II

THE LEGAL PROFESSION ON THE FRONTIER

THE GENERAL CONDITIONS surrounding the administration of justice in most of the frontier states at times seemed to be discouragingly primitive.[1] As late as 1841 the court in Springfield, Missouri, convened in the shade of a tree on the banks of a stream;[2] and the first courthouse in Springfield, Illinois, a town destined to become the capital of the state of Illinois, was a crude single-room log cabin erected at a cost of $42.50.[3] In Montgomery County,

[1] See, in general, Clark, *The Rampaging Frontier* 163–82 (1939); English, *The Pioneer Lawyer and Jurist in Missouri* (21 University of Missouri Studies, no. 2, 1947); Rogers, "The Epic of the American Lawyer," *Proceedings of the State Bar Association of Wisconsin* (1934); Bond, *Civilization of the Old Northwest* (1934); Zillmer, "The Lawyer on the Frontier," 50 *The American Law Review* 27–42 (1916); Clark, "Manners and Humors of the American Frontier," 35 *Missouri Historical Review* 3–24 (1940); King, "A Pioneer Court of Last Resort," 20 *Illinois Law Review* (1916); Hallem, "Early Courts and Lawyers," 25 *Yale Law Journal* 386–96 (1916); McCurdy, "Courtroom Oratory in the Pioneer Period," 56 *Missouri Historical Review* 1–11 (1961); Foote, *Bench and Bar of the South and Southwest* (1876); Stewart (ed.), *The History of the Bench and Bar of Missouri* (1898); Utter, *History of the State of Ohio: The Frontier State* (Ohio State Archeological and Historical Society, 1942).

[2] Letter of Charles Yancey to Marry Bedford, dated November 28, 1841, Charles Yancey Papers, Western Historical Manuscript Collection, University of Missouri, Columbia, Missouri.

Missouri, a primitive log cabin served as a combination of courtroom and jail, and when it was not used in the interest of administering justice, it sheltered sheep.[4] A judge in Tennessee, who had been charged with failing to hold court as required by law, gave as an excuse for his dereliction of duty the fact that the "courthouse" was infested with vermin and, hence, unusable, having served as a pigpen during vacations. In other places court was held in open houses without floors or windowpanes. During the wintertime the room was often cold, the seats were not fit to sit on, there existed no accommodations to permit private consultations between lawyer and client, and the general atmosphere, as August S. Merrimon puts it, made everyone feel "revengeful."[5] Courthouses frequently served as centers of social activities in small towns. County fairs and contests as well as recreational activities were held there, and exhibits of all sorts were placed within the courtroom. In the midst of all this confusion and uproar civil as well as criminal trials were conducted.

Many of the earliest judges or justices—usually wealthy farmers, squires, merchants, or landlords—were uneducated men: some were almost illiterate, and virtually none were grounded in the law or versed in its most fundamental technicalities.[6] They were chosen, as a rule, not for their legal knowledge, but often because they had been conspicuous leaders on the frontier in fighting Indians and, hence, knew how to wield authority effectively. In civil actions they assumed the role of referees, proceeding under the assumption that both parties were at fault, but they knew so little law that frequently they refused to instruct the jury in the presence of lawyers for fear that they would disclose their ignorance. They interpreted and dispensed justice according to their

[3] Beach, *History of Sangamon County, Illinois* 554 (1881). The adjoining jailhouse, it will be noted, cost twice as much as the courthouse.

[4] For a description of early courthouses in western Pennsylvania, see Crumrine, *The Courts of Justice: Bench and Bar of Washington County, Pennsylvania* 13–31 (1902).

[5] Newsome, "The A. S. Merrimon Journal, 1853–1854," 8 *North Carolina Historical Review* 315, 318 (1931). In *ibid.*, 327, Merrimon reports that at one time it was so cold in the courtroom that he could not stay to hear the charge.

[6] See, for instance, the many and amusing anecdotes and episodes connected with the earliest Illinois bench and bar, as they have been related by Ford, *A History of Illinois from Its Commencements as a State in 1818 to 1847* (1854), *passim.*

own judgment or sense of "natural equity," and punished offenders as they saw fit, without regard to precedent and decorum. Naturally, the administration of justice varied widely from court to court, and the judges, court officials, and lawyers were largely responsible for the manner in which the proceedings were conducted. Sometimes trials proceeded smoothly; on other occasions they were handled in a most inefficient way. As often as not they were conducted by ignorant men in the midst of loud talking, noise, and general confusion. At times the pandemonium was such that the testimony could not be heard.[7] Unkempt and unwashed lawyers rolling quids of tobacco in their mouths and judges intoxicated or snoring on the bench were no rarity.[8] Some lawyers and judges displayed meanness in conduct and slovenliness in dress in order to appear "democratic." For pioneers were more apt to distrust and condemn a man for being "kid-gloved" and "silk-stock-

[7] Newsome, "Merrimon Journal," *loc. cit.*, 328; Farmer, "Legal Practice and Ethics in North Carolina, 1820–1860," 30 *North Carolina Historical Review* 338 (1953).

[8] August S. Merrimon, a member of the North Carolina bar around the middle of the nineteenth century, noted with much distress that many of the judges and court officials were frequently intoxicated while "on duty," and that part of the time, while cases were tried, the whole court was off the bench taking some "refreshments" in the local tavern. Newsome, "Merrimon Journal," *loc. cit.*, 329–30. See also Foote, *Bench and Bar of the South and Southwest* 21 (1876): "Judge Child was often known to sit on the bench . . . when so much overpowered with the draughts of intoxicating drink which he had recently imbibed, that, notwithstanding his ability and learning, he was wholly incapable of conducting the business of the court in a decent and orderly manner. This was particularly the case in the town of Benton [in Mississippi], during one of the last courts he ever held in the state, on which occasion I well remember his calling up to the bench, one day during the trial of a most important case, a drunken attorney to preside in his stead, whilst he went across the public square to a low drinking shop to 'wet his whistle,' as he said. It was in this town that after he had been holding court for a week, and rendered many judgments, he fell into a fit of ill-humor; and avenged himself on the members of the bar at whom he had taken offence, by suddenly mounting his horse and riding out of town, after having made an order for final adjournment *without* signing the minutes—thus leaving all the judgments he had been granting mere *nullities*. It is certainly true that the very outrageous official conduct of Judge Child, together with the ascertained impossibility of getting rid of a judge misconducting himself ever so grossly, by *impeachment*, contributed very materially to the change which was at this period effected in the state constitution [of Mississippi]—by means whereof the election of judicial officers was vested in the people, and his life-tenure, then existing, changed to a term of years."

inged" than for lack of a clean shirt, drunkenness, or outright rudeness.

The frontier judges, usually "fair" in their "homey" decisions, prompt in the discharge of their duties, and not afraid to assume responsibilities, were invariably popular with the majority of the frontiersmen who liked informality as well as "rough-and-ready" justice in their courts. Sometimes they administered justice of a sort right on the spot, as in the case of a judge who personally laid hands on a convicted horse thief: "Hold up your head, you d . . . . d 'ornary pup! Look the court in the eye," he commanded the trembling culprit and planted a horny judicial fist between the "'ornary pup's" eyes.[9] The absence of jails or penitentiaries often made it necessary that justice be summary and sentences be carried out in the presence of the court. Judges never extended themselves more than when they were issuing warrants to have persons brought into their courts to be tried by law as they understood it. Perhaps the warrant issued by the "Honorable Court" of Jett's Creek, Breathitt County, Kentucky, in 1838, is the rankest of all frontier court commands. The judge instructed the constable that the "State of Jett's Creek, Breathitt Hi Official Magistrate Squire and Justice of the Peace, do hereby issue the following rit against Henderson Harris chargin' him with assault and battery and breach of the peace on his brotherin-law Tom Fox by name, this warrnt cuses him of kickin', bitin', and scratchin' and throwin' rocks an' doing everything that was mean and contrary to the law of Jett's Creek and aforesaid. This warrnt othorises the hi constable Mils Terry by name to go forth comin' and 'rest sed Henderson Harris and bring him to be delt with accordin' to the law of Jett's Creek aforesaid. T'is warrnt othorizes the hi constable to tak him whar he ain't as wel as wher he is and bring him to be delt with accordin' to the laws of Jett's Creek and aforesaid. January 2, 1838, Jackson Terry hi constable, Magistrate and Squire and Justice of the Peace of Jett's Creek aforesaid."[10] Such warrants apparently did not fail to fetch prisoners to the bar, and frequently the hearing of their cases was based upon just about as much knowledge of the law and

[9] 21 *Spirit of the Times* (New York), August 28, 1852, p. 336.

[10] Clark, *The Rampaging Frontier* 167 (1939).

procedure as was exemplified in the warrant issued by the Honorable "Jackson Terry hi constable, Magistrate and Squire and Justice of the Peace of Jett's Creek." The first superior court in the Territory of Iowa included among its judges a young man who was an excellent fiddler, but knew no law, having traveled during most of his adult life with a circus, although he had somehow managed to secure a license to practice law.[11] The first Supreme Court of Illinois was notoriously incompetent.[12]

The idea of "individualized justice" plainly replaced on the frontier the notion of an "organized machinery of the law." There, a crime was more an offense against the victim than a violation of the law or perhaps a "breach of the peace." That method of meting out justice was considered best which was most direct and most effective. The backwoodsman was intolerant of men who split hairs, drew fine distinctions, or scrupled over the methods of reaching the right solution. Refinements of legal procedure were regarded as dishonest devices to thwart justice and permit the guilty to escape his just punishment; and there existed a widespread belief, shared also by the courts of justice, that the law must furnish a remedy for every imaginable (and imaginary) wrong. If no ready-made remedy could be found, it was quickly invented to fit the particular situation. If it were proper for a thing to be done, then the most immediate and effective way was the best and, hence, the sole way. The pioneer was also of the opinion that the law should be "popular" in its foundations as well as in its application.[13] He considered abstract justice, wrung from the dry tomes of English reports, dangerous in a country where men were equal, and where right and wrong were not matters of abstraction but the wholesome product of certain insights gained by just men using down-to-earth common sense. At the same time the frontiersman was impatient of restraint. He knew or thought he knew how to preserve order, even in the absence of legal authority; but he was not ready to submit to complete regulation.

