

# LAWYERS AND 'BOOSTER LITERATURE' IN THE EARLY TERRITORIAL PERIOD

By  
Douglas A. Hedin

## I. "Wanted"

On June 21, 1851, the following editorial appeared in the *St. Anthony Express*:

### **Who are Wanted in Minnesota.**

We want Farmers—strong, robust, active men, who know the way, and have the will and means to tame our wild uncultivated soil, and develop its surprising fertility and unsurpassed resources. Let them if possible possess some means—enough at least to break and fence a few acres, and put up a cabin for a temporary home. More if possible, but this much is almost absolutely necessary. The best of land can be obtained, whether preempted or purchased of individuals on a credit of at least a year. —But there are no farms in Minnesota, ready fenced and ploughed, to be given away, or disposed of for a song. Farming is too profitable here, to favor the idea of such generosity. Lands broken and fenced, are worth from 10 to 30 and 50 dollars per acre according to situation. It is true, that there is no western state where improvements will pay so certain and large a profit as in Minnesota. Large sums are annually sent out of the Territory for grain and provisions—not because we have not a soil which produces luxuriantly, nor a climate which does not ripen to perfection every vegetable and species of grass, grain, and fruit of the temperate zone, nor a cash market of the highest price at our own doors, but solely, because there are not farmers enough to supply the market. Let it be distinctly understood, then, that farming is by far the most profitable business at present, in Minnesota, and is likely long to continue so.

Next, Mechanics are wanted—men of industry, enterprise and who thoroughly understand their business. Such, cannot fail to do well. There are not enough such, to supply the demand; there is not sufficient competition to reduce the price of mechanical labor to its proper standard, as compared with other employments. Unless we are greatly mistaken, mechanics receive much higher wages in proportion, than professional men or farmers. The same is true of laboring men. Two and three dollars per day, is a high price to pay an ordinary mechanic, and a dollar and a half is too much for a common hand, at hoeing corn and potatoes. The farmer cannot afford to hire at that high price. Let the laborer be well, even generously paid, for faithful toil. He deserves to be paid a good price for a good days work. And after all, any slight disproportion which may exist in the compensation of different employments, can only be temporary. Time will make all right. But it is a truth which all feel, that good mechanics are much wanted in Minnesota. With temperance, prudence and industry, none can fail to thrive—some will make fortunes.

Lawyers are wanted in Minnesota—men of education, character, and refinement, who thoroughly understand both the science and practice of their profession—men who adorn that profession by irreproachable lives, and high moral virtues, men, whose severe study, unswerving integrity and enlarged views, evince their love for the noble science of the law, and afford security of their usefulness in society. A lawyer in Minnesota should be able to plead a cause in law, to advise a client of his rights, to wield an axe or handle the hoe. He will not have business in his profession to occupy all his time, and he must think no honest labor beneath him of whatever kind it may be. Our Territory is large, but there is no room for miserable pettifoggers, who gain a wretched subsistence by stirring up quarrels in the community—vampyres, who drain the blood of society, too lazy to work, too ignorant to harbor an idea, too stupid to have a sense of shame, ‘hated of the gods and despised of men.’

We want ministers—learned, pious, self-denying men, who have not entered the ministry as a dernier resort, to get a living which they are too lazy or inefficient to earn by any other means. We want men of independent thought, untrammelled by

creeds or dogmas; who will preach the bible in its purity, whether or not it accord with the teachings of men or sects. Men especially, who shall not be afraid of work, who can plane a board, drive a nail, dig a well, stone a cellar or handle a spade none the less skillfully, that they preach with all the fervor and eloquence of a Paul or Apollos. Thank God, we have some such, hundreds more will be welcomed. Let them come.

Physicians, who expect to live by the practice of their profession will find Minnesota a poor field for a location. If there is any one peculiar characteristic of this Territory, it is its exceedingly healthy climate. Life Insurance Companies are at a discount. There are already a goodly number of disciples of Galen among us, who will find ‘their occupation gone,’ as soon as they have cured or killed, such desperate cases as come here infected with the thousand dangerous and complicated diseases of other parts of the Union, and have been given over by the ‘regulars’ of eastern and more southern states.

Last, though not least, *young ladies* are wanted. By this term, is not meant that class to which it is usually misapplied—so called genteel young misses, brought up to read yellow covered literature, to idleness and tight lacing, to sing a sentimental song, or play a tune on the piano, dance the polka and talk fashionable nonsense. There is no room for such in Minnesota. We use the term ‘young lady’, in its legitimate sense, as meaning one who is ready to engage in any labor that may be useful and necessary, whether it be to wash or bake, mop the floor, clean house, or patch a worn garment. These are your true ladies, more worthy of honor than those to whom armed knights of old paid homage— who give dignity to labor by a noble example, render homes happy, and become ornaments to society. Such can command from two to three dollars per week for their work, break the hearts of industrious and enterprising young men by their charms, heal them by consenting to become happy wives and mothers, and become the founders of great and prosperous commonwealth. Let *such* young ladies come to Minnesota.<sup>1</sup>

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<sup>1</sup> *St. Anthony Express*, June 21, 1851, at 2 (emphasis in original). The author of the editorial was H. Woodbury, the newspaper’s publisher. His spelling and punctuation have not been changed. Though snippets of this editorial are quoted in George S. Hage,

This editorial is remarkable in two respects: First, it is a perfect example of what has become known as “booster literature” and, second, it may be one the few times in recorded history when lawyers were invited to become members of a community.

