, by way of Prairie du Chien, came into what is now Dubuqueland, and ran up the Red Flag of Britain. From 1800 to 1803, the pennant of the French Republic under Napoleon Bonaparte was flown—but only momentarily at New Orleans after it became known that this was part of the French

Republic. And from 1803 until today, the Old Glory of the United States was run up to remain—and God hope for many years hence.

The hamlet that Julein Dubuque founded at the mouth of Catfish creek in 1788 was the first white settlement in Iowa, to be succeeded in 1833 by the present modern city of Dubuque.

So, I think it would be quite appropriate, as well as it is quite interesting this morning, to take a glance back through these last one hundred years to see what was this state of Iowa, the state in which the sovereign government of the United States decided to set up its Federal court. When Judge John J. Dyer ascended the steps of his judicial rostrum, Iowa had been a state but only three years, for it was in December, 1846 that it had been admitted as the twenty-ninth state of the Union. Its population was thin and scattered. The cities of Iowa were mainly along the Mississippi river—Dubuque, Davenport, Burlington and Keokuk. Council Bluffs, across the state, was a small gateway, growing more important, admitting the immigrants to the west. Sioux City was a little hamlet, just abornin'. There was not a city of any size within the state, except the little capitol of the state, at that time Iowa City on the Iowa river. Des Moines, the present capitol, was a military outpost on the shores of the Raccoon and Des Moines rivers.

Of all the younger states of the United States at that time, Iowa was the most ambitious. Thousands of immigrants each week were coming up the Mississippi river on steamboats to be landed at these cities, for as yet the steel ribbon of the railroads had not come as far as the Mississippi valley. The hectic days of the California gold rush were on and mobs of people were passing through this state on their way west. The great Mormon migration was still continuing, mostly through the southern part of the state; not a week passed but hundreds arrived at the Dubuque harbor, and left for Utah, crossing the state from here.

Iowa, so far as the Dubuque territory was concerned, depended mainly on lead, minerals and lumber, but agriculture, even at that time, was the great source of wealth of the state. This was long before corn had become king, and before the hog was the cartoonist's symbol of the wealth of Iowa. Wheat grew everywhere, on the prairies and along the streams. The squatter, the farmer, and the settler, was still staking out his claim in 1850. Transportation was entirely by wagon, by stagecoach, or by steamboat. That, in a few words, is the economic picture of Iowa in 1850.

#### EDUCATIONAL SYSTEM INAUGURATED

The cultural eminence to which Iowa has always laid claim had already begun in the foundation of the educational system of Iowa. Loras college in Dubuque was already eleven years old—

a college founded by a French bishop, Matthias Loras, and a Welsh general, George Wallace Jones. Iowa Wesleyan university, at Mount Pleasant, was founded in 1844. The State University of Iowa was then being organized—and other academies and colleges were being formed; and a myriad of little schoolhouses were being erected by 1850.

In that year the governor of Iowa was Ansel Briggs, from the county south of us, Jackson county. He lies buried today in the cemetery at Andrew in Jackson county—and in this part of the year he was still signing bills in that great, historic old building at Iowa City called the Old Capitol. But before the year 1850 was ended, a thirty-eight year old resident of Dubuque, Stephen P. Hempstead, took over the governorship, and we have a street named after Governor Hempstead in the northern part of the city. Incidentally, I believe Governor Hempstead was the only Dubuquer ever to become governor of Iowa, or any state of the Union.

In that same year, in 1850, Iowa was represented in the halls of the United States senate by two distinguished gentlemen whose lives were entwined with Dubuque very intimately. They were Augustus Caesar Dodge and George Wallace Jones. Dodge street and Jones street in Dubuque are named after them. To the south of us and to the west slightly is Jones county, named after George Wallace Jones; and Linn county, of which Cedar Rapids is the county seat, was named after his uncle, Senator Linn of Missouri, who was sitting in the halls of congress at the time Senator Jones was sitting there from Iowa. Fort Dodge, at that time known as Fort Clarke, a little village, had its name changed a few years later to honor the Dodges. General Henry Dodge and General Augustus Caesar Dodge, father and son, served simultaneously in the U. S. senate representing two different states, the only instance we have of that in the entire history of the United States. And of the city's name being changed to honor the Dodge family, Cyrenus Cole of Cedar Rapids, former congressman, wrote, "No city was ever named more honorably in the annals of America than Fort Dodge, which carries the memory of General Henry Dodge of Wisconsin and General Augustus Dodge of Iowa." Both of these gentlemen had served together in the Blackhawk war. Both had been generals of the militia. And General Jones, when he was delegate from Wisconsin to the congress of the United States, was instrumental in putting through a bill which created the territory of Iowa, in 1838, and later when Augustus Caesar Dodge was delegate from the Iowa Territory to the congress of the United States, he was the one chiefly instrumental in securing passage of the bill creating Iowa as a state. Both of those gentlemen were close friends of Judge Dyer during the years he presided as Federal District Judge in Dubuque.