[11] Parvin, "The Early Bar of Iowa," *Historical Lectures upon Early Leaders in the Profession in the Territory of Iowa* 72 (1894).

[12] King, "A Pioneer Court of Last Resort," 20 *Illinois Law Review* 524 (1916).

[13] Foote, *Bench and Bar of the South and Southwest* Preface, vii (1876).

The term "bench" was used literally as well as figuratively, for the justices usually sat upon a bench of pioneer construction. One contemporary observer reports that the grand jury lolled on a log in the woods, and the foreman signed the bills of indictment upon his knees.[14] None of the jurors had shoes on; all wore moccasins and were belted around the waist and carried side-knives used by the hunters.[15] Sheriffs and constables seem to have been selected because of their ability to shout halfway across the county, and to run jurors down and drag them forcibly into court. In Indiana one conscientious and efficient sheriff proudly reported to the court that he had captured about half enough people to serve on the jury, that he had tied them to a tree outside the courthouse, and that he was in pursuit of others.[16]

But because the frontier courts and the frontier lawyers obviously shunned formality, decorum, and even a modest mastery of the law,[17] it must not be inferred that the administration of justice in the pioneer communities was essentially a travesty or a farce. The judges and the lawyers, in the main, were men of homespun integrity and sterling common sense. In doing justice, the latter quality often had to supplement the law, which had not yet become adjusted to frontier conditions. The pioneers, on the whole, were thoughtful, earnest, and independent people who not only possessed a natural genius for self-government, but also recog-

[14] See also 1 Monks (ed.), *Courts and Lawyers of Indiana* 45, 102–24 (1916).

[15] Hill, *Lincoln the Lawyer* 20–21 (1906).

[16] Clark, *Jeremiah Mason* 167 (1917).

[17] One judge of the First Judicial Circuit Court of Illinois, Stephen T. Logan (incidentally, a very fine lawyer), "had a mania of whittling and Court never moved smoothly until the sheriff had placed a number of white pine shingles beside the wool-sack, when the evolution of law and pine shavings proceeded with equal dignity and composure." Chapman, *County History of Tazewell County* 385 (1879). See also Beach, *History of Sangamon County, Illinois* 183 (1881): "The court was in session," a visiting New York lawyer related, "and . . . Judge Logan was on the bench. . . . To us, just from the city of New York with the sleek lawyers and the prim and dignified judges, and audiences to correspond, there was a contrast so great, that it was almost impossible to repress a burst of laughter. Upon the bench was seated the judge, with his chair tilted back and his heels as high as his head, and in his mouth a veritable corn-cob pipe; his hair standing nine ways for Sunday, while his clothing was more like that worn by a woodchopper than anybody else. There was a railing that divided the audience; outside of which smoking and chewing and spitting tobacco seemed to be the principal employment."

nized the necessity as well as the authority of law and order; and the courts, the judges, and the laws were established in the spirit of a rampaging frontier society.

The judges and juries in buckskin on the whole were shrewd and fearless administrators of justice.[18] General Marston Clark, one of the earliest judges in Indiana, was an uneducated backwoodsman, six feet tall, whose judicial costume consisted of a hunting shirt, leather pantaloons, and a fox-skin cap. Although tradition has it that he was completely innocent of all legal knowledge, no lawyer could trifle with him. Another judge, John Lindsay of Versailles, Indiana, is said to have quelled a disturbance in his court by descending from the bench, thrashing the nearest offender into submission, and kicking him out of the door. "I don't know what power the law gives me to keep order in this court," he admitted, "but I know very well the power God Almighty gave me," referring to his physical prowess.[19] That it was poor business to offend the court, especially since some of the judges were equipped with a pair of ready fists and the knowledge of their effective use, is shown by the following incident: During a trial the defendant (who, incidentally, won the case) thought he was aggrieved by a remark of the judge, and bluntly called his honor a liar. When he refused to apologize for his misconduct the judge promptly adjourned the proceedings for five minutes and after whipping the offender called the court back into session.[20] Judge Charles Reaume of Wisconsin was a powerfully built man who would openly display his long hunting knife if a litigant so much as showed signs of disputing his authority or of objecting seriously to his rulings.[21] Henry Mary Brackenridge of Philadelphia, who in 1810–11 visited Missouri, decided against settling in that country because he abhorred the practice of dueling—a practice not uncommon among lawyers—and of going armed at all times.[22] The fact

[18] Hill, *Lincoln the Lawyer* 21 (1906).
[19] *Ibid.*, 23–24.
[20] 21 *Spirit of the Times* (New York), August 28, 1852, p. 336.
[21] Childs, "Recollections of Wisconsin since 1820," 4 *Reports and Collections of the State Historical Society of Wisconsin* 165–66 (1859).
[22] Brackenridge, *Recollections of Persons and Places in the West* 267 (1868). Hence, Brackenridge decided in 1811 to return to the more peaceful surroundings of Philadelphia, the "City of Brotherly Love."

that lawyers in the courtroom and judges on the bench had pistols and knives on their persons or by their sides did not make him feel safe or at ease.

Judges at times became insufferably pompous once the mantle of office fell about their shoulders. But amid this pomposity a dull cloud of ignorance nearly always showed through. William Foster, who held a judgeship in early Illinois, in the opinion of his contemporaries was "a great rascal, but no lawyer . . . a very gentlemanly swindler from some part of Virginia. . . . He was assigned to hold court in Wabash, but being afraid of exposing his utter incompetence he never went to any of them."[23] Whenever judges were appointed in faraway places and, hence, enjoyed a certain tenure of office beyond all control and supervision, the incumbent at times became insufferably overbearing and tyrannical, especially if his judicial office and judicial authority "went to his head." One judge treated the bar so outrageously that the lawyers resolved unanimously to dunk "his honor" in the nearest pond if he did not mend his ways. But, after all, these were the exceptions rather than the rule.

In some places the lawyer at times was considered a meddlesome fellow, a fomentor of quarrels, and the cause of all sorts of troubles, to be classed with land speculators, swindlers, and other evildoers; and he certainly did not increase his popularity when he became the agent for merchants and moneylenders, or tried to collect debts which the average frontiersman preferred to forget. As often as not he disturbed the title to land by a suit for an absentee owner or speculator. He did not help his own cause if he assumed an air of social or intellectual superiority, lived perhaps in a better house than most of his neighbors could afford, made at least some money when all others just barely subsisted, filled many public offices, and allied himself with the creditor class in politics, business, and social status.

> At this period, too, in what was then called the 'back country' . . . the gentlemen of the Bar were objects of obloquy and denunciation to a generally poor and illiterate people, and frequently experienced at their hands the grossest outrages. It not only re-

[23] Ford, *History of Illinois from Its Commencement as a State in 1818 to 1847* 28 (1854).

quired, on their part, prudence, but also courage equal to any emergency, to avoid indignity. . . . [W]ith a blind prejudice, many . . . only saw in the profession, those who defended their oppressors. . . . Uncultivated settlers, who subdue the wilderness, are apt to look with suspicion upon the proprietor of the soil, when he demands rent for his land, or its value. Unfamiliar with those principles by which civilized communities can only be bound together, and with a wild sense of what they styled natural justice, they insist that the first occupant had an indefeasible right to property that his labor has rendered productive; grants from Crown or State they regard as frauds, and the attorneys employed to bring ejectments or sue for use, as the venial instruments of tyranny, bandits hired by gold to despoil them of the fruits of their honest industry. With the feeling of independence fostered by the peculiarity of their life in a new country, they are little disposed to render tribute where tribute is due. The same causes that disturbed the peace of society then, still animate the same class of people to resistance to law, and urge them to violence and bloodshed. The squatter on the frontiers of the Union, looks rather to his rifle than authenticated parchment for a title to his home; and he is more prompt to pay the demand of a legitimate owner in bullets than in the current coin."[24]

A story, widely circulated on the frontier, reveals the deep-rooted unpopularity of some lawyers:

> Lawyers were never buried in the city where they lived. They were simply laid out at night in a room with the window open and the door locked, and next morning they were always gone . . . [and] there was always a strong smell of brimstone in the room.[25]

Andrew Jackson, in the April term of 1790, was employed as counsel in 42 cases out of a total of 192 on the docket of the County Court of Nashville, Tennessee; and in 1794 he was counsel in 228 cases out of a total of 397 before the same court. This relatively large number of cases may serve as an indication of their

[24] 1 McRee, *Life and Correspondence of James Iredell* 96 (1856).

[25] *Jefferson City Inquirer* (Jefferson City, Missouri), June 12, 1847, p. 3. On the other hand, there was also a popular saying on the frontier that if a family had several sons, they guided the dullest toward preaching and sent the brightest to study law.

essential triviality.[26] As a rule litigations on the frontier consisted of actions arising from disputed land claims, fraudulent titles, "hog stealing," horse thieving, slander, or simple instances of assault and battery (often with a deadly weapon). Court day on the frontier was a great social event, and to go "a-courting" was a favorite pastime. It brought huge crowds into the county seats and "towns" as no other occasion could, except perhaps a political barbecue or a "delayed funeral." People came not because they were really interested in the course of justice, but because they considered a court session always as an excuse to exchange gossip, visit friends or relatives, discuss politics, drink whisky, trade horses, listen to fiddlers, gamble, flirt with the girls, and break a few heads during the apparently unavoidable brawls.