This is an essay about lawyers who wrote booster literature, and why they were good at it, and it concludes with some speculation about why lawyers were wanted on the frontier—why, in other words, the author of the editorial in the *St. Anthony Express* pleaded, “Lawyers are wanted in Minnesota....”

## II. “Booster Literature”

When settlers arrived in Minnesota in the late 1840s and early 1850s, they were awed by what they saw—immense hardwood and pine forests ready to be cut, great navigable rivers available for travel, transportation and production of energy, a vast fertile land waiting to be homesteaded and cleared for fields and crops, and a healthy climate that did not tolerate disease. They also saw that the rewards of this territory could be reaped only if there were many more settlers. And so “booster literature” was born. Beginning in the late 1840s and continuing for the next three or more decades, the richness and the opportunities of Minnesota were touted in promotional literature that had one aim—to lure settlers there.

Immigrants were needed because the new territory was sparsely populated. When the Territory of Minnesota was established by congress on March 3, 1849, it had less than 5,000 inhabitants.<sup>2</sup> The population of St. Paul was only 840.<sup>3</sup>

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*Newspapers on the Minnesota Frontier, 1849-1860* 9-10 (St. Paul: Minnesota Historical Society Press, 1967), it was “rediscovered” so to speak by Professor Lynn Weiner, who reproduced a lengthy excerpt it in her article, “‘Who Are Wanted In Minnesota’: Workers as Described in Antebellum ‘Booster Literature,’” 18 *Labor History* 403 (1977).

<sup>2</sup> According to a census conducted by Edmund Brissett and William Dahl, there were 4,780 persons in the territory at the time of the passage of the Organic Act on March 3, 1849, and that was the sum of 3,067 men and 1,713 women. There were also 700 who lived in the Dakota Territory. Indians were not counted, nor were 367 soldiers. The census is described in J. Fletcher Williams, *A History of the City of St. Paul to 1875* 228 (Reprint: St. Paul: Minnesota Historical Society Press, 1983) (1876).

<sup>3</sup> *Id.* St. Paul’s population increased over the course of the year. James M. Goodhue estimated that its population in the late summer of 1849 to be “about eight hundred inhabitants, most of whom have sprouted up within the last few months.” *Minnesota*

On September 4, 1849, Territorial Governor Alexander Ramsey delivered a message to the first legislature in which he trumpeted the territory's "many advantages":

Our Territory, judging from the experience of the few months since public attention was called to its many advantages, will settle rapidly. Nature has done much for us. Our productive soil and salubrious climate will bring thousands of immigrants within our borders; it is of the utmost moment that the foundation of our legislation should be healthful and solid. A knowledge of this fact will encourage tens of thousands of others to settle in our midst, and it may not belong ere we may with truth be recognized throughout the political and the moral world as indeed the "polar star" of the republican galaxy."<sup>4</sup>

Ramsey's speech stimulated immigration to the new territory.<sup>5</sup> Over a half century later, Charles E. Flandrau recalled that it "was well calculated to attract immigrants to this region. It was written in a year of great activity in that line. Gold had been discovered in California, and the thoughts of the pioneer were attracted in that direction, and it needed extraordinary inducements to divert the stream to any other point. It was extensively

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*Pioneer*, August 16, 1849, at 2. Edward D. Neill estimated the population of St. Paul in 1849 to be "two hundred and fifty or three hundred inhabitants." Edward Duffield Neill, *The History of Minnesota: From the Earliest French Explorations to the Present Time*, 494 (Philadelphia: J. B. Lippincott & Co., 1858)(This book has been reprinted by the University of Michigan Historical Reprint Series). Professors Anderson and Loeb estimated that the population of St. Paul was "less than one thousand" which is far closer to the 1849 census conducted by Brissett and Dahl. William Anderson & Albert J. Loeb, *A History of the Constitution of Minnesota* 31 (Minneapolis: University of Minnesota, 1921). The federal census of 1850 placed St. Paul's population at 1,294. Williams, *supra* note 2, at 266.

<sup>4</sup> Alexander Ramsey, *Message from the Governor of the Territory of Minnesota to the First Legislative Assembly, September 4, 1849* 4 (St. Paul: Chronicle and Register, 1849).

<sup>5</sup> As two historians noted, Ramsey's message was "replete with brilliant predictions, but at no time does he suggest the necessity of official action on the part of the territory." Livia Appel & Theodore C. Blegen, "Official Encouragement of Immigration to Minnesota During Territorial Period," 5 *Minnesota History Bulletin* 167, 168 (August 1923). It was not until March 1855, that the legislature authorized Governor Gorman to hire an "emigration commissioner" in New York City to publicize the Minnesota Territory. The first commissioner was Eugene Burnand. *Id.* at 170, 177-179, 181-182.

quoted in the eastern papers, and much commented upon, and succeeded beyond all expectations in awakening interest in the Northwest.”<sup>6</sup>

Booster literature had much to do with this spike in immigration. It took many forms—pamphlets, books, newspaper editorials, ballads and verse.<sup>7</sup>

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<sup>6</sup> Charles E. Flandrau, *The History of Minnesota and Tales of the Frontier* 64 (St. Paul: E. W. Porter, 1900). By 1855, Minnesota’s population was 40,000, and within two years it exploded to 150,037. William Watts Folwell, *A History of Minnesota* 359 (Rev. ed.: St. Paul: Minnesota Historical Society Press, 1956)(1921) (citing sources).