## DUBUQUE AN IOWA GATEWAY

Dubuque was then a bustling little town of four thousand people. The census of 1850 gives the population of Dubuque county as a little less than eleven thousand. Dubuque was the gateway and port of entry for goods and people from the east for all of northeastern Iowa. Across the river east, as well as a few miles to the south, was another city and is another city yet today, Galena, which was then the rival of Dubuque. And not a day passed but what from five to fifteen steamboats came from the south to the north and entered the harbors of those two cities. The rivalry at this time in 1850, was quite fierce. I noticed the other day, in the *Miner's Express* of 1849, a few months before Judge Dyer opened the Federal court, referring to this rivalry in the hope of Dubuque being the Queen City port of the northwest, this was said in an editorial:

Already the largest town west of the Mississippi and north of St. Louis situated precisely at the point latitude at which the railroads extending west from the towns upon the lakes must strike the river; surrounded by a country on all sides, almost illimitable in extent and inexhaustible in its agricultural and mineral resources—it requires no gift of prophecy to foresee that Dubuque is destined to become and to remain the great commercial city of the northwest.

What a prophecy! I leave it to you, to say how well it has been fulfilled. At that time the log cabins and the wooden huts of the city of Dubuque had been gradually transformed into the brick and stone buildings and the elegant mansions that reached over the hilltops here. In 1849, just before Judge Dyer opened the Federal court, he built the beautiful mansion with high colonnade pillars at the entrance of Main and 13th streets. At that time, I should mention too, that the great newspaper of Iowa, the leading one, was the *Dubuque Miner's Express*, and its editor was a famous name prior to and during the Civil war, Dennis A. Mahoney, and it was read all over the state.

## LAWYERS AND LITIGATION

In conclusion, I would like to say a few words about the Federal court itself, which opened one hundred years ago today. On that day it opened in a building down on Sixth and Main streets called the Globe building, often referred to as the Globe hall. In this building was housed the Globe theatre and council rooms of the city of Dubuque, as well as the United States postoffice of that day.

The first lawyer to arrive in Dubuque was a gentleman by the name of William Corriell, who came here in 1835. On May 26, 1836, the *Dubuque Visitor* said in the paper of that day, "A good omen. Dubuque so far has been found fit to be occupied by only one

lawyer." Remember, the *Dubuque Visitor* was the first newspaper to be published north of St. Louis and west of the Mississippi. So that statement is quite significant—but we may say, that the caliber of the attorneys appearing in Federal court in Judge Dyer's day was as high as it is today. Among them, we have the names of such men as Governor Hempstead who practiced in that court. Governor Hempstead came to Dubuque in 1837. There was here a famous lawyer by the name of Timothy Davis, after whom Davis avenue in Dubuque is named, and who later on became a United States congressman from northern Iowa. He arrived in 1839—and practiced in Federal court in its first years. And there was Justice Thomas S. Wilson and his brother, David, whose descendants we are honored to have with us today. Thomas S. Wilson arrived here in 1836. He had been a member of the Territorial Supreme Court of Iowa, and later on, after his retirement, he became a district judge of the Iowa court. And there was an attorney by the name of Platt Smith, who had no collegiate training whatever, but who developed later on as one of the great Dubuque attorneys, and was connected with many of the famous cases of litigation at that time. He had a claim to culture. He was the founder of the Dubuque library association. There was Ben Samuels, a handsome, tall, eloquent orator, who was a product of the finished schools of the east. And we do not want to forget, Frederick E. Bissell, who also practiced in that court, and who later on toward the 60's became attorney general of Iowa. The firm of Nightingale and Wilson was the one at that time which included David S. Wilson, who later succeeded his brother as a district court Judge in Dubuque. And it is interesting to note that Judge Dyer, after he arrived in Dubuque, helped form a law school here, called the Dubuque Law School, which flourished until the time of his death some five or six years later. He was the dean of the law school, and on the faculty was Judge Dyer, Judge Thomas S. Wilson and the Rev. Joshua Phelps, a Congregationalist divine, who taught English and the classics in that school.

The type of litigation before the courts of that day had to do with cases growing out of lead mines, and admiralty cases arising out of the busy traffic on the Mississippi river, steamboat collisions and other claims. And when the railroads came, there was litigation in connection with right-of-way and accidents. They were things that you do not hear very much about today. There was a great deal of litigation about the defaulting bond issues of the various cities and towns, which, in their early liberality, encouraged the railroads to come, but later failed to pay off the mortgages. Those types of matters have just about disappeared from the docket of our Federal court of today.