Probably each court day produced as many new cases as it settled—or tried to settle—old ones. Bellowing lawyers attracted audiences from miles around. "Spectators whistled, cracked walnuts on the old-fashioned stove, and whittled away at the tables and chairs. One man in the audience . . . a double-fisted fellow . . . appeared desirous to get a fight: 'hell's afloat, and the river's rising,' said he, 'I'am the yaller flower of the forest; a flash and a

[26] On March 18, 1844, the Springfield, Illinois, Circuit Court opened, and Abraham Lincoln (or Lincoln's law firm) had two cases called. On March 19 his firm had nine cases in court. One case was tried, one was won by default, one required a court order, three were continued, one was dismissed, and appropriate orders were entered in the two others. On March 20, Lincoln's firm obtained judgment in a block of ten cases, took a default on a note, and filed defense papers in one case and plaintiff's papers in another. Eight more of Lincoln's cases were called for some disposition. On March 21 seventeen cases were called for Lincoln's firm, and in his spare time that day Lincoln filled out a printed mortgage deed. On March 22, in the first case a partition of land was granted, in the second case the suit was dismissed, in the third case Lincoln's firm sought an injunction, the fourth case was won, in the fifth case Lincoln entered a satisfaction of judgment, and he filed pleadings in three more cases. On March 23, Logan and Lincoln had five cases before the court; on March 26 they processed some phase of five cases; and on March 28, Lincoln obtained a hung jury in a criminal case, appeared for the plaintiff in a civil case, and filed pleadings in three other cases. On March 29 the firm was handling six cases; and on March 30 thirteen of Lincoln's cases were called, of which three were argued and won, and in the other ten cases some minor action was taken. See Frank, *Lincoln as a Lawyer* 4–5 (1961). Lincoln's personal law practice was proportionately large. His firm handled from one-fifth to more than one-third of all the cases in Springfield. See Donald, *Lincoln's Herndon: A Biography* 43–44 (1948).

half of lightening; a perfect thunder gust, who wants to fight?' "[27] Frequently the audience was carried away by a particularly moving plea made by some of the attorneys, yelling and stomping on the floor to give vent to its emotions. "Go it my little Johnson," one enthusiastic listener shouted across the courtroom to the lawyer for the defendant, "rise and shine, honey; live in the milk and die in the cream."[28] Kemp P. Battle once witnessed a vicious fistfight between two lawyers right in the courtroom in the presence of the court, but such incidents apparently were quite common. At the conclusion of the bout—ostensibly the court would not directly interfere so as not to cut short the fun—the court would simply fine the offenders. Since, as a rule, the two antagonists would make up and ask the court's pardon, the fines would usually be remitted.[29] In Missouri an attorney denounced in severe tones a witness who was obviously lying. The witness' father, enraged by this attack on the honor of his son, promptly assailed the lawyer and was immediately shot down in open court by the party whom the lawyer represented.[30] James Murray, the constable of Wake County, North Carolina, was sitting within the bar when during a trial a certain John Willamson came up from behind and for no apparent reason struck him with a rock.[31]

James Hall, in 1810, was a spectator in a Kentucky courthouse where Joseph Hamilton Daviess, perhaps the most famous of the earliest "frontier" lawyers and the first "Western" lawyer to appear before the Supreme Court of the United States, argued a case. According to Hall, Daviess was a homely man dressed in a hunting shirt, who had no distinguishing characteristics other than bright eyes and a seeming indifference to what was going on around him. He warmed to his subject rapidly. He spoke in short colloquial phrases at first, but later burst into an eloquent argument

[27] *Jeffersonian Republican* (Jefferson City, Missouri), July 23, 1842, p. 1.

[28] Stewart (ed.), *The History of the Bench and Bar of Missouri, with Reminiscences of the Prominent Lawyers of the Past, and a Record of the Law's Leaders of the Present* 381 (1898). The attorney addressed in the wild outburst of enthusiasm was Waldo Johnson, an eloquent lawyer of St. Clair County, Missouri.

[29] Battle, *Memoirs of an Old-Time Tar Heel* 141 (Battle ed., 1945).

[30] Stewart, *Bench and Bar of Missouri* 390 (1898).

[31] *Raleigh Register*, February 26, 1851. The paper also reported that Murray was recovering.

couched in well-rounded sentences arranged in logical sequence. He bullied, pleaded, persuaded, and wept before the jury, seeking justice for his client. He defended a young girl who had been wronged by a bully, the prisoner at the bar, and he made the best of his advantage in this case. Before he finished he had proclaimed his client as pure as driven snow, a helpless woman who had been traduced, a sacred female character. The defendant was a bully, a rapist, a traducer, a menace to all sacred motherhood in the West. When he had finished his eloquent tirade against the despoiler of the fair sex he rested his case, and almost without leaving their seats the jurymen voted by acclamation to convict. Never had the people heard such powerful oratory. The crowd rushed stunned from the courthouse. Hall did not know who the eloquent lawyer in the hunting shirt was and inquired of a weeping backwoodsman the name of this orator. Wiping the tears from his eyes, the Kentuckian said that it was easy to see that Hall was a stranger, for "otherwise you would never have asked that question. What man in all Kentucky could ever brung tears to my eyes by the tin full, but Joe Daviess."[32]

If a court session got off to a slow start, the judge often became worried over the poor impression he was making on his constituents and friends. Hence he would privately instruct the lawyers to go it full tilt in order to keep the audience in a happy frame of mind and give everyone his "money's worth."[33] Frontiersmen seldom had the distressing experience of having to adjourn court for lack of cases. Whenever this happened all parties concerned, the judges, the lawyers, and the general populace included, were profoundly disgusted and deeply disappointed. In a way, the earliest frontier was simply in a state of chronic riot,[34] but with the rapid increase in population the community gradually became more prosperous and more orderly. In this growing general prosperity the alert and venturesome lawyer had an ample share, partly through the diligent practice of his profession, partly through judicious purchases in land or other investments.

[32] Hall, *Legends of the West* 257–60 (1857). See also Clark, *The Rampaging Frontier* 174–75 (1939).

[33] Smith, *Early Indiana Trials and Sketches* 5–7 (1858); Hall, *Travels in North America in the Years 1827 and 1828* 167 (1830).

[34] Clark, *Jeremiah Mason* 164–66 (1917).

As the administration of justice varied widely from court to court, so the performances of individual lawyers, too, differed considerably. Thomas Ruffin, for instance, was in the unpleasant habit of bullying witnesses, litigants, and opposing lawyers. His offensive manners, which he shared with certain other lawyers, "produced widespread discontent among the people. . . . [P]ublic meetings [were] called in Orange County to consider this abuse. . . . *Resolutions* were passed expressing the indignant condemnation by the people of this reprehensible practice. . . . Ruffin's manner at the bar contributed more largely than any thing else to these Meetings. In the resolutions this sort of practice at the bar was styled '*Bullyragging*' *parties and witnesses in Court.*"[35] Archibald D. Murphey, on the other hand, is said to have been a quiet and polite lawyer who never encouraged litigation. He was respectful, considerate, and tactful with opposing parties and opposing lawyers as well as with witnesses and members of the jury.[36] Sometimes a session of a certain court would not be held because a prominent lawyer had failed to arrive in time, and sometimes a session was cut short because an eminent practitioner had to depart or was simply absent. In 1838 the Superior Court in the backwoods of North Carolina had been in session for a whole week, but, in the absence of one of the leading lawyers, little business was transacted.[37]

During the earliest days of Illinois, in a trial involving the title to a mill, a somewhat erudite and prominent local lawyer once cited from Johnson's *New York Reports* in support of his argument. The opposing counsel simply evaded the force of the argument by informing the jury that this Johnson was a Yankee peddler who "had gone up and down the country gathering rumors and telling stories against the people of the West, and had published them under the title of 'Johnson's Reports.' " He vehemently objected to the mere thought that this "book" should be given any authority or standing in an Illinois court, and he concluded his "rebuttal" with the following remark: "Gentlemen of the Jury, I am sure you will not believe anything that comes from such a

[35] 2 *The Papers of Archibald D. Murphey* 426–27 (Hoyt ed., 1914).
[36] *Ibid.*, 424–25.
[37] *Raleigh Register*, April 9, 1838.

source, and besides that, what did this Johnson know about Duncan's Mill no how?" When informed of the true nature of Johnson's *Reports*, he vehemently denounced his opponent for his outrageous attempt to insult a sovereign and intelligent Illinois jury by introducing "foreign" law. The jury, in full accord with this argument, found against the side that dared to pervert local justice by importing alien precedents.[38] An Indiana lawyer of some distinction as well as some familiarity with the law actually had the audacity to refer several times to "the great English common law." His opponent at the bar, a lawyer of sorts, scored a telling success with the gentlemen of the jury when he pointed out: "If we are to be guided by English law at all, we want their best law, not their common law. We want as good a law as Queen Victoria herself makes use of; for, gentlemen, we are sovereigns here. But we don't want no English law. United States' law is good enough for us; yes, Indi-a-na law is good enough for an Indiana jury; and so I know you will convince the worthy gentleman who has come here to insult you patriotism and good sense, by attempting to influence your decision through the common law of England."[39]

In the beginning almost everyone who chose to do so could follow the profession of the law. In some places, though by no means everywhere, a license to practice law could be obtained by practically any applicant of "good moral standing,"[40] which, as one wit put it, was about the only qualification most of the practitioners lacked. Simon Suggs has become the popular image of the "lawyer" who could be found on the frontier. Son of a Georgia preacher, he developed all the shortcomings usually credited to the wayward son of a minister. In one of his innumerable escapades he apparently won the license of a young lawyer at a game of cards. Armed with this document and not wishing to let it "go to waste," he moved to the Arkansas frontier, and soon began a "legal" career that within a short span of time made him a man of wealth and power. Operating in a country where there was an abundance of legal problems and litigations but little morality—in a country

[38] Gillespie, "Recollections of Early Illinois and Her Noted Men," 13 *Fergus Historical Society Series* 21 (1880).
[39] Quoted in Clark, *Jeremiah Mason* 168 (1917).
[40] Woldman, *Lawyer Lincoln* 13 (1936).

where "the sheriff was as busy as a militia adjutant on review day, and the lawyers were mere wreckers, earning salvage"[41]—he engaged in all the skullduggery and pettifoggery that the shrewd and bustling shyster is supposed to have practiced.[42]

Western lawyers, as a rule, were the sons of poor or middle-class people and seldom had a college education. They were the products of the law office and the courtroom, and in some instances, of self-study (or no study at all). Most state and territorial statutes before 1820–30 required a student to spend at least two years, and sometimes three, studying under the supervision of a practicing lawyer or a judge. But after 1830, with the advent of "Jacksonian democracy," there was a widespread tendency to abolish this requirement and to allow a young man to practice law as soon as he could convince any judge that he knew "some law." These relaxations in standards were also in keeping with "Western egalitarian views" which proclaimed that the rough school of actual court practice and court experience was the best professional training a man could possibly have; and that every ambitious and honest young man had the "immemorial right" to make a living and rise in his chosen profession as well as in the community if he could succeed in the hard school of practical experience.[43] Upon application for a license he was, as a rule, subjected to a purely perfunctory examination as to his knowledge of the law by a disinterested and often ignorant judge or by a "board" of equally uninterested and ignorant lawyers.[44]

In keeping with the new democratic spirit of the frontier, judges and lawyers alike were willing and even eager to give a young man an opportunity, provided he could produce a few recommendations, appeared to be reasonably pleasant, honest, and somewhat intelligent, and could convince them, if they were not already convinced, that he knew some of the rudiments of the

[41] Baldwin, *Flush Times in Alabama and Mississippi* 91 (1854).