<sup>7</sup> Journalist Frank G. O’Brien’s “Minnesota” is an example of a booster ballad:

### MINNESOTA

(Tune—”Tramp, Tramp, Tramp, the Boys Are Marching.”)

In this Minnesota State,  
With its broad, wide-open gate,  
That ne’er closes to the honest son of toil,  
There is always a glad hand  
For the tiller of the land,  
Who is not afraid to rustle with the soil,

CHORUS:

Come! Come! Come! We bid you welcome,  
Come and share our rich domain;  
We will cheer you on the road  
As you struggle with life’s load,  
And we’ll make you feel you’re with us to remain.

With our wheat-fields, pine and ore,  
We have wealth enough in store  
To enrich each valiant wrestler for the prize,  
All you have to do is work,  
Not one duty must you shirk—  
Words like these are all sufficient for the wise.

CHORUS:

You will sure find out our ways  
Ere you’re with us many days,  
And you’ll come to share our wonder, joy and pride,  
In our splendid water-power,  
In our butter, cheese and flour,  
And the many precious things we have beside.

Frank G. O’Brien, *Minnesota Pioneer Sketches* 196 (Minneapolis: H. H. S. Rowell, Publisher, 1904). O’Brien’s ballad was likely published sometime after the Civil War. On immigrant ballads in general, see Theodore C. Blegen, “Singing Immigrants,” in *Grass Roots History* 31-54 (Minneapolis: University of Minnesota Press, 1947). See also,

Personal letters were particularly effective. John Wesley North, the first lawyer to reside permanently in St. Anthony, and his wife wrote so many letters to friends, family and newspapers back east that they ran out of stamps.<sup>8</sup> Roughly 1,000 settlers came to Minnesota in 1850 because of the Norths' letter-writing campaign.<sup>9</sup> In 1851, William G. Le Duc, who had trained as a lawyer, published the first *Minnesota Year Book*; it would appear in five annual editions.<sup>10</sup>

Promoting the territory was one of the missions of early newspapers, according to George S. Hage, a historian of journalism:

The frontier press in Minnesota was to fulfill two primary functions, both promotional. The first was to attract settlers to the territory, the second, to advance the cause of a political party. Other functions informing the community about itself and the outside world, mounting watch-on government,

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David M. Emmons, *Garden in the Wilderness: Boomer Literature of the Central Great Plains* (University of Nebraska Press, 1971)(though it does not discuss developments in Minnesota).

<sup>8</sup> Merlin Stonehouse, *John Wesley North and the Reform Frontier* 36 (Minneapolis: University of Minnesota Press, 1965)(“When pupils and guests were gone, the Norths spent evenings writing. North wrote to eastern papers touting Minnesota, and even placed a card in the *National Era* in Washington, D. C. For the next several years almost every mail brought three or four letters of inquiry which he answered in detail, describing the advantages of settling in the Territory....A check on North's writing to the press and public was his lack of stamps. By late spring in 1850, only a timely contribution from his father-in-law saved him from an empty purse—his last shilling had been spent on stamps.”). In the fall of 1850, as a member of the territorial legislature, North got free postage. *Id.* at 49.

Unlike other boosters, North sought settlers with a particular political-leaning—“northerners who had strong convictions about temperance, education, peace, abolition, and free soil.” *Id.* at 27. The readers of the newspapers which published North's promotional pieces had similar qualities: “Like himself, they were carpetbaggers interested in speculative investment and settlement in a land where they might bring about the evangelical humanist reforms by founding a new political state.” *Id.* at 36.

<sup>9</sup> *Id.* at 37 (“A conservative estimate would place the number of newcomers lured to Minnesota by North's correspondence during the first year [1850] at a thousand. He had doubled the population of St. Anthony.”).

<sup>10</sup> William G. Le Duc's *Minnesota Year Book* appeared annually from 1851 to 1855. It listed principal settlements, distances between St. Paul and other villages, described the legislature, listed charts of moon phases, and had a traveler's guide. The 1851 edition was 55 pages, but later versions were shorter. They were self-published by Le Duc in St. Paul, where he operated a bookstore.

advertising goods and services, instructing and entertaining readers got less attention from editors in early years.<sup>11</sup>

In the inaugural issue of the *Minnesota Pioneer* on “Saturday Morning, April 28, 1849,” James M. Goodhue announced: “There is nothing more certain than that the interests of Minnesota require an able and efficient press, to represent abroad our wants and to set forth our situation, our resources and our advantages.”<sup>12</sup> In its first issue on April 27, 1849, the *Register* announced that it had two objectives: to promote settlement of the territory and to establish a good constitution for statehood.<sup>13</sup> The *St. Anthony Express* advised its “patrons” in its first issue on May 31, 1851, that “the primary leading object of the *Express* will be to advocate the interests of the Territory in general, and especially those of St. Anthony village.”<sup>14</sup> Two years later, the *North-Western Democrat*, also published in St. Anthony, emphasized the dual aims its first issue: “Yes we *must* blow our own trumpet if we would have our Territory *and our village*, known and country about us settled,” adding that its second objective was to represent the “Democrats of St. Anthony.”<sup>15</sup>