There, in a few words, we have the picture of Iowa of 1850. It was a young state, full of ambition, resolute, full of confidence in the future. It was the miniature of the United States republic. Thousands of European immigrants and settlers from the east were crossing the Mississippi every week to settle here in Iowa. The breath of freedom was in their nostrils, and the hope of liberty which they knew would be at home on the prairies and hills of Iowa beat strongly in their hearts. It is the Iowa of their day of 1850 that we inherited, and that in this courtroom this morning, under the aegis of justice and liberty, we stand as it were receiving the kindly benediction of the tradition of the past in the presence of Judge Graven, the able successor to a long line of noble jurists. And looking back one hundred years ago, seeing what a haven of opportunity Iowa was for our fathers and our forefathers and praying that God will keep alive that hope and opportunity in the future for our children and our childrens' children, we can repeat this morning with patriotic fervor, the lines of the poet:

“Great God, we thank Thee for this home,  
 This beauteous birthland of the free,  
 Where strangers from afar have come  
 To breath the air of liberty.  
 Long may her flowers, untrampled spring,  
 Her harvests wave, her cities rise,  
 And yet till time shall fold her wing  
 Remain earth's lovliest paradise.”

#### THE ADMINISTRATION OF JUSTICE

The privileges and blessings of citizenship in America were emphasized also in the address of U. S. District Attorney Tobias E. Diamond next introduced, who said in part:

One hundred years sweeps into it practically Iowa's entire existence as a state. 1850 was a notable year in American history. That year saw two presidents of the United States. History records that General Taylor, president of the United States, died, and he was succeeded by the then vice-president, Millard Fillmore. That was the year in which the great Omnibus bill was passed in congress, sponsored and fathered by that great pacificator, Henry Clay. That was the year in which the Fugitive Slave act was passed, a piece of legislation that had much to do with the conflict between the states a few years later. Yes, that was the year in which the dominant political issue before the American people was the slavery question. It was in that year when there was a great discussion as to the admission of the state of California as a free state or as a slave state. And slavery was the principal, if not the only, political issue discussed

with any degree of earnestness during all of those years, and especially during the year of 1850, when the famous compromise of 1850, as it is known in our history books, was again sponsored and fathered by that great statesman, Henry Clay. Iowa had been admitted to the Union a few years before that, and I suppose that congress being aware that our winters were severe also included Florida to give us a little better weather, admitting Florida and Iowa at the same time.

It was not so long after that the Federal Judicial District of Iowa was formed—I believe in the year 1848. There were certain divorce proceedings instituted in congress by which a part of that district was divorced from the rest, and while the law as to retaining maiden names by divorcees may not have been in force, yet they did give this district a new name and called it the Northern District of Iowa—and the remaining part of the old District was called the Southern District of Iowa. I believe it was in 1882 when those proceedings took place in congress. My parents must have had prophetic souls, because they must have realized that if I ever came into existence I would love the state of Iowa, and particularly the Northern District of Iowa, because I arrived here just five years later, in 1887. And I am almost constrained to say that I must have had a little impression in my mind that some day I would like to take part in the administration of justice in that district.

When I heard the young man speak this morning to our newly-made citizen of the United States, he brought me back to some of the earlier years when I too went through that same process. You folks who were born, native-born Americans, I sometimes feel sorry for you, because you are not in a position to appreciate fully the wonderful blessings of being an American citizen, as we do who were naturalized into citizenship in this country.

I believe that the United States of America is the greatest country on God's green footstool—and Iowa, the most typical state in this entire sisterhood of states. Just look at it! She isn't too far north. And yet she isn't too far south. She isn't too far east. Nor is she too far west. She is not the largest, and yet not the smallest. She is not the richest, nor the poorest. She is not the most thickly populated, and yet she is not the most sparsely populated. I understand that the flora of the North American continent can be divided into two main classes: those of the eastern half of this continent and the flora of the western half of this continent. They tell me that they both meet in Iowa.

I don't believe that there is a state that has as many things to commend it as our beloved state of Iowa. And this judicial district, with all due respect to our distinguished guest who presides over the judicial destinies of the Southern District of Iowa, I

am inclined to think that the best land and the best counties in the state of Iowa are the fifty-two counties in our own Northern Judicial District of Iowa. And going a little outside of the United States may I mention, parenthetically, that the great poem, "In Memoriam," written by Lord Alfred Tennyson, was written in that same great year of 1850.

#### OUR SUPERIOR JUDICIAL SYSTEM

There is always one thing which I think of with a great degree of fondness and that is the wonderful judicial systems we have here in the United States: the state judicial system and the Federal judicial system, with a sort of an elliptic thread of justice running through both systems in their respective jurisdictions. While I have practiced law for something like forty-six years, yet I have never entered a court, either state or Federal, but I have always felt that my client will get just what he is entitled to, no more, no less, and although I have sometimes gone out of the court room thinking that the judge made a terrible mistake, upon more sober reflection, upon more mature deliberation, I am glad to say that in every instance I have finally been led to see that justice was administered just as it should have been.