[42] *Ibid.*, 114–41.

[43] English, *The Pioneer Lawyer and Jurist in Missouri* 12–13 (21 *The University of Missouri Studies*, no. 2, 1947). See also Zillmer, "The Lawyer on the Frontier," 50 *American Law Review* 33 (1916); Rogers, "The Epic of the American Lawyer," *Proceedings of the State Bar Association of Wisconsin* 84 (1934).

[44] See English, *Pioneer Lawyer* 95–96 (1947).

law.[45] Since at that time large sections of the Western lands were still without lawyers, the bar and the courts were only too anxious to "create" additional attorneys and place them in the small county seats where they might, at some future time, act as agents for already established lawyers in the larger centers of population—where they might get some business for them, collect debts for them, summon witnesses, or serve papers.[46] It was this situation which prompted Judge William B. Napton to make the following critical comment about early Missouri lawyers: "Many lawyers here are found to be profoundly ignorant of the law as a science and who perhaps have never heard of international or civil law, or are not even partially versed in the law of real property of England, but who are honorable and dishonorable as they might be considered elsewhere. By memorizing Chitty, the Missouri statutes and decisions of the Missouri Supreme Court, he is armed at all points and prides himself infinitely more in succeeding on a demurrer, or squashing a writ, or nonsuiting his opponents, than in succeeding before a jury on the merits."[47]

Litigation on the frontier, it must be borne in mind, was fairly simple if not crude, and in most places a comprehensive knowledge of the law or a special technical training in legal skills was not required of, and likely to be of little use to, the average lawyer. The majority of the cases the lawyer was expected to handle were of a type common to any new and sparsely settled community, and a knowledge of the fundamental elements of the common law, often gleaned from Blackstone, as well as an intuitive sense of natural justice were chiefly relied upon to dispose of the simple litigations that arose. There existed no voluminous collections of precedents to master and no array of authorities to cite. A sharp mind, an ability to marshal facts, a power of reasoning, a good deal of common sense, a tenacity of purpose, and as often as not a distinct gift of gab and a talent for storytelling were sufficient equipment to make a man a passable lawyer. Oratory or the appeal to emotions,

[45] See Stewart (ed.), *The History of the Bench and Bar of Missouri* 73 (1898).

[46] See English, *Pioneer Lawyer* 96 (1947).

[47] Napton, Notebook 41–42, in possession of Mrs. T. H. Harvey, Marshall, Missouri; quoted in English, *Pioneer Lawyer* 97–98 (1947).

which frequently went for legal argument, was marked by directness and force, and was largely relied upon to sway the court and the jury. Rough and ready wit as well as bold logic, or the lack thereof, counted infinitely more than subtle legal reasoning. The terms "lawyer" and "speechmaker" were almost synonymous, and as late as 1819 attorneys in Missouri called themselves "orators."[48] The outstanding strength of the pioneer lawyer lay perhaps in his ability to stir his listeners to anger, laughter, or tears, and it was often more important to know the life story of every man on the jury—his likes and dislikes, his associations, and his peculiarities of temperament—than to know the law or understand the facts of the case. Juries who shed tears over "the poor horse thief who just had to have that horse in order to feed his eight starving children" also delighted in hearing lawyers flay each other or the opposing party with invectives and accuse each other, without any justification whatever, of the three most reprehensible crimes a frontiersman could think of: lying, cheating, and cohabiting with Negroes.[49] The victims of such attacks occasionally retaliated by issuing similarly groundless countercharges, by challenging their denouncers to a duel, by waiting outside the courtroom door with a horsewhip, or by engaging in a bout of fisticuffs right in the courtroom.

The duties of the earliest frontier lawyers, in the main, were both arduous and ill rewarded:[50] "The account books of my father [who practiced in upstate New York]," George W. Strong relates, "bear abundant evidence of his early struggle. . . . Most of the charges were insignificant amounts, such as 50¢ for drawing a deed, $2.50 for drawing a deed, bond, mortgage and agreement, $1.00 for advice, $3.00 for assisting some client in the trial of a case before a Justice of the Peace, and from $3.00 to $5.00 for going to some neighboring township to attend the trial of a case in a Justice's court, with an occasional larger fee, not more than

[48] *Missouri Intelligenzer and Boon's Lick Advertiser* (Franklin, Missouri), November 19, 1819, p. 4.

[49] McCurdy, "Courtroom Oratory in the Pioneer Period," 56 *Missouri Historical Review* 6 (1961).

[50] Present-day lawyers will be amazed that the average frontier lawyer could survive, let alone prosper, on the incredibly modest fees which the rank and file practitioners charged for their professional services.

$20.00 generally, the taxable costs in a litigation in one of the higher courts. His aggregate fees . . . amounted during his first year—from January 14, 1826, to January 18, 1827—to $217.00. . . . In his third year of practice he was evidently making good headway, for his receipts in 1829 amounted to $670.00."[51] Hence, not many frontier lawyers in the early days were able to support themselves by the exclusive practice of law. Especially in the rural sections of the country they were compelled to combine "with their professional practice . . . the occupation of farming. . . . Their practice was not sufficient to engage all their time; the court sessions were infrequent . . . and it was, therefore, quite natural, and entirely practicable, to manage a farm without neglecting the practice of law."[52]

The vast majority of the cases the frontier lawyers were expected to handle were of a trifling nature, and it was the large number of suits rather than the amount involved in each case which enabled the average lawyer to make the practice of law pay off. Since farming, fur trading, mining, general merchandising, river boating, land speculating, and moneylending were the only businesses of any consequence, the practice of law in the main centered around these activities. The greater part of all civil suits dealt with debts, accounts, notes, contracts, titles, foreclosures, ejectments, and bankruptcies. Because money was scarce, the lawyer frequently received for his efforts commodities, services, land, slaves, furs, a share in a mining interest, or just credit for merchandise.[53] Ferris Foreman, a young lawyer from New York in search of a place to settle on the frontier, in 1836 had this to say about the

[51] Strong, *Landmarks of a Lawyer's Lifetime* 11 (1910).

[52] *Ibid.*, 5.

[53] In his Autobiography, Thomas L. Anderson relates: "The litigation [of the frontier] was generally of a small nature—there was a great deal however, in proportion to the population. Litigation at Palmyra [in Missouri] increased rapidly. We had three terms per annum—and frequently I would bring about fifty suits. The collection of debts furnished a very lucrative practice. The whole of North East Missouri was flooded with goods—all sold to merchants on credit of six months and sold to people on credit of twelve months—the result was that the people could not pay the merchants and consequently the merchants could not pay their creditors. There was no such thing as Banks . . . no deeds of trust—all the notes by suit—and not as they now are—by sale under deed of trust—and by Banks." Autobiography of Thomas L. Anderson 9–10, Western Historical Manuscript Collection, University of Missouri, Columbia, Missouri.

Missouri bar: "All the gentlemen of the legal profession, who have means, engage in speculation. . . . Men [who] have small capital, by taking advantage of the time, make fortunes here in a few years. Men here do not attend to their business [*scil.*, the practice of law] as assiduously as in the State of New York, or indeed, anywhere North or East. Men make money here easy and spend it profusely."[54]

Abraham Lincoln, an extreme example, once drew a will for a wealthy client who resided several miles from Springfield, Illinois. Since the roads at the time were impassable, he was forced to travel by foot. He spent a whole day going over the testator's affairs, wrote out the will by hand, and returned home after nightfall. For all his labors and travels he charged $5.00, yet the total estate involved exceeded $100,000.00. For his services in the case of Samuel Nolan v. John Hunter—Lincoln drew up the pleadings and participated in the trial before a jury—his fee was $5.00.[55] In a case of debt where he collected $600.00, he charged a mere $3.50.[56] For drawing up a lease for a hotel he received $15.00,[57] and for his legal services to the county of Menard, including ten court appearances, he collected $20.00. For taking care of at least fifteen cases for the Illinois Central Railroad during the period of one year he charged $150.00, and for arguing a case on appeal before the Illinois Supreme Court he often collected as little as $5.00 or $10.00.[58]

[54] Letter of Ferris Foreman, addressed to Clark Hyatt. A copy of this letter can be found in the Western Historical Manuscript Collection, University of Missouri, Columbia, Missouri.

[55] Pratt, *Personal Finances of Abraham Lincoln* 38 (1943).

[56] Townsend, *Abraham Lincoln, Defendant* vii (1923).

[57] 2 *Collected Works of Abraham Lincoln* 332–33 (Basler ed., 1953).