No editor wrote more extravagantly about Minnesota than James M. Goodhue, the editor and publisher of the *Minnesota Pioneer*.<sup>16</sup> Even before

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<sup>11</sup> George S. Hage, *supra* note 1, at 3-4. In attracting immigrants, the newspapers were successful. As St. Paul lawyer William P. Murray later recalled the year 1849, “These newspapers did much to bring immigration to the Territory.” William P. Murray, “Recollections of Early Territorial Days and Legislation,” 12 *Minnesota Historical Society Collections* 103, 107 (1908). This was a printed version of a speech Murray delivered to the Historical Society’s Executive Council on November 14, 1904. .

<sup>12</sup> *The Minnesota Pioneer*, April 28, 1849, at 2. The editorial was captioned, “The Press in Minnesota.” On its front page, the *Pioneer* proclaimed its politics to be “Democratic Principles, Democratic Men and Democratic Measures.”

<sup>13</sup> *Minnesota Register*, April 27, 1849, at 2 (“There are two great objects to which we purpose to conduct our efforts:—to promote the settlement of our *Territory*—and the establishment of a good Constitution, preparatory to our admission to the Union.”)(emphasis in original). In politics the *Register* supported the Whigs.

<sup>14</sup> *St. Anthony Express*, May 31, 1851, at 2. In politics, the *Express* supported the Whigs.

<sup>15</sup> *North-Western Democrat*, July 13, 1853, at 2. The editorial page is headed “Volume One, Number One.” Obviously, in politics, the *North-Western Democrat* supported the Democrats.

<sup>16</sup> Born in 1810 in New Hampshire, he graduated from Amherst in 1833, farmed for several years with an uncle, read law and was admitted to the New York bar about 1840. After practicing law in small towns in Wisconsin, he turned to newspaper publishing. He arrived in St. Paul in mid-April 1849, and put out the first issue of the *Minnesota Pioneer*



Governor Ramsey's general call for settlers in his September 1849, address to the legislature, Goodhue published an editorial in the *Pioneer* specifying the occupations that were needed in the territory:

The mechanic arts in St. Paul are in many of the departments abundantly represented. We have no immediate want of ordinary carpenters nor blacksmiths....

We need no more merchants. There is already too great a supply of all sorts of merchandise adapted to this market. If any merchant is so set upon trying this market as not to take our word for it, let him come and see.

We want farmers. We are almost ready to offer a bounty on farmers. And we recommend to them to come—come as soon as they can....

The Territory is settling very fast with immigrants from the eastern and middle states. We should probably have had a fuller flood of immigration had it not been for the cholera in the towns along the way....

The winters are long and cold, but the temperature is so equable, that they are said to be agreeable...The climate is almost precisely like that of New England. Bilious diseases are rare, and agues have no home here. Our country is proverbially healthy.”<sup>17</sup>

Goodhue returned to the needs of the territory in an editorial headlined “The Wants of Minnesota” on January 22, 1852:

We want the treaties [with the Sioux Nation] ratified. There can be no division of opinion on that subject. With the treaties ratified, our Territory will be rapidly progressive; without the treaties ratified, Minnesota will be stationary, if not retrograde.

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by the end of the month. Mary Wheelhouse Bethel, *Horns of Thunder: The Life and Times of James M. Goodhue* 4- 13 (St. Paul: Minnesota Historical Society Press, 1948).

<sup>17</sup> *Minnesota Pioneer*, August 16, 1849, at 2.

We want the Chippewa treaty ratified. The interests of our brethren at Pembia require it. We want treaties made, for every foot of Indian territory within our limits, east of the Mississippi...

We want ten thousand farmers, with strong hands and courageous hearts, with their plows and their oxen and cattle and sheep, and their wives and children, who are not particular on which side of the river they settle, to raise large crops, and obtain large prices and enjoy vigorous health, and build up valuable institutions of religion and learning, for present and future generations.

We want manufacturing capital enough, invested in saw-mills, planing mills, lath mills, shingle mills, lathes, and the manufacture into all possible uses, every pine log that can be cut on the Mississippi river and its tributaries, to supply the home demand and to furnish the demand of the whole vast region of hard wood lands and prairies, to the mouth of the Mississippi river. We want thousands of lumbermen, to supply the pine logs; and we want the permission of the Government, to buy the pine lands north of us, and to continue inland to extend, this our legitimate business, for our own profit and the evident profit and advantage of the Great West.

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We want to see all our people distinguished for thrift without meanness, for strict temperance in all things, for religion without bigotry, for intelligence without pedantry; for charity, for strict punctuality in the payment of all debts, for abhorring and reprobating all tricks and chicaneries and unfair advantages, by which men deceive and defraud each other, and call it *smartness*.

We want that there should be such intelligence and such a standard of enlightened public opinion, as will awe down roguery and rowdyism, and enforce correct conduct with power far mightier than the penalties of statutes....