And may I say at this time a word to attorneys? Perhaps more to those younger men who were just admitted; your zeal for your clients may lead you to believe that your client's cause, or your side is impregnable, and is the only side that should win, and when you are defeated in court, I want to take you just a moment to the seat of admonition and tell you that when you step into an American court, and you are given the privilege of helping to select the jury, if it is a jury case, and as the presiding genius of that legal proceedings sits the judge. When you get through with that case, I admonish you to take home with you the thought that in no other country on God's green footstool will you find that proceeding performed with such meticulous care and such an earnest desire to administer justice than you have seen in the case you may have just tried. I have never yet stepped into a court where I felt at the outset that I wouldn't get a square deal. I know I am a member of a minority race that has been much persecuted—some of it deserved no doubt; and some of it undeserved—and yet I have never in a single case felt that it would cut the slightest figure in the destinies of my case that I was about to and later did present in that court.

#### PLACE OF HOLDING FIRST COURT

Representing the local judicial district of the state, the next speaker presented was Robert W. Clewell, attorney of Dubuque, and member of the board of gov-

ernors of the Iowa State Bar association, who addressed the court in part as follows:

In March 1845, congress also passed an act creating the Judicial District of Iowa. Provision was made for a judge of the district court of the United States for the District of Iowa, and for holding court at the seat of government, which was then Iowa City, having been moved there from Burlington in 1841.

In 1846 John J. Dyer of Dubuque, a native of Virginia, was appointed judge of the United States district court for the District of Iowa and he acted as such until his death in 1856. In 1849, the business of the court was such as to bring about a provision for holding the court in three places instead of only one. The Judicial District of Iowa was divided into three divisions, the Northern Division to meet in Dubuque on the first Monday in January, commencing January 7, 1850, the Middle Division to meet in Iowa City, in October, and the Southern Division at Burlington in June.

Accordingly on the first Monday in January 1850, which was January 7th, Judge Dyer opened the first term in Dubuque of the District Court of the United States for the Northern Division of the District of Iowa. Volume A of the United States District Court records in the office of Clerk Lee McNeely contains the record of the proceedings of that first term in Dubuque, as well as of all of the succeeding terms. . .

An exhaustive search has been made to determine the place in Dubuque where the Federal court met in 1850. The Dubuque newspaper at that time was the *Miners Express*, a weekly publication. The issue of January 9, 1850, refers to the court session but simply states that "United States District Court commenced its session in this city on Monday last. The following are the names of the jurymen in attendance" (naming 24 jurors).

The same paper for the first week in January, 1851, did not even mention the court being here. It is a significant fact that the newspapers in those days made no attempt to dramatize the news. There were no alluring headlines, only a simple statement of fact without any embellishment or glamour whatsoever. Undoubtedly this was because it was necessary to set the type by hand.

There are other circumstances in the records and newspaper files, however, from which it seems quite certain that the Federal court met in what was then known as the new courthouse which was completed in 1843. It occupied the site of the present courthouse at 7th street and Central avenue but apparently faced 7th street instead of Central avenue, as the present courthouse does, because references are found to the building of a jail behind or in the rear of the courthouse and on 8th street.

At this point certain of the records in Volume A before alluded to, become significant because of their connection with subsequent events, which tied together, seem to lead to the conclusion that the Federal court met in the county courthouse. The record of the Federal court session held in 1852 shows that on January 5th of that year in the case of Chouteau vs. Molony, the following order was entered:

On motion of defendant's attorneys, ordered that the depositions in this case be filed and published.

On January 9, 1852, the following entry appears in the record in the same case of Chouteau vs. Molony:

This day came the plaintiff by his attorney, P. R. Cornick, Esq. and on his motion and with defendant's consent, it is ordered that leave be granted to plaintiff to withdraw his declaration and substitute therefore a petition under the practice as regulated by the code of Iowa. It is further, upon consent of the parties, ordered that plaintiff have leave to withdraw an original paper (Dubuque's petition to Baron Carondelet) and substitute in its place a copy thereof. Thereupon came the defendant by Wilson and Smith, his attorneys, and filed his demurrer to plaintiff's petition. When the case came on to be heard upon the demurrer of the said Patrick Molony to the petition of the said Henry Chouteau and the court being fully advised in the premises, is of opinion that the said petition and the matters therein contained are not sufficient in law to maintain the action of the said Henry Chouteau against the said Patrick Molony and the said plaintiff declining to amend but standing by his petition, therefore it is considered that the said Patrick Molony go hence without delay and recover of the said Henry Chouteau his costs in his behalf expended taxed to \$85.50.

This was the famous Dubuque Claim case, which involved the title to all of the land now comprising the city of Dubuque and nearly two-thirds of Dubuque county. The significant fact in our search for the location of the first Federal court sessions is that the ruling from which appeal was taken to the Supreme Court of the United States was made in the District Court of Iowa, Northern Division at Dubuque. The leading attorney for the city of Dubuque and the settlers whose property rights and very existence were involved in that litigation, was Thomas S. Wilson of Dubuque, a lawyer of outstanding ability and who in 1847 had resigned as a member of the Supreme Court of Iowa.