[58] See also Woldman, *Lawyer Lincoln* 33–34, 40, 43, 53, 105, 213ff. (1936). In 1852 the Chicago bar adopted a schedule of fees intended as a guide for minimum charges. The charge for legal advice was $2.00, for a legal opinion $10.00, for drawing a special declaration $10.00, for drawing a rule to plead $1.00, and $5.00 for each of the following: term fee when suit is disposed of; drawing, filing, and arguing a motion for continuance; drawing a demurrer; plea or notice of defense; arguing a demurrer if sustained; arguing a plea in abatement; and drawing an affidavit of attachment. The fee for the trial of a cause in a court of record was $10.00, and $10.00 was the minimum fee demanded for a case argued in the Illinois Supreme Court and the United States District Court. Fees in Chancery were slightly higher. The per diem arrangement usually called for a charge of $15.00,

Bartholomew F. Moore, who was admitted to the bar of North Carolina, confessed that his total income from the practice of law for seven years was only $700.00.[59] "There are . . . young lawyers in this city [*scil.*, Raleigh], who . . . do not, each earn three hundred dollars per annum. A mason or a carpenter, boldly asks twenty shillings a day and gets it, all the year around—and yet parents scorn to make their sons mechanics—but rather allow them to starve in professions. . . . If it was more fashionable to be a Carpenter than a Lawyer or Physician the difficulty would soon be overcome."[60] The records indicate, however, that not only fledgling lawyers but also established and experienced practitioners were poor struggling individuals who barely managed to eke out a modest living. Not a few members of the profession suffered real economic hardships and frequently found themselves indebted as well as insolvent. Archibald D. Murphey, one of the finest lawyers in North Carolina, was actually imprisoned for debt.[61]

Despite the obvious economic disadvantages that were connected with the practice of law—the starvation years faced by almost every budding lawyer and the difficulties inherent in building up a decent practice—law was still the favored profession on the frontier. As late as 1857 it was stated that "[l]aw stands first in respectability in the eyes of every young man."[62] Victor M. Murphey, the son of Archibald D. Murphey, informed Thomas Ruffin

as did the drawing of a bill of divorce and an application (and argument) for receivership. See *Chicago Legal News*, February 13, 1869.

[59] Quoted in Farmer, "Bar Examination and Beginning Years of Legal Practice in North Carolina, 1820–1860," 29 *North Carolina Historical Review* 170 (1952).

[60] *Raleigh Register*, May 31, 1836. Thomas Ruffin wrote in 1826: "If there be not an improvement in the business of our Courts, some of us, *honorable Attornies at Law*, will have to resign our Credentials and betake ourselves to employment more suited to our capacities and more congenial with our dispositions, the pursuits of agriculture or the acquisition of the knowledge necessary for the performance of some *trade* which will secure to us the means of an honest livelihood." 1 *The Papers of Thomas Ruffin* 345–46 (Hamilton ed., 1920). For additional information about lawyers' professional earnings, see Farmer, "Legal Practice and Ethics in North Carolina, 1820–1860," 30 *North Carolina Historical Review* 351–53 (1953).

[61] 2 *The Papers of Archibald D. Murphey* 431–37 (Hoyt ed., 1914).

[62] "Editorial Table," 7 *North Carolina University Magazine* 187 (1857). The census of the year 1850, the first to list professions, gave the number of lawyers in North Carolina as 399. *Seventh Census of the United States, 1850* 318.

in 1828 that he would rather be a lawyer than a member of any other profession. But since he was seeking a more lucrative profession than law, he had decided to become a physician, "the dernier resort of all Blockheads."[63] The legal profession, it must be borne in mind, carried with it a certain undeniable prestige not to be found in any other line of work. It was, above all, the surest avenue to social and political preferment. A young man from one of the lower classes of society could rise and be recognized as a gentleman by becoming a lawyer. In the eyes of many young men these unquestionable advantages greatly outweighed the rather numerous and burdensome disadvantages connected with the practice of law. In consequence, the legal profession grew rather rapidly during the early years of the frontier.[64]

A characteristic feature of the administration of justice on the frontier was the judicial circuit system. In keeping with the popular but somewhat extravagant tendency to bring justice "to every man's door,"[65] both the bench and the bar—the "circuit bar"—traveled from county seat to county seat—a time-consuming, laborious, and often trying as well as dangerous experience. Transportation was hazardous, legal fees pitifully small, and proceedings in many of the outlying courts simply undignified and rowdyish. Almost all lawyers, in order to eke out a modest living, had to be "circuit riders," traveling over the neighboring counties and going at times even into adjoining states or territories. The young lawyer in particular, but also the established practitioner, found it necessary to visit a large area in order to attend as many courts as possible. For the more courts he attended, the more people he was likely to meet, the more quickly his professional reputation would grow, and the greater his income would be. Thomas Ruffin, for instance, spent approximately forty-three weeks each year "on the circuit."[66] To appreciate the sturdiness of the old circuit lawyer (and circuit judge), a description of the itinerary of the Eighth

[63] 1 *The Papers of Thomas Ruffin* 439–40 (Hamilton ed., 1920).

[64] See Farmer, "Legal Practice and Ethics in North Carolina, 1820–1860," 30 *North Carolina Historical Review* (1953), *passim*.

[65] See note 174, Chapter I, above.

[66] Graham, "Life and Character of the Honorable Thomas Ruffin, Late Chief Justice of North Carolina: A Memorial Oration," 1 *The Papers of Thomas Ruffin* 23 (Hamilton ed., 1920).

Judicial Circuit in Illinois around 1840—incidentally, Abraham Lincoln's circuit—might be appropriate: from Springfield, Sagamore County, the court (and the bar) moved to Tremont, Tazewell County (50 miles); to Metamora, Woodford County (20 miles); to Bloomington, McLean County (30 miles); to Postville and later to Pulaski, Logan County (35 miles); to Clinton, De Witt County (25 miles); to Monticello, Piat County (25 miles); to Urbana, Champlain County (20 miles); to Danville, Vermilion County (30 miles); to Paris, Edgar County (35 miles); to Shelbyville, Shelby County (55 miles); to Sullivan, Moultrie County (15 miles), to Decatur, Macon County (20 miles); to Taylorsville, Christian County (30 miles); and back to Springfield (25 miles)—a total of approximately 415 miles.[67]

The members of the circuit bar at first rode along trails, on horseback, carrying saddlebags containing some toilet articles, a spare coat, a clean shirt, perhaps a lawbook or two, and some paper. When better roads came into use, the one-horse buggy often but not always successfully superseded the saddle horse, at least during the dry season.[68] Converging upon the county seat, the weary, travel-stained lawyers shopped around for accommodations, either at the local inn or in private boarding houses where "the lawyers slept two in a bed and three or four beds were located in one room."[69] The rigors of travel, the inconvenience of county hostelries—the first "hotel" in Hopkinsville, Kentucky, a cheap wooden structure, significantly was called "Buzzard Roost"—the

[67] See Woldman, *Lawyer Lincoln* 79ff., 89 (1936).

[68] Jesse W. Fell, one of Lincoln's closest friends and companions on the circuit, describes the hazards of "circuit riding" in the early days: "I came near losing a horse. . . . We came to a slew that looked too deep for safety and I detached a horse [from the buggy] and rode in to ascertain the depth. I had gone but a little way till we plunged into a deep hole and with great difficulty my horse got through, having swam some distance." Quoted in Duff, *Abraham Lincoln, Prairie Lawyer* 178 (1960).

[69] Herndon, Lincoln's last law partner, had this to say about the rigors of circuit travel: "No human being would now endure what we used to do on the circuit. I have slept with 20 men in the same room—some on bed ropes—some on quilts—some on sheets—a straw or two under them; and oh—such victuals." Quoted in Duff, *Abraham Lincoln* 198 (1960). For a dramatic description of the Indiana circuits, see 1 Monks (ed.), *Courts and Lawyers of Indiana* 8–10 (1916); of the North Carolina circuits, see Farmer, "Legal Practice and Ethics in North Carolina," 30 *North Carolina Historical Review* 329–53, *passim* (1953).

irregular hours of sleep and the irregularity as well as poor quality of meals were all part of the exacting and exasperating life on the circuit. A man had to be healthy to stand up under its strain;[70] and he had to be a man of real ability—an all-round lawyer in the true sense of the term: engaged in a "nomadic practice," he had to try cases day in and day out without much preparation, taking all comers. Uncommon versatility and an awe-inspiring capacity for work were the chief professional qualifications of the old circuit lawyer:[71] "Facing each day new problems which at times necessitated heroic improvisations," he had to "develop the capacity to think under fire and acquire the knack of adjusting himself quickly to changed situations; confronted with a type of practice that required a legal mind quick to find expedients, he found himself relying not so much on precedents, but on his own wits and native shrewdness."[72]

The vast majority of the early frontier bar consisted of men who for some reason or other had come from the Eastern seaboard states or, in some instances, from the Gulf states. The lure of greater professional and economic opportunities, often coupled with a spirit of adventure, induced some established lawyers to abandon their native communities and move west. But the greater part of these immigrants were young men just admitted to the bar of their native states. They went west mainly because their home communities were already well supplied with older men who by

[70] Gibson W. Harris remembers "the wretched hotel accomodations" when traveling the circuit: "The taverns . . . were almost always . . . uncomfortable. . . . The 'transient' of these days could not be sure of finding his hostelry so much as water proof; more than once I have slept with tiny eddies of snow drifting upon my bed. . . . The bedding was usually abundant, perchance the bed bugs superabundant. The guests performed their ablutions in a tin basin on the back porch, or on a bench out by the well in the yard . . . wiping on a crash towel that late risers were sure to find too wet for effective service. I distinctly remember washing at the well one morning when the thermometer was thirty degrees below zero." Harris, "My Recollections of Abraham Lincoln," *Farm and Fireside*, December 1, 1904. Whenever the journey from one county seat to another took more than a day, the itinerant bar (and bench) had to stop at wayside inns (which were usually more primitive than the inns at the county seats) or at the cabin of a prairie settler. For a vivid description of frontier hostelries, see Clark, *Rampaging Frontier* 102–19 (1939).

[71] Woldman, *Lawyer Lincoln* 87ff. (1936).