The men who aid in and cherish, the purposes and aims which we have above set forth, are your true Democrats, your liberal, practical, working Democrats; and they are the men, and the only men, in our Territory, who are really, heartily and sincerely, laboring to promote the greatest good of the greatest number. These are sober, honest truths. People of Minnesota! We ask you to ponder them.<sup>18</sup>

Goodhue had a Jeffersonian belief in the virtues of farming. Farmers worked; they had families; they were stable; they held the future of the territory's prosperity in their hands. In an editorial on October 10, 1850, Goodhue tried to persuade "some" of the lawyers in town to take up farming: "It can be demonstrated beyond a cavil, that any industrious man can make a fortune in Minnesota by farming. The proceeds of ten acres of such lands as lie uncultivated around Saint Paul will amount to more money than is realized from the business of any lawyer or doctor in Minnesota...let us make an estimate of the profits of farming here, and see if we cannot convince *some* of the thirty lawyers in our town, as well as other professional gentlemen, including the whole of that genteel class of loafers, who are waiting for something to turn up that the best thing they can do is to *turn up* the sod."<sup>19</sup> Goodrich must have known that many frontier lawyers were restless, practicing here or there for a few years, then moving westward. If, through his encouragement, some turned to farming and soon made "a fortune," they would stay permanently.<sup>20</sup> Boosters wanted the kind of settler

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<sup>18</sup> *Minnesota Pioneer*, January 22, 1852, at 2.

<sup>19</sup> *Minnesota Pioneer*, October 10, 1850, at 2 (emphasis in original). To Goodhue, land was something to be tilled (his editorial was captioned "Cultivation of the Soil."); he despised land speculation by nonresidents. Many others viewed land as a speculative commodity. When John Wesley North's biographer wrote, "Land, not law, filled North's thoughts," he was referring to North's speculative urges. Stonehouse, *supra* note 8, at 34.

<sup>20</sup> While Goodhue placed farmers on a pedestal, he viewed lawyers as members of the working class, no better or worse than others. In July, 1849, he published an impassioned editorial captioned "Let Us Understand Each Other," decrying growing divisions and rivalries within the settler community, especially prejudice against newly arrived immigrants. He argued that unity, common purpose and mutual support were necessary to achieve prosperity. "We are all laborers," he wrote. "We labor for each other. We are dependent upon each other." He continued in this vein, describing various trades, including one of "the lawyer" that is vintage Goodhue:

The lawyer, who spends the dewy morning of his life in threading the thorny labyrinths of his profession, an apprentice it may be for five years

who would subdue, master, and develop the then almost uncharted territory of Minnesota—and who would stay there. John Wesley North was not atypical in “want[ing] as few wandering fur traders, lumberjacks, military men, Indian agents, immigrant Irish, and western toughs as possible.”<sup>21</sup>

For all Minnesota boosters, the competition was California, whose gold fields beckoned settlers seeking immediate riches. But between California and Minnesota, it was an unfair contest—California had attractions that Minnesota could never match. Nevertheless, John Wesley North, the inveterate letter-writer, emphasized that finding gold in California was a gamble, but success in Minnesota could be achieved by industry.<sup>22</sup> Typically, Goodhue drew more dire distinctions between the two: “Contrast the two regions. California is on the western verge of the continent, while Minnesota is in the very heart of it. The former, is afflicted with that lingering, living death, the fever and ague; while to the latter, the whole family of bilious ailments is unknown.”<sup>23</sup>

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to the business in a dirty alley leading to Wall street, threadbare, hungry, and exhausted by the drudgery of serving notices, and copying bills and answers in Chancery, and who, at a little past the meridian of his life, by cant of hard study, perplexing trials, and corroding anxiety and hard work for the interests of his client, has attained to the luxury of his own house, owning a library of law books, the indispensable tools of his trade, and wearing two clean shirts each week, is quite as much a working man as the tailor who makes his coat, or the shoemaker who makes his boots.

*Minnesota Pioneer*, July 26, 1849, at 2.

<sup>21</sup> Stonehouse, *supra* note 8, at 36.

<sup>22</sup> Stonehouse, *supra* note 8, at 43. Ironically, about fifteen years later, there were rumors of gold deposits in northern Minnesota, and this led inevitably to litigation. E.g., *New York & Minnesota Gold Mining Co. v. Martin*, 13 Minn. 417 (Gil. 386) (1868). For a history of the Minnesota gold rush, see David A. Walker, “Lake Vermillion Gold Rush,” 44 *Minnesota History* 43-54 (1974).

<sup>23</sup> *Minnesota Pioneer*, June 7, 1849, at 2. To Theodore Blegen, Goodhue’s dreams were quixotic:

A bold, intelligent, and honest exponent of personal journalism, Goodhue made his paper a cultural and political power in Minnesota. St. Paul was only a village of straggling shanties and log huts, but to Goodhue, optimist and prophet, it was more marvelous than the Seven Cities of Cibola. He glorified Minnesota, extolling its wide, blooming plains and hills, its lands as fertile as the banks of the Nile, its forests of ancient pines, its lakes of crystal water. To him, California was a place of “lingering, living death,” whereas Minnesota was life. Never ceasing his prophecies of greatness for the coming state, he foresaw the Indians “fading, vanishing, dissolving

The promoters minimized the hardships and dangers of living on the frontier. John Wesley North earned only \$15 in 1849.<sup>24</sup> Years later, in the wake of the Panic of 1857, Isaac Atwater confessed in a letter to a friend, “I cannot get money enough to buy provisions for my family.”<sup>25</sup> Boosters either did not mention native tribes or dismissed them as temporary impediments to settlement. In an editorial in the *Pioneer* on August 16, 1849, responding to inquiries from potential immigrants, James Goodhue, wrote, “Probably in the course of a year or two our enviable domain will include the lands now occupied by the Sioux Indians. When the Indian title is extinguished, all that tract of country included within the northern line of the State of Iowa, and the Mississippi and Missouri rivers, extending as far west as Nebraska, will be open to settlers, like other parts of Minnesota.”<sup>26</sup> When they mentioned the weather, they gave it a favorable twist.<sup>27</sup> Goodhue

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away,” and, looking out into the future, drew a picture of thousands of farms and cottages, waving wheat fields, and “jungles of rustling maize.”