In a reminiscent article written by him years later, and published in the *Herald* newspaper on April 17, 1887, Judge Wilson referred to the fact that this famous case was brought in the United States District Court at Dubuque before Judge J. J. Dyer. This coincides with the record in Mr. McNeely's office showing that Judge Dyer sustained the demurrer to plaintiff's petition and it was from this ruling that the case was taken to the United

States Supreme Court by writ of error. It may be asked then, how does that indicate where in Dubuque the Federal Court was held? The connecting link is found in another article appearing in the *Herald* newspaper on January 22, 1893. At an elaborate celebration in connection with the completion of our present county courthouse, J. H. Shields responded to the toast "The Old Courthouse". In the course of his remarks he commented on the fact that it was begun in 1839 and finished in 1843; that the plans were made by Samuel Wilkins and for which the county paid him \$8.00. He said:

#### MR. SHIELD'S RECOLLECTIONS

My earliest recollections are connected with the old courthouse. My old home, built in 1837, five years before I was born, is still standing on White Street just east of the courthouse. This house, the Edward Langworthy homestead farther up on the same street, and the Leroy Jackson house on the corner of Eleventh and Iowa, all occupied today, were the three first brick houses built in Dubuque; the Jackson house was the first in the state and all were very pretentious and elegant for that time.

The old brick courthouse as I first remember it was about one-half the size of the building as most of you knew it, and stood in the middle of the grassy square, with a tower covered with shining tin rising from the center of the roof, and its adjunct, a hewed-log jail two stories high, stood in the rear on Eighth Street.

It was in its day the largest and finest public building on the Mississippi north of St. Louis. It was the most important building in town, and was used for all public purposes.

Many important and famous old cases have been tried within its brown walls. Here, in the matter of Ralph, a slave from Missouri, on habeas corpus, was first promulgated the doctrine that when a slave, with the consent of his master, becomes a resident of a free state, he could not be regarded as a fugitive slave, and Judge T. S. Wilson delivered the opinion.

The great Julien Dubuque Spanish grant case, involving the title to seven leagues of territory, from the mouth of the Maquoketa to the mouth of the Tete Des Morts, including the city of Dubuque, was first tried in the old courthouse and determined finally by the supreme court of the United States. Three Indians, the perpetrators of the last Indian massacre near Dubuque, were here tried and convicted for the murder of a trader by the name of Tegardau and his family.

It would thus seem to be clearly established that the so-called Dubuque Claim case was tried in the Federal court which held its terms in the then new county courthouse at 7th and Clay street (now Central avenue) in Dubuque. This conclusion is further strengthened by the fact that there was apparently no other public place in Dubuque available for holding court. There was no permanent postoffice or customs house building. The postoffice had moved from time to time with the changing post-

masters from lower Main street to 7th and Iowa streets and then to the old Globe building near 5th and Main streets, where the mail was distributed in 1850. The city of Dubuque conducted its business in a small building at 5th and Locust Streets subsequently occupied by Dr. Staples. Prior to the completion of the courthouse in 1843 the territorial court, as well as conventions and public gatherings of all kinds, was held in the little log building primarily built as the Methodist church and located on the Locust Street side of the Washington Square just across the street from where we are now.

All indications therefore point to the fact that during the period in question the Federal court held its sessions in the county courthouse at 7th and Clay streets. The only possible doubt arises from an article appearing in the *Herald* newspaper on February 15, 1891, in the nature of a reporter's news item on the Chouteau vs. Molony case and states that

The case was first tried in the state court and was taken thence to the United States District court where Judge J. J. Dyer decided in favor of the settlers.

If it was a trial in the state court that Mr. Shields referred to in his statement that the case was first tried in the old courthouse, then our best evidence that the Federal court met in the courthouse loses its value. However the article referred to was undoubtedly written by a layman who might have had in mind a prior action which was brought at Galena, Illinois.

After Julien Dubuque's death the federal government leased much of the land to lead diggers and a considerable part of the minerals mined on the land was taken to Galena to be converted into lead. Those claiming as assignees of Julien Dubuque brought suit to test the question of title to the mineral which had been taken to Galena. But at the trial they were not able to identify the mineral which came from the Julien Dubuque mines since it was commingled with other mineral which had been taken to Galena and a non-suit was taken. This may have been the state court proceeding referred to in the newspaper article of February 15, 1891.

Therefore, I am not inclined to regard that statement as sufficient evidence to refute the chain of circumstances that points to the County Courthouse as the place where the court was held . . .

In conclusion, the thing that I pass to you all has been better said than I can, that throughout these one hundred years the faith of our fathers has been vindicated and justified. I cannot help but think of your experience and mine many times as we have, especially as I recall in the middle 90's, going across this wonderful state of Iowa in a passenger train, with the coal-burning

stove in the front of the car, seeing that little family from a far-off land beyond the seas hardly able to ask for a drink of water in the language of our country; and yet seeing those same children, sitting there as silent witnesses to the wonders before them, now judges upon our benches, United States attorneys, teachers in our schools and colleges, and representatives in our congress and our various legislatures. No other place, as Mr. Diamond said, "on God's green footstool," are such things possible as in the United States of America.