[72] Duff, *Abraham Lincoln* 168 (1960).

their experience and reputation monopolized most of the available legal business.[73] On the frontier the beginner thought he saw an opportunity immediately to rise to some prominence either in his chosen profession, or in business, or in politics. The immigrant lawyer usually sought out important county seats or main trading centers as the place to settle and hang out his shingle. Later he often moved "back" to a larger town as his reputation grew. In addition to the practice of law he frequently engaged in other activities, such as real-estate selling, farming, surveying, teaching, merchandising, tavern keeping, speculating, newspaper editing, or banking.[74]

This general attitude is well expressed by John Breckenridge,[75] who in 1793 permanently removed from Virginia to Kentucky: "I am satisfied with this Country [*scil.*, Kentucky] better than with the old, for two substantial reasons," he wrote a few weeks after his arrival in Kentucky. "1. Because my profession is more profitable; and 2ndly. Because I can provide *good* lands here for my children, & insure them from *want*, which I was not certain of in the old Country, any longer than I lived."[76]

John Breckenridge's migration to Kentucky and his reasons

[73] "Attorneys came in great numbers almost by every stage-coach which came into the state [of Mississippi], and by every steamer which descended the Mississippi river. Many came only with an intention of sojourning in the land of promise for a short period, leaving their families behind them, whilst others came to take up a permanent residence. Many of these new comers were men of learning and worth, and deserved all the success which they afterwards achieved. If there were a few others of a different description, the fact is not to be wondered at. That, in such a state of things . . . too much avidity for the accumulation of wealth should have, to some extent, made itself apparent even among the members of the legal profession . . . ; that sometimes fees were demanded to an amount a good deal beyond the services actually rendered; and that there were instances of gross oppression in the collection of money by execution, should, perhaps, occasion no surprise." Foote, *Bench and Bar of the South and Southwest* 55 (1876).

[74] English, *Pioneer Lawyer* 12–13 (1947).

[75] John Breckenridge was appointed attorney general of Kentucky in 1795, elected senator from Kentucky in 1801, and appointed attorney general of the United States in 1805.

[76] Letter of Breckenridge to his brother-in-law, Joseph Cabell, Jr., dated July 23, 1793, in Breckenridge MSS, Library of Congress, quoted in Harrison, "A Virginian Moves to Kentucky, 1793," 15 *William and Mary Quarterly* (3rd series) 201 (1958).

for so doing are described by Lowell H. Harrison.[77] Soon after he had been admitted to the Virginia bar in 1785, the year in which the young republic was in the throes of a serious economic depression, Breckenridge discovered that neither the practice of law nor farming nor the combination of both, in spite of all his exertions, could secure him adequate economic returns. Although he was considered a good lawyer with a fair professional reputation, he faced the keen competition of the early Virginia bar which, like the bars of so many other states, was seriously overcrowded with an abundance of outstanding lawyers. In addition, due to the widespread economic plight in the East, the few clients he had were either unable or unwilling to pay for his services. In 1787, for instance, he found himself compelled to employ an agent to collect fifty-four delinquent accounts. Other clients, lacking sufficient cash money, paid him reluctantly in kind.[78]

While thus struggling to make ends meet, Breckenridge received several letters from his two half-brothers Alexander and Robert Breckenridge, who had gone west in 1781, telling him that in Kentucky more money was in circulation than in Virginia, that the already considerable amount of legal business there was bound to increase further, that there was a dearth of good lawyers "out West," and that he had a very good chance of becoming attorney general of the new state. In 1783 his brother William sent back from Kentucky glowing reports of countless lawsuits, the scarcity of lawyers, and the deep satisfaction of living on one's own soil in the "rich and extensive country [of Kentucky]."[79] After some hesitation, Breckenridge, in 1790, purchased six hundred acres of land in what is now Fayette County, six miles from Lexington, where he hoped to establish a profitable legal practice. Finally, in 1793, he permanently transferred his family and possessions to Kentucky.

Alphonso Taft, the founder of the "Taft dynasty," settled in Cincinnati, Ohio, in 1838. His reasons for transferring from Connecticut to Ohio were similar to those which prompted Brecken-

[77] Harrison, "A Virginian Moves to Kentucky," *loc. cit.*, 201–13, and the unpublished sources cited there.

[78] *Ibid.*, 202.

[79] *Ibid.*, 202–203. See also *ibid.*, 206–207.

ridge to move to Kentucky. Taft was graduated from Yale in 1833 and completed his legal studies in 1838. As early as 1837 he informed his father, Peter Rawson Taft, that "Pennsylvania was a fine state to settle in"[80] and practice law. But being a cautious man, he decided to look further. In October, 1838, he set out on a journey in which "mediocrity was to be the standard by which he judged his future home."[81] New York, where he stopped for a short while, obviously was not the place he was seeking: "At New York," he wrote back, "I made myself acquainted with several lawyers . . . for the purpose of learning what would be the prospect if I were to cast my lot in New York. . . . I feel well assured that I might make a living in that city, but I don't think it is the place for me. . . . I dislike the character of the New York Bar exceedingly. The notorious selfishness and dishonesty of the great mass of the men you find in New York is in my mind a serious objection to settling there. You find selfishness elsewhere, I know, but it is the leading and most prominent characteristic of New York. . . . Money is the all in all."[82] These evils were less conspicuous, he believed, in Philadelphia: "[T]he scene is entirely different [in Philadelphia]. . . . Men of business are not, as in New York, generally adventurers. . . . The Bar of Philadelphia is a perfect contrast to that of New York."[83] Subsequently, he proceeded to Cincinnati, Ohio, and apparently was quite impressed with the town and the professional opportunities which it offered a young lawyer. The profits from the practice of law, he felt, were not potentially as great perhaps as in New York or Philadelphia, but they were good enough. He would not have too much professional competition and, hence, would not have to work too hard in order to make a respectable livelihood: "I believe," he wrote to his fiancée, Fanny Phelps, "they have but very few men at this Bar of much talent . . . while there is an immense amount of business."[84] And two weeks later he confided to Fanny Phelps that "[i]t ought

[80] Letter of Alphonso Taft to his father, dated July 22, 1837, quoted in 1 Pringle, *The Life and Times of William Howard Taft* 8 (1939).

[81] 1 *ibid.*, 8 (1939).

[82] Letter to Fanny Phelps, dated October 9, 1838, quoted in 1 *ibid.*, 9.

[83] *Ibid.*

[84] Letter dated October 27, 1838, quoted *ibid.*

to be possible to earn from $3,000 to $5,000 a year" by practicing law in Cincinnati.[85]

The early frontier bar, then, included all sorts and types of men: college graduates, men who had attended one of the budding law schools in the East or South, or who had been educated to the law in the office of some Eastern or Southern lawyer, and plain adventurers, some of whom were semi-illiterate at best. In some sections of the West men coming from the New England or Middle Atlantic states found that their geographical origin was a serious disadvantage and, hence, pretended to be "Southerners."[86] But if they could adjust themselves to the ways of the frontier and to the spirit of the pioneer, something which apparently not all were able to do,[87] and if they were capable of hard work, known for their honesty, renowned for their professional skill, and generally accepted for their understanding of, and falling in with, the particular "genius" of time and place, in due course they were bound to succeed: "There was something adventurous and exhilarating in the life of a young lawyer in Missouri fifty-five years ago," James O. Broadhead nostalgically reminisces, "who commenced as most of them did, with a horse, bridle, and a pair of saddle bags as his only possessions, except perhaps, a copy of the *Revised Code of 1835*, a Blackstone *Commentaries*, and a copy of Chitty's *Pleadings*. His ambitions and his hopes were the incentives that stimulated his energies and opened upon him a bright future. For a while at least he depended upon his credit, and credit was freely given to anyone who had an honest face, a correct deportment, and industrious habits. . . . [W]hen a young lawyer swept out his office, chopped his own wood and made his fires, he was considered

[85] Letter dated November 12, 1838, quoted *ibid*. See also *ibid*., 8–9.

[86] See, for instance, Bay, *Reminiscences of the Bench and Bar of Missouri* 50 (1878). Since at that time prejudices against "Northern people" ran pretty high in Missouri, James Carr, who had come from Pennsylvania, pretended to be a Virginian. See Stewart, *Bench and Bar of Missouri* 69 (1898).

[87] Henry M. Brackenridge of Philadelphia, for instance, could not brook the generally accepted practice of dueling and of walking around with pistol or knife (or both) all the time, including in the courtroom. Abiel Leonard of Vermont, on the other hand, fully accepted the *mores* of his new environment and in 1824 fought a famous duel with Taylor Berry, another lawyer, which resulted in Berry's death and, incidentally, in Leonard's temporary disfranchisement and disbarment.

worthy of credit, of one month's credit at least. . . . When eggs were six cents per dozen, beef three per pound . . . and everything else in proportion, a lawyer could not expect large fees."[88]

The earliest (and, as a rule, most successful) lawyers on the frontier, as might be expected, were "immigrants," although in time the native legal talent made its presence felt. This "immigration," at least in some places, followed a certain pattern. The first lawyers in Tennessee and Kentucky came mainly from North Carolina and Virginia. There was also a sprinkling of lawyers from other states, including Pennsylvania and, in some isolated instances, from the Northeastern states. Among these immigrants there were not a few men who had received a good education in their native states, including an adequate training in the law.[89] Of the fifty-five lawyers who are said to have practiced in Missouri around the year 1821, ten came from Virginia, seven from Tennessee, four from Kentucky, three from Connecticut, and one each from North Carolina, Maryland, New York, Massachusetts, New Hampshire, and Vermont. Three were born outside the United States, and the origin of the remaining twenty-two cannot be ascertained with any degree of certainty.[90] But it is certain that men from Indiana and Illinois settled in Missouri, and that some lawyers came up from Louisiana and Mississippi by way of the river. Just before Missouri acquired statehood, persons who had grown up "west of the mountains" were arriving in ever greater numbers, and soon a few men, such as Edward Bates, Joshua Barton, Ezra Hunt, and George Tompkins, received their legal

[88] Stewart, *Bench and Bar of Missouri* 13 (1898).

[89] See, in general, Caldwell, *Sketches of the Bench and Bar of Tennessee* 2 vols. (1898); Green, *Lives of the Justices of the Supreme Court of Tennessee, 1796–1947* (1947); Green, *Law and Lawyers* (1950); Levin (ed.), *The Lawyers and Lawmakers of Kentucky* (1897); Rodes, "Some Great Lawyers of Kentucky," *Proceedings of the Fourteenth Annual Meeting of the Kentucky State Bar Association* 152–68 (1915); Webb, "Some Great Lawyers of Kentucky," *Proceedings of the Sixteenth Annual Meeting of the Kentucky State Bar Association* 64–86 (1917); Dishman, "Some Great Lawyers of Kentucky," *Proceedings of the Eighteenth Annual Meeting of the Kentucky State Bar Association* 105–14 (1919); Bush, "Some Great Lawyers of Kentucky," *Proceedings of the Twenty-Fourth Annual Meeting of the Kentucky State Bar Association* (1925).