Theodore C. Blegen, *Grass Roots History* 171 (Minneapolis: University of Minnesota Press, 1947).

<sup>24</sup> Stonehouse, *supra* note 8, at 33.

<sup>25</sup> *Id.* at 118 (quoting letter to John Stevens from Atwater dated October 31, 1857).

<sup>26</sup> *Minnesota Pioneer*, August 16, 1849, at 2.

<sup>27</sup> As might be expected, James Goodhue excelled in issuing favorable meteorological reports about Minnesota. See, e.g., editorials in the *Pioneer*, September 26, 1850, at 2, headlined “To Farmers of the United States and Europe,” and the *Pioneer*, June 5, 1851, at 2, headlined “Minnesota Affairs.”

On August 16, 1851, the *St. Anthony Express* invited a “Mr. Ray” of Macon County, Alabama, to visit the new territory:

We received, through the politeness of A. Godfrey, Esq., a letter from Mr. Ray, of Macon Co., Alabama stating that a number of families of that vicinity, were preparing to remove to Minnesota, and making inquiries in regard to climate, soil, route, price of land, population of St. Anthony, &c. If our friends in Alabama can stand a winter cooler than they have been accustomed to in the “sunny South,” we are sure they will be delighted with this Territory. Yet from the fact that Mr. R. inquires, “if the River is navigable at all seasons, from St. Louis here,” he may not be aware that the winters in this latitude are rather cool—in fact, we may venture to say decidedly cool, insomuch, that the thermometer, sometimes falls to 30 below zero. Yet the atmosphere is always perfectly dry, pure and healthy, the sky usually clear, sleighing good, and no rain from November to April. The most favorable time to visit this Territory is from May to November.... We shall forward our friends the *Express*, from which they will learn full particulars in regard to the country, and can judge for themselves whether it will suit them.

concluded his editorial on August 16, 1849, by arguing that immigration would have been greater if villages “along the way” to Minnesota had not been hit by cholera.<sup>28</sup> In early 1850, he assured his readers, “A case of cholera has never been known in Minnesota.”<sup>29</sup> The following year, he was just as emphatic: “Never has a case of fever and ague originated here.”<sup>30</sup> In this way, Goodhue attempted to turn rumors about Minnesota’s harsh weather to its advantage. The *St. Anthony Express* tried to squelch them by boasting in its “Who are Wanted in Minnesota” editorial that the climate there was so perfect that physicians would lack patients.<sup>31</sup>

For many reasons, including booster literature, lawyers began to trickle in to the new territory. According to an informal census by Ephraim S. Seymour on June 13, 1849, there were in St. Paul, “twelve attorneys at law, six of whom were practicing.”<sup>32</sup> After Justice Chief Justice Aaron Goodrich presided over the first court held in Saint Croix County on August 12, 1849, only five months after the territory was formed, Goodhue wrote in the *Pioneer*, “The roll of attorneys is large for a new county. About 20 of the

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*Id.* at 2.

<sup>28</sup> *Minnesota Pioneer*, August 16, 1849, at 2.

<sup>29</sup> *Minnesota Pioneer*, January 30, 1850, at 2. There may be an unfortunate irony here. Goodhue died in St. Paul on August 27, 1852. In its next issue, the *Pioneer* gave this account of his death: “A short period before he was confined to his room, he fell from his ferry boat into the river, and was obliged to use great exertion to keep from drowning; this, in connection with a mind oppressed by the cares of one so active in life, is supposed to have shortened his days on earth.” *Minnesota Pioneer*, September 2, 1852, at 2. Goodhue’s biographer likewise does not identify the disease that caused his death. See Bethel *supra* note 17, at 260. Professor Jocelyn Wills, however, states quite plausibly that cholera killed Goodhue. *Boosters, Hustlers, and Speculators: Entrepreneurial Culture and the Rise of Minneapolis and St. Paul, 1849-1883* 54 (St. Paul: Minnesota Historical Society Press, 2005).

<sup>30</sup> *Minnesota Pioneer*, June 5, 1851, at 2.

<sup>31</sup> *St. Anthony Express*, June 21, 1851, at 2.