#### ABILITY, LOYALTY AND CO-OPERATION

The concluding address of the court session was rightfully that of the presiding jurist, Judge Henry N. Graven. In presenting him Chairman Kenline said:

Judge Graven comes to us clothed with many distinctions in the service of the government. Before becoming a member of the judiciary of the Federal bench, he was judge for the state district court of Iowa, and served the government in many other capacities. As able as were his predecessors, none served this court more ably or with greater devotion than the incumbent, and I think it is fitting that I give this brief biography of his life.

Judge Henry N. Graven was born at St. James, Minnesota, on June 1, 1893. He obtained the BA and LLB degrees from the University of Minnesota in 1921. He was given the LLD by Capital University, Columbus, Ohio, in 1942. He was admitted to the bar in 1921. In 1936-1937 he was special assistant attorney general of Iowa and counsel to the Iowa state highway commission. He was judge of the Twelfth judicial district of the state of Iowa 1937-1944. He was appointed judge of the United States District court for the Northern District of Iowa, took the oath of office and entered upon his duties as judge March 30, 1944. During World War I he served with the combat engineers of the U. S. army. He is chairman of the board of pensions of the American Lutheran church. He is a member of the Order of Coif, and during the period 1919-1921 was a member of the editorial board of the *Minnesota Law Review*. The family home is in Greene.

Besides paying tribute to the distinguished character of his predecessors on the bench of this court, and praising the fidelity and efficiency of its staff of officials, Judge Graven referred to the important litigation of the early years previously outlined by Mr. Clewell, and briefly surveyed the history of the beginnings of courts in the Iowa area, saying in part:

Since the area now included in the Northern District of Iowa passed to the United States by the Louisiana Purchase in 1803, it might seem surprising that no Federal court was held in that area until 1850. However, it is the estimate of one historian that as late as 1832 there were not more than fifty white people living in what is now the state of Iowa. For a period of time both before and after 1832 there were no courts for the area.

It was during this period that the lead miners at Dubuque established the so-called Miner's court, which assumed jurisdiction, without benefit of statute, for any matters needing attention, even to the extent of trying a man for murder, finding him guilty, sentencing him to be hung, and carrying out the sentence.

The first session of the court was held at a place of great historical interest. For considerable time prior to the coming of the white man the Indians had known of the presence of lead in and around Dubuque and had been mining lead. It had long been the site of an Indian village. One of the earliest white men connected with Dubuque was Jean Marie Cardinal, who set up a post here for trading with the Indians around 1770. Jean Marie Cardinal was Iowa's first and only casualty in the Revolutionary war. In 1780, during that war, a detachment of British and Indians attacked what is referred to as the "Village of St. Louis." Jean Marie Cardinal was killed repelling the attack. Cardinal avenue in St. Louis is named after him.

Misconduct of counsel (in the early courts) was not unknown. The record of the court for the session of January 10, 1852, show a contempt proceeding against one of the leaders of the bar in Iowa. The outcome of the proceeding was as follows:

This day came the said Dft and purged himself of the contempt of which he stands charged by his own statement, disclaiming all improper or unworthy motive or any design to interrupt or hinder the due administration of justice, and the introduction of testimony.

And the court being satisfied in the premises, it is considered that the said defendant be discharged and go hence without day.

In contempt proceedings against one Vansickle, Judge Dyer on January 3, 1854, ordered "that an alias Pluries Capias issue" be issued against him. That formidable writ seemed to have the desired effect, for the later court records indicated that Vansickle made amends for his conduct.

In the record of a criminal case tried before Judge Dyer in 1852, it is recited that the "defendants plead not guilty and for trial *put themselves upon the Country* and thereupon came a jury." (Italics supplied.)

## LAUDS COURT STAFF AND BAR

Commending the value and loyalty of the court staff and the important functions of the bar of the district, the judge said:

While the judges play an important part in the administration of justice, there are others who play parts of equal importance. Among those are the members of the court staff. They are the ones with whom the public comes in contact more directly, and the attitude of the public towards the courts will, to a considerable extent, be determined by the manner in which the members of the court staff discharge the duties of their offices.

This district has been, and is, most fortunate in the character and ability of the members of the court staff. They have served, and do serve, the public ably, efficiently and courteously. They have represented, and do represent, public service at its best.

There are others who play an important part in the administration of justice. Among such are the members of the bar. In the long run the administration of justice will be largely shaped and determined by the actions and attitude of the members of the bar. With the help and cooperation of the members of the bar the court can do much to improve the administration of justice. It has been, and is, a desired objective, in the administration of justice, that cases be disposed of promptly and on their merits, instead of being disposed of after long delays and upon technicalities. It has been my experience as a judge of this court that the members of the bar of this court have cooperated willingly and whole-heartedly in methods and procedures, having for their objective the prompt disposition of cases on their merits. I wish to express my deep appreciation to them for such cooperation.