[90] See English, *Pioneer Lawyer* 33 (1947); 3 Houck, *A History of Missouri from the Earliest Explorations and Settlements until the Admission of the State into the Union* (1908), *passim*.

training in Missouri proper, although it appears that James G. Heath was the only lawyer who had been educated in the Territory before 1810.[91] Only a few members of the old Territorial (Missouri) bar were college graduates. The men who came from Tennessee, surprisingly enough, seemed to have had less than an average education, but some of the Virginians as well as some immigrants from other parts of the Union likewise betrayed scanty educational backgrounds.[92] The early Missouri bar, it could be said, displayed all the diversity of background, education, and social position commonly to be found on the frontier.[93]

The first lawyers in Ohio[94] (at least in northern Ohio), who included among their numbers some graduates of Harvard and Yale, came mostly from the New England states and, somewhat later, from New York, New Jersey, and Pennsylvania, although there were a few persons, especially in southern Ohio as well as in Cincinnati, who had moved into Ohio from Kentucky, Tennessee, and Virginia. While southern Indiana[95] seems to have attracted men from Kentucky as well as some persons from other states, northern Indiana and Illinois[96] received the majority of their first lawyers from New York, New Jersey, Maryland, the New England states, and Kentucky (southern Illinois); and Michigan[97] attracted men from the New England states, New York, and Pennsylvania. Naturally, since everywhere throughout the Union there was a multitude of adventurers and drifters in search of greater opportunities, and since the frontier was "wide open," it is not surprising to find there people from every part of the

[91] 3 Houck, *History of Missouri* 261 (1908).

[92] English, *Pioneer Lawyer* 33 (1947).

[93] *Ibid.*, 33–34.

[94] See, in general, Reed, *Bench and Bar of Ohio* 2 vols. (1897); Neff, *History of the Bench and Bar of Northern Ohio* (1921); Marshall, *A History of the Courts and Lawyers of Ohio* 4 vols. (1934).

[95] See, in general, Taylor, *Biographical Sketches and Review of the Bench and Bar of Indiana* (1895); Monks (ed.), *Courts and Lawyers of Indiana* 3 vols. (1916).

[96] See, in general, Crossley, *Courts and Lawyers in Illinois* 2 vols. (1916); Caton, *Early Bench and Bar of Illinois* (1893); Palmer, *The Bench and Bar of Illinois* (1899).

[97] See, in general, 1 Blume, *Transactions of the Supreme Court of the Territory of Michigan, 1805–1814* (1935); *ibid., 1814–1824* (1938); *ibid., 1825–1836* (1940).

country. In some instances lawyers kept wandering from state to state (or territory), moving with the inexorable westward push of the frontier.

Many of the early (and successful) lawyers on the frontier, as has been shown, were immigrants from the New England states. Elisha Whittlesey and Eben Newton, both natives of Connecticut, became the first two lawyers in Canfield, Ohio; Benjamin Franklin Wade, who was born in 1800 near Springfield, Massachusetts, became an outstanding lawyer in Andover, Ohio, and later senator from Ohio (1851–69); the first lawyer in Chicago, Illinois, was Russell E. Heacock from Litchfield, Connecticut, who arrived in 1827; and Byron McCutcheon, a native of Pembroke, New Hampshire, was the first lawyer in Manistee, Michigan. Vermont supplied a great many lawyers to the West: Judge Hugh White, of Middletown, in 1784 moved to Oneida County, New York; Daniel F. Kimball went to Janesville, Wisconsin, in 1839, and he was soon followed by Charles H. Parker; Noel H. Camp came to Milwaukee, Wisconsin, in 1850, as did Henry Francis Prentiss in 1855; Levi B. Vilas moved to Madison, Wisconsin; George Baldwin migrated to Chilton, Wisconsin; George P. Keeler settled in Waterloo, Wisconsin; Moses M. Strong, a graduate of Dartmouth College, in 1836 went to Mineral Point, Wisconsin; and Charles Remick, also a graduate of Dartmouth College, moved to Iowa. Don Alonzo Joshua Upham, a native of Wheatersfield, Vermont, and a lawyer of some stature, served as mayor of Milwaukee, Wisconsin, and became president of the First Constitutional Convention of Wisconsin. James Sullivan of Exeter, New Hampshire, and a grandson of General John Sullivan, was the first lawyer in Niles, Michigan; James Whitcomb, a native of Vermont and a graduate of Transylvania University, became a lawyer in Bloomington, Indiana, and later governor of the state (in 1843); and Solomon L. Withey arrived in Grand Rapids, Michigan, from St. Albans, Vermont, in 1836, and became a noted lawyer and judge whose courts were always models of propriety and decorum.[98] Early Vermont, itself still a pioneer state, probably produced more "embryo lawyers" than the young and relatively poor state could possibly support. Bates Turner, who opened a "law school" in Fairfield,

[98] See Holbrook, *The Yankee Exodus* (1950), *passim.*

Vermont, in 1811, is said to have trained about 175 lawyers during a period of about twenty years.[99] Hence, the only way to professional fame and fortune for many of the ambitious young men was to emigrate.[100] Driven by the "Genesee fever," the "Ohio fever," or the "Western fever," they moved west or southwest, settling in western New York, western Pennsylvania, Ohio, Indiana and, somewhat later, in Illinois, Michigan, and Missouri as well as in the Western territories. Some drifted into Kentucky, Tennessee, and the South.[101]

Despite somewhat inauspicious beginnings, within a very brief space of time the frontier bar produced some outstanding lawyers and statesmen of national repute: Tennessee had its John Bell, one of the truly great political figures in Tennessee and probably the most intellectual man in the public life of the state;[102] Felix Grundy, who after a brilliant career both at the bar and on the bench became attorney general of the United States in the Cabinet of President Van Buren;[103] George Washington Campbell, who in 1814 was appointed United States secretary of the treasury and subsequently became chairman of the Senate Finance Committee; John Catron, who in 1837 was appointed to the Supreme Court of the United States by President Jackson; Andrew Jackson, the seventh President of the United States; and James K. Polk, the eleventh President of the United States. Lawyers from Kentucky who attained to national prominence were John Breckenridge, the friend of Jefferson and Marshall, who in 1805 became attorney general of the United States in President Jefferson's Cabinet; Thomas Todd, who in 1807 received an appointment to the Supreme Court of the United States; Robert Trimble, who in 1826 was appointed to the Supreme Court of the United States; William Taylor Barry, one of the most brilliant and most remarkable men

99 2 Hemenway (ed.), *Vermont Historical Gazetteer* 812 (1867–91); Stillwell, "Migration from Vermont," 5 *Proceedings of the Vermont Historical Society* 149n. (1937).

100 Stillwell, "Migration from Vermont," *loc. cit.*, 149–50.

101 Holbrook, *Yankee Exodus* (1950), *passim.*

102 Among many other important public and political offices John Bell also held the position of Secretary of War in President Harrison's Cabinet. He was the nominee for President of the Constitutional Union Party in 1860.

103 See Parks, *Felix Grundy: Champion of Democracy* (1940), *passim.*

of the age in which he lived, who became postmaster general in President Jackson's Cabinet (1829–35); Amos Kendall, a very influential member of President Jackson's "Kitchen Cabinet," who became postmaster general of the United States in 1835; Madison Conyers Johnson;[104] John Boyle, who was to the jurisprudence of Kentucky what John Marshall was to that of the United States;[105] Benjamin (Ben) Hardin, who by many was regarded as the ablest jurist of his generation west of the Alleghenies;[106] Charles Anderson Wickliffe, who became postmaster general in President Tyler's Cabinet (1841–45); George Mortimer Bibb, the author of *Bibb's Reports* and United States secretary of the treasury (1844–45), who argued several cases before the Supreme Court of the United States;[107] John Jordan Crittenden, who after a constructive political career became attorney general of the United States in 1841 and, again, in 1848, and acting secretary of state in 1851 during Daniel Webster's illness;[108] and Henry Clay.[109]

104 Associate Justice Harlan of the Supreme Court of the United States had this to say about Johnson: "No greater lawyer, in the largest sense of the word, ever lived in this country, in my judgment. . . . He deserves to be ranked by the side of Daniel Webster and Rufus Choate." Quoted in Webb, "Some Great Lawyers of Kentucky," *Proceedings of the Sixteenth Annual Meeting of the Kentucky State Bar Association* 64, 75 (1917).

105 His many decisions can be found in fifteen volumes of the *Kentucky Reports*, beginning with 1 Bibb and ending with 3 Monroe. President Jefferson and President John Quincy Adams considered him for an appointment to the Supreme Court of the United States.

106 He also argued before the Supreme Court of the United States in Green v. Watkins, 19 U.S. (6 Wheat.) 118 (1821); 20 U.S. (7 Wheat.) 13 (1822).

107 Green v. Biddle, 21 U.S. (8 Wheat.) 1 (1823), together with Henry Clay; Wagman v. Southard, 23 U.S. (10 Wheat.) 1 (1825), together with Benjamin Munroe (of Kentucky); Bank of the United States v. January, 23 U.S. (10 Wheat.) 23 (1925); Brashear v. Mason, 47 U.S. (6 How.) 97 (1848), together with Walter Jones; and Fremont v. United States, 58 U.S. (17 How.) 567 (1855), together with William Carey Jones and John J. Crittenden.

108 See, in general, Coleman, *The Life of John J. Crittenden* 2 vols. (1871).

109 Aside from a distinguished political career which propelled him into the forefront of national politics, Henry Clay argued many important cases before the Supreme Court of the United States: Skillern's Executors v. May's Executors, 8 U.S. (4 Cranch) 83 (1807); Osborn v. Bank of the United States, 22 U.S. (9 Wheat.) 326 (1824)—in the reargument of this case he was associated with Daniel Webster and John Sergeant; Ogden v. Saunders, 25 U.S. (12 Wheat.) 135 (1827), together with David B. Ogden and Charles G. Haines; Groves v. Slaughter, 40 U.S. (15 Pet.) 286 (1841), together with Daniel Webster and Walter Jones.