<sup>32</sup> Ephraim S. Seymour, “Sketches of Minnesota, the New England of the West,” quoted in Williams, *supra* note 2, at 224. By Charles E. Flandrau’s count, only three lawyers resided in Ramsey County in March, 1849, and one of those would drown that autumn. Charles E. Flandrau, “History of the Bench and Bar of Ramsey County (Pt. I.),” 7 *Magazine of Western History* 328, 333 (January, 1888) (“At the time of the passage of this act [the passage of the Organic Act on March 3, 1849] the only attorneys residing in what is now Ramsey county were David Lambert, William D. Phillips and Bushrod W. Lott, all of St. Paul. David Lambert was admitted to the bar of New York, and came from Madison, Wisconsin, to St. Paul in 1848. He was a man of fine ability, but his career was short. He was drowned from a steamboat on the Mississippi river, in November, 1849, aged about thirty years.”).

lankest and hungriest description, were in attendance.”<sup>33</sup> Decades later, Charles Flandrau recalled, “In the year 1850 law business improved, and several new lawyers arrived. Associations began to be formed among attorneys. The firm of Babcock, Ames & Wilkinson was formed, Mr. Babcock representing the firm in St. Paul, and Messrs. Ames and Wilkinson residing at Stillwater.”<sup>34</sup> The business directory in the *Minnesota Pioneer* on January 2, 1850, carried the business cards of less than ten practicing lawyers.<sup>35</sup> Later that year, in an editorial on October 10, 1850, Goodhue lectured the “thirty lawyers” in St. Paul about the desirability of farming.<sup>36</sup> While “the law business” may have “improved,” it generally was not enough to sustain a family, and so lawyers turned to other business endeavors. Some lawyers became land agents.<sup>37</sup> In the summer of 1851, lawyers John Wesley North, Isaac Atwater and Henry L. Moss became agents for insurance companies.<sup>38</sup>

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<sup>33</sup> *Minnesota Pioneer*, August 16, 1849, at 2.

<sup>34</sup> Charles E. Flandrau, “History of the Bench and Bar of Ramsey County (Pt. II),” 8 *Magazine of Western History* 58, 60 (May, 1888).

<sup>35</sup> J. Fletcher Williams named fourteen lawyers who appeared in the *Pioneer’s* “first” business directory on January 1, 1850 (they included James M. Goodhue, who was not practicing law). Williams, *supra* note 2, at 245-246. However, the January 2, 1850, issue of that newspaper shows less than ten. The lawyers who are listed under The “St. Paul Business Directory” on the front page are: 1) Bushrod W. Lott; 2) Henry A. Lambert; 3) Rice & Whitall (a partnership of Edmund Rice and Ellis G. Whitall, but this may have been outdated because George L. Becker joined the firm in late 1849, and the name of the firm had changed to “Rice, Whitall and Becker.”); and 4) two notices of William D. Phillips, one in English and the other in French. On page three, the following are listed: 1) a second notice of Edmund Rice, naming him individually but not his firm; 2) “Dan’l Noble Johnson, Attorney at Law and Land Agent,” residing in Willow River, Wisconsin; 3) Lorenzo A. Babcock, residing in Sauk Rapids, Minnesota; 4) an ad of Henry L. Moss in his capacity as real estate salesman (“Land Warrants for Sale. I Have just received a quantity of Land Warrants, which I will sell cheap for cash. Stillwater. H. L. MOSS.”). Also on page three, under the “Stillwater Business Directory,” three other lawyers are listed: 1) George Goble; 2) Morton S. Wilkinson; and 3) a longer notice of Henry L. Moss, “Attorney and Counsellor at Law, and general Land Agent.”

<sup>36</sup> *Minnesota Pioneer*, October 10, 1950, at 2. In his inaugural *Year Book*, William Le Duc stated that, according to the 1850 federal census, there were 17 lawyers among St. Paul’s 1,294 inhabitants. William G. Le Duc, *Minnesota Year Book for 1851* 26 (St. Paul: W. G. Le Duc Publisher, 1851).

<sup>37</sup> The subject of lawyers as land agents is discussed *infra* pp. 20-23.

<sup>38</sup> In its “Stillwater Business Directory” on August 2, 1849, the *Minnesota Pioneer* carried two business cards of Henry L. Moss; the first, under the headline, “FIRE INSURANCE,” listed him as the agent of “The Protection Insurance Com’y, Harford, Connecticut,” the second was his card as attorney and land agent, reproduced *infra* at 21.

Up river in St. Anthony village, things were a bit different. Ann North noted in a letter to her parents, how few lawyers there were in 1850: “Mr. North’s business prospects are, I think, good. There is only one other Lawyer in town, and he is young, and rather light. The people all seem very kindly disposed toward us and we have already, I think, some warm friends.”<sup>39</sup> In the next few years more arrived but did not stay long. North’s biographer wrote that in 1852, “St. Anthony was being depleted of lawyers: Whitall had gone south ‘where he could keep slaves’; E. L. Hall had returned east; Warren Bristol crossed the river to Minneapolis, now taking shape on the west bank; and Atwater soon would do the same.”<sup>40</sup> This pattern repeated itself during the remainder of the nineteenth century.<sup>41</sup> North himself left Minnesota in 1861 after he was appointed surveyor-general of the Territory of Nevada by President Lincoln.<sup>42</sup> There is a nomadic impulse in many early lawyers that is hard for lawyers today, who are acutely conscious of the risks and expenses of starting a new firm in a new city, to understand.

### III. The Lawyer in Booster Literature

#### a. The Lawyer as Author of Booster Literature.

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On July 26, 1851, a large advertisement for “Fire and Marine Insurance. Washington Union Insurance Co., Office at Cleveland, Ohio,” appeared in the *St. Anthony Express*, and it concluded, “Full information given, and insurance effected in the above company by the undersigned, who is Agent for St. Anthony and vicinity. I ATWATER.”