An examination of the cases which came before the courts 100 years ago shows that some of those cases dealt with damages growing out of collisions between river steamboats, and injuries sustained because of mishaps to stagecoaches, as contrasted with cases coming before the courts today involving collisions between motor vehicles and injuries sustained because of airplanes.

While factual situations in cases coming before the courts change from century to century, the fundamental principles of justice are permanent and everlasting. It is my wish and hope that those of us who now carry on the work of judicial administration in this district may never depart from those fundamental principles, and that we may never lower the high standards of judicial administration which have been set by those who carried on before us.

I wish to express my deep appreciation to Judge Chalmers, Chairman Kenline, the members of the committee, and the members of the court staff, and all who have cooperated to make this occasion what it is. And it is our hope that perhaps on January 7, 2050, the records of what we did here today will be of as much interest to them as are the records of the session of January 7, 1850, to us today.

#### LUNCHEON ADDRESS BY WM. F. RILEY

Following the formal program at the courthouse a luncheon was given at Hotel Julien, presided over by Judge Chalmers. The invocation was delivered by the Most Rev. Leo Binz, coadjutor archbishop of Dubuque. The benediction at the close of the meeting was pronounced by the Rev. Fred J. Landdeck, president of the Dubuque ministerial association.

Judge Chalmers introduced as the after-dinner speaker William F. Riley, of Des Moines, president of the Iowa state bar association, who said in part:

Properly to observe this anniversary one must take the perspective of a Janus. One must look back at the century that has passed—long, in the life of man; brief, in the span of history—to see and to interpret what is past. But also, one must look forward to the century that is to come, appearing longer in the life of man, to project what is to be and what can be, in the light of what has been.

Let us first look back into this century now ending, confining our gaze to the corridors of this court, and its history. That is not a narrow perspective, because through these corridors and to and from this court has flowed a never-ending stream of humanity, carrying on its surface what is good and bad, what is noble or less so, and carrying also with it the hopes and aspirations and finer ideals and resolves of our fellow-men.

This court began with the calling of a jury and with the admission of lawyers to practice before its bar. Both acts symbolized the American conception of justice—the first, the right of every citizen to have questions concerning his life, his liberty or his property to be determined by a jury of his peers; the second, the right of every citizen to have his cause presented by counsel of his own free choice.

One could speak at length of the jury system, its merits and disadvantages. Others have done it better. Rather, let us look back and perhaps also forward as to the calling of lawyers to its bar, and then, at the court itself. By this method we usurp the privileges of the Janus as we look both ways.

## THE BAR OF THE COURT

As to the bar of the court, it has been well said by Mr. Justice Jackson:

As society is organized in this country, the law office is the very base of the pyramid-like structure on which we depend to administer justice. "It too often is overlooked that the lawyer and the law office are indispensable parts of our administration of justice. Law-abiding people can go nowhere else to learn the ever-changing and constantly-multiplying rules by which they must behave and to obtain redress for their wrongs." Hickman v. Taylor, 329 U. S. 495, 514-515. The law office indeed is the vestibule to the courts.

The men who presented themselves for admission to this bar in 1850 were almost entirely men first admitted to the bar of Iowa. Already they were committed to perform the duties of attorneys and counsellors as defined by the laws of Iowa. It is a matter of more than passing interest that those duties as contained in the code of Iowa 1851 were *identical* with those appearing in the code of Iowa today.

Those duties were delineated by our pioneer forbears at the bar—men who recognized, accepted and defined the duties as those pertaining to a great and learned profession which put public service above personal gain. Those men wrote a standard for themselves and other men of honor and ideals. They recognized that the practice of law was a *privilege* not a right, that men admitted to the bar were first officers of the court and only later, free to offer their services for a fee. They believed then as we must believe today that when there arose a conflict between their duty to the court and the desire of the client, their first duty was to the court.

We must be today as eager and zealous to observe these duties so defined as 100 years ago. We must now, as then, make character a primary test of fitness to be admitted. The rules of admission prescribe certain educational requirements, or their equivalent. They require, too, a certificate of character, but make no provision for *its* equivalent. That, gentlemen, is because there is no equivalent for character. It is a must and a *sine que non* for admission to the bar of this court and of every court.

## OBLIGATIONS OF THE LEGAL PROFESSION

We hear much these days of public relations programs, all designed to improve the relations between the public and the legal profession. I am sure that you share my belief that nothing will improve those relations so effectively as will the personal conduct of the lawyer in his profession, and the personal conduct and example of the lawyer as a citizen. By choosing to enter the profession of the law we accept well-defined obligations and duties.

We take a solemn oath to observe and discharge them. No man entering business for a profit so obligates himself. In our professional relation there is no rule of *caveat emptor* or of implied warranty. There is instead an express undertaking written into the law of this state. Our oath gives it even the higher sanction of conscience.

Not only must the public be able to rely upon the faithful discharge by us of these sworn duties, but the men of this bar and the court must see to it that the dereliction of a member receives the swift and certain discipline which the transgression may require.