In Missouri, Henry S. Geyer, the compiler of the early Missouri statutes (1818), who provided some of the main arguments advanced in the Dred Scott case; and Thomas Hart Benton, who won great fame as a politician in the National Bank controversy,[110] became nationally known lawyers. Ohio likewise produced some lawyers whose influence was strongly felt far beyond the confines of their state: Peter Hitchcock, whose main accomplishment was the adaptation of the traditional common law to the particular conditions prevailing in the new state of Ohio;[111] Ethan Allen Brown, a most competent chairman of the Senate Committee on Roads and Canals, whom President Jackson appointed commissioner of the General Land Office in Washington, D.C.;[112] Charles Hammond, the author of the first nine *Ohio Reports* (*Hammond's Reports*), who by many was considered the most eminent lawyer at the Ohio bar;[113] and Thomas Ewing, who in 1841 was appointed secretary of the treasury in President Harrison's Cabinet.[114] Indiana produced Isaak Blackford, who while on the bench of the Indiana Supreme Court wrote a total of 905 opinions and thus established and stabilized the law of the state.[115] And the Illinois bar had its Stephen Arnold Douglas, a justice of the Illinois Supreme Court at the age of twenty-eight, a United States Senator, and a candidate for the Presidency of the United States, who

[110] He argued before the Supreme Court of the United States in Craig v. Missouri, 29 U.S. (4 Pet.) 249 (1830). See also, in general, Roosevelt, *Thomas Hart Benton* (1886); Meigs, *The Life of Thomas Hart Benton* (1904); Rogers, *Thomas H. Benton* (1905).

[111] See, for instance, Lessee of Moore v. Vance, 1 Ohio (1821); Lindsley v. Coats, 1 Ohio 243, 245 (1821).

[112] He also appeared before the Supreme Court of the United States in the reargument of Osborn v. Bank of the United States, 22 U.S. (9 Wheat.) 326 (1824).

[113] He argued before the Supreme Court of the United States in Osborn v. Bank of the United States, 22 U.S. (9 Wheat.) 326 (1824), against Henry Clay. It was said that as regards his legal ability he was the equal of John Marshall, Theophilus Parsons, and Daniel Webster. President John Quincy Adams, in 1828, offered him a place on the Supreme Court of the United States.

[114] See, in general, Ewing, "Autobiography of Thomas Ewing" (Martzloff ed.), 22 *Ohio Archeological and Historical Publications* (1913).

[115] 1–8 *Blackford's Reports*; 1–3 *Indiana Reports*; and *Smith's Reports*. See, in general, Thornton, "Isaak Blackford," 3 Lewis, *Great American Lawyers* 189 (1908).

gained lasting fame for his debates with Lincoln; David Davis, whom President Lincoln appointed to the Supreme Court of the United States in 1862; and Abraham Lincoln. These are the names of but a few "frontier lawyers" who by their natural endowments, industry, ability, learning, and energy within a remarkably brief span of time not only managed to rise far above local fame and success, but also deservedly succeeded in becoming vital actors in our national history.

During the early days the legal profession of the frontier utterly lacked any kind of professional organization that might supervise the deportment of lawyers. Some individuals, however, took it upon themselves to state their personal views on professional standards and professional ethics in order to raise the general level of the bar. "I do not consider it the duty of a lawyer," A.S. Merrimon wrote, "to bewilder a Jury or the Court and lead their minds astray. This is not what a lawyer ought to do, and I consider it highly dishonorable for him to do it. It is every lawyer's duty to seek after the true and just rights of his clients, and to present his case in the most forcible light to the court and jury and he has not done his duty until he has done this; but it is not part of the duty of a lawyer to assist a scoundrel at law or in regard to the facts and whenever this is done, the man who does it is to some extent an accomplice. . . . A lawyer, in the true sense of the term, never studies Chickenery and low cunning. No, a man who is a lawyer, never fears to meet the question and battle face to face."[116] Benjamin Swaim maintained that a good lawyer was one who would not plead a cause if "his tongue must be confuted by his conscience"—a man who would not grow lazy and would be "*more careful to deserve, than greedy to take fees.*"[117] As a matter of fact,

[116] Newsome, "Merrimon Journal," *loc. cit.*, 304.

[117] 2 Swaim, *The Man of Business; or Every Man's Law Book* 135–38 (1835). Abraham Lincoln's refusal to handle a questionable case is perhaps best illustrated by the following incident, reported in Hill, *Lincoln the Lawyer* 239–40 (1906): "We can doubtless gain your case for you," Lincoln informed a prospective client, "we can set a whole neighborhood at loggerheads; we can distress a widowed mother and her six fatherless children, and thereby get for you six hundred dollars to which you seem to have a legal claim, but which rightfully belongs, it appears to me, as much to the woman and her children as it does to you. You must remember, however, that some things legally right are not morally right. We shall not take your case, but we will give you a little advice for which we shall charge you

William Hooper, chastizing the legal profession, insisted that lawyers, on the whole, would have little or no fees if they would follow the principle of justice to every man. The more desperate the case and the more odious the offender, "the greater is the harvest of renown and wealth to the successful pleader."[118] The *Raleigh Register*, in 1833, flatly rejected the view, expressed by a lawyer, that a lawyer owed his first duty to his client and that he must act "reckless in consequence." Denouncing such statements as being false and dangerous in principle, the newspaper editorialized that "it will never be maintained in an American Court of Justice, that the acceptance of a fee releases a man from his obligations of social virtue and future responsibility."[119]

It would not be amiss to say that the majority of the Western states greatly gained in stature through their respective bars, and that its early bar made Tennessee the foremost state in the West and the equal in political influence of any state of the Union during the first half of the nineteenth century. Measured by the standards of their own time and judged with due regard of their particular environment, the first lawyers of Tennessee often were men of high character, astounding ability, and great political acumen. Some of them, like Andrew Jackson, John Bell, and James K. Polk, remained in Tennessee, rising from local offices to the highest positions of political power in the nation. Others, like Sam Houston who had studied law in Nashville and by 1818 had a substantial practice in Lebanon, or Thomas Hart Benton who had been admitted to the Tennessee bar in 1811, moved westward to seek fame and fortune. Not only can Tennessee look with pride on the eminence of its lawyers in state and national affairs, but it can proudly point to innumerable lawyers trained in Nashville and Knoxville who became the professional and political leaders of the new areas in the West and Southwest.

In early Indiana lawyers, in the main, not only were by far the best educated class of people, but they simply dominated the

nothing. You seem to be a sprightly, energetic man. We would advise you to try your hand at making six hundred dollars in some other way."

[118] Hooper, *The Sacredness of Human Life, and American Indifference to Its Destruction: An Address* 19, 24 (1857).

[119] *Raleigh Register*, September 10, 1833.

political life first of the Territory and, later, of the new state. The majority of the members of the Indiana Constitutional Convention of 1816 were lawyers. Of the first eight governors, seven were professional lawyers, and of the first thirteen lieutenant governors, eleven.[120] It must be conceded, however, that among the lieutenant governors there was hardly a man of real professional stature. In the Indiana General Assembly the lawyers likewise had a controlling influence: of the men presiding over the Senate between 1816 and 1852 all but one were lawyers, and a study of the Speakers of the House during the same period shows an even more remarkable preponderance of lawyers.[121] Lawyers furnished seven out of the eight first secretaries of state; and they filled seventy-five out of ninety-three terms of Indiana Congressmen prior to 1852. There were sixty-one different men sent to Congress, and of this number forty-five were professionally active lawyers. Of the nine United States Senators elected by the Indiana legislature on a joint ballot, eight were lawyers. Thus it appears that law and the practice of law were largely the gateway to a political career in early Indiana.

Other parts of the Western country, as they progressively gained statehood, and even prior to that event, gradually developed respectable bars out of modest beginnings. Frequently, if not overwhelmingly, the first lawyers of any professional standing in these new states or territories were men who, in the search of greater opportunities, had moved westward, either after already having professionally established themselves in some seaboard state, or immediately after the completion of their preparatory training for the practice of law. In several instances "frontier-born" persons also entered the profession, some after having visited the East for the purpose of studying law in one of the law schools which began to spring up all over the East, others after having acquired by their own independent efforts whatever bits of legal information were available in the native community. In keeping with the general conditions prevailing on the frontier, there were also many—perhaps too many—inept and irresponsible persons of easy penmanship and a voluble tongue who held themselves out as competent lawyers. The growth of this type of sharper was especially en-

[120] See 1 Monks (ed.), *Courts and Lawyers of Indiana* 80 (1916).

[121] *Ibid.*, 83.

couraged by the peculiar spirit of a frontier democracy which propagated the idea, so popular among pioneers, that every man was as good as any other, and that everyone should find open the gates to material success and self-advancement in any field of his choice. But there were also a goodly number of highly qualified professional men who, particularly after being raised to the bench, did much to bring about an orderly and successful administration of justice by developing and stabilizing the law in these new states or territories. Within a short period of time the legal profession in the frontier states or territories ranked at the top of the frontier gentry. It had achieved, on the whole, respectability, social standing, economic success, and political influence. In professional competence it soon became the keen rival of the old and established bars in the seaboard states.

III

BAR ORGANIZATIONS AND THEIR DECLINE

EVERY CLASS OR GROUP of professionally trained and professionally acting experts has an inherent tendency to organize itself and to form a sort of close-knit association or "guild." This guild, unless interfered with from the outside, sooner or later will compel, or try to compel, all persons practicing the same skills to become members of it and to comply with the policies, rules, and decisions agreed upon by the members of the association. In this it frequently has the full support of the law. The primary concerns of such a guild and, hence, also of these rules and decisions are, first, the training and education preparatory to admission to the practice of the profession; second, the maintenance of high standards as regards professional competence and professional deportment, often through the issuance and enforcement of a detailed "code of professional ethics"; third, the exclusion of incompetent, "immoral," or undesirable people from the practice of the profession; fourth, the establishment of good "public relations" through the diligent enlightenment of the general populace, in order to enhance the standing of the profession in, and its importance for, the community in which it operates; and, fifth, furtherance of continued improvements of knowledge and skills among its members through