Should it be said by the skeptic that times have changed, that the relation of attorney and client must change with the times, let us remind him that the rules which govern and describe that relation have not changed in these 100 years. When the rules change, the practice of law will cease to be a profession. The relationship of trust and confidence will no longer exist. The lawyer no longer will be an officer of the court. Chicanery and trickery and artifice and cunning will be rewarded, rather than penalized.

The public for whose benefit courts were created and organized and for whom the courts received the power to admit and discipline those who practice before the bar would suffer immeasurably and would be first to protest the change.

We of our profession, bench and bar have made these rules in the public interest. Our new rules of civil procedure, federal and state, are adopted in the public interest that the administration of justice may be prompt, economical, simple and complete for any citizen. Our oath is more strict than that of Hippocrates. We must keep it so and make the penalty for its violation swift and certain.

#### HIGH INTEGRITY OF THE COURTS

Looking back at the bench of this district, it is surprising how few men have served—only six in its 100 years. They have been men of honor, ability and dignity, and I pay them high compliment when I say that none were the peer of their present successor. It would be easy to say more of him, and all here would concur.

These men were recruited from the bar. That is true, too, of the judges of the sister district, and of all of our Iowa courts. The statement of Mr. Justice Jackson that "the law office is the vestibule to the courts" is true too, in this sense.

It places on the bar the greater duty of requiring and preserving high integrity in its membership, of seeing to it that always there is kept before the individual lawyer and the organized bar the

high responsibility of their calling. You accept, I know, the truth of what I have said. My justification for saying it is that it cannot be too often recalled and repeated. We might well read our canons of ethics and re-read them as we re-read our bible or our missal. They are our standards of conduct—the precepts for our chosen profession.

The responsibility and opportunity of men of the bar in our relation to the court and the community is immeasurable. May I specify? Are your fellow townsmen, your luncheon group, your neighbors conscious of the place of the court in our tri-partite system? We may help them to become so. I believe it to be our duty to make them realize its relation and meaning to them.

It is for us to interpret it to them. The average layman knows that our government has three branches—legislative, executive and judicial—that the first is composed of his chosen representatives to legislate for him, that the second executes the laws, and that the third possesses the judicial power.

But does he know that he has no *right*—and I mean right in the sense of power or privilege—to demand an audience or to appear in person before those first two branches of his government? He may “petition the government for redress of his grievances”; he may ask for an audience with the chief executive and get it as a matter of grace, not of right. He may be invited to appear before a legislative body or one of its committees. He may ask that privilege and it may be denied. He is not entitled to appear as a *right*.

But does he know that to the court, to which we do honor today, he may come not as a matter of grace, not as a privilege, but by virtue of his citizenship and in the exercise of a *right*? He comes to the court, no matter what his estate or position, in his full dignity as a man and as a citizen, and no man can gainsay him. He may come in his own person to plead his own cause.

Does the average citizen know—he should—that the first ten amendments to the constitution—his bill of rights—define rights for the protection of which he turns in greatest measure, not to the other branches of his government, but to the court?

It is to the court that the citizen may turn to interpret, apply and enforce laws made by him through his freely chosen representatives. It protects him whenever an arbitrary, wilful or despotic majority attempts to invade or violate his rights, whether they relate to his person or property. Its independence and integrity are his greatest interest and asset as a citizen in a free government.

If he understands these things I have mentioned; if he knows how intimately the safety and protection of his family, his person, his property, even his church, is related to maintaining inviolate the independence and integrity of his court, he will be its most ardent, loyal and able champion.

We of the bar, as officers of the court, and as equal citizens with him, must make him conscious of his dependence on and relation to the court.

#### PROTECT THE COURTS FROM DANGERS

In the century that has passed I doubt that any page will record any attempt to impair, dishonor, or destroy his court, either through malevolent design or through selfishness or ignorance. I wish that the history of the next 100 years may include no such page. It will not if we are vigilant, alert and aggressive.

But there is danger from within as well as from without. Those who have sought to destroy government seek first the control of law enforcement agencies. The enemies of freedom strike first at the agency which most protects freedom.

There is danger from men well-meaning, but without understanding, men without malice, but without appreciation of the consequences of their acts. The bar has a responsibility in this new century to be jealous of the character, training and ability of the men who will come to the bench by appointment—as well as of the men elected to the bench of this state. We may secure and safeguard its integrity by having only men of integrity available for selection.

We must be jealous too, of its independence by protecting the attacks upon it. Remember that the people have entrusted us—bench and bar—the judges and the lawyers—with the administration of justice—with control over their liberties and property.

They have a right to hold us to some accountability for the manner of the operation of its machinery. And we have a medium today through which we may act more effectively than in the past. I refer to the organized bar.

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#### CONESTOGA STOGIES

The humble stogie derives its name from the fact that it was the favorite smoke of the men who drove the famed Conestoga wagons having their origin among the Dutch farmers of the Conestoga valley, Lancaster County, Pennsylvania.

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