On August 2, 1851, a large advertisement for the “Troy Fire Insurance Co., of Troy, Walworth County, Wisconsin,” appeared in the *St. Anthony Express* and listed its local agent as “J. W. North, Agent, St. Anthony Falls.”

Obviously legal ethics was not a major concern of frontier practitioners—though North and Atwater were law partners, each was an agent for competing fire insurance companies. Their “copartnership” ended on August 8, 1851. See *infra* note 84.

<sup>39</sup> Letter from Ann North to her parents, dated December 28, 1849, quoted in Carlton C. Qualey, “John Wesley North and the Minnesota Frontier,” 35 *Minnesota History* 101, 103 (September 1956). The other lawyer was Ellis G. Whitall. Stonehouse, *supra* note 8, at 33.

<sup>40</sup> Stonehouse, *supra* note 8, at 69.

<sup>41</sup> Many of the histories of the bench and bar of Minnesota counties that are posted separately on the MLHP, name lawyers who came, practiced there a few years, and then “removed,” as these histories called it, to the Dakota Territory, Montana, California or elsewhere, usually westward, rarely back east.

<sup>42</sup> Stonehouse, *supra* note 8, at 131-135. Lincoln later appointed him Judge of the First Judicial District and Associate Justice of the Nevada Territorial Supreme Court, where he served in 1863 and 1864. *Id.* 150-177.



There is an old saying that the law is the best profession to go *from*—with legal training, a person can go into business, teaching, politics, government and, especially in pre-statehood Minnesota, journalism.

James Goodhue had been a lawyer before becoming a newspaper publisher.<sup>43</sup> Daniel A. Robertson, who founded the *Minnesota Democrat* in December, 1850, had trained in a law office, and became a member of the New York bar in 1839.<sup>44</sup> Samuel H. Quay was a lawyer who published the *Minnesota Register*.<sup>45</sup> James Hughes, another lawyer, edited the *Chronicle* before it merged with the *Register* in August, 1849.<sup>46</sup> Lorenzo A. Babcock was a prominent member of the Minnesota bar who published the *Chronicle and Register* for several months in 1849;<sup>47</sup> while William G. Le Duc, who edited the *Chronicle and Register* in September, and October, 1850, had training in the law but did not practice.; he also compiled and published the *Minnesota Year Book for 1851*, and several subsequent annual editions, which were promotional guides aimed at luring potential immigrants.<sup>48</sup>

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<sup>43</sup> Bethel, *supra* note 16, at 6-7.

<sup>44</sup> Hage *supra* note 1, at 15. For profiles of Robertson, see Williams, *supra* note 2 at 283; and Daniel S. B. Johnson, “Minnesota Journalism in the Territorial Period,” 10 *Minnesota Historical Society Collections* (Pt. I) 247, 258 (St. Paul: Minnesota Historical Society, 1905).

<sup>45</sup> Flandrau, *supra* note 32, at 335 (“On the sixth day of the term [August, 1849] Samuel H. Quay and Laysel B. Wait were admitted to practice. Mr. Quay was one of the publishers of the *Minnesota Register* in St. Paul, and Mr. Wait was at the time of his admission a resident of Stillwater, but for many years after of St. Paul, and engaged in various mercantile pursuits. Neither of these gentlemen ever practiced law that can be discovered.”). Within a “few weeks” of the inaugural edition of the consolidated *Chronicle and Register*, Quay “withdrew” and “left the territory.” Williams, *supra* note 2, at 230.

<sup>46</sup> Hage *supra* note 1, at 15;

<sup>47</sup> *Id.* See also, Flandrau, *supra* note 32, at 335 (“On the second day [August 14, 1849] the court admitted Putnam B. Bishop and Lorenzo A. Babcock.”); and Flandrau, *supra* note 34, at 60 (“Mr. Lorenzo A. Babcock, of whom we have before spoken, was a native of Vermont, and admitted to practice in that state. He arrived in Minnesota early in the spring of 1849, and settled in Sauk Rapids. He was elected to the first legislature, and was the first attorney-general of the territory. He removed to St. Paul in the latter part of 1849, and practiced his profession there until his death.”).

<sup>48</sup> Hage, *supra* note 1, at 15. See also Flandrau, *supra* note 34, at 62 (“William G. LeDuc came to St. Paul in 1850. He did not do very much at the practice. He was in the book and stationery business. Mr. LeDuc was in the quartermaster's department of the Union army during the Rebellion, and during President Hayes' term was commissioner of agriculture. Mr. LeDuc has demonstrated that the soil of America, manipulated by Yan-

Babcock and Le Duc were succeeded as publishers of the *Chronicle and Register* by Charles J. Henniss, who had a background in the law before becoming a journalist.<sup>49</sup> Isaac Atwater, a lawyer who had been invited to Minnesota by John Wesley North, was one of the publishers of the weekly *St. Anthony Express*.<sup>50</sup> George W. Prescott, who founded the *North-Western Democrat* in 1853, likely practiced law in Maine before coming to Minnesota.<sup>51</sup> From this, historian George S. Hage deduced “a lawyer-editor-printer pattern” in Minnesota journalism between 1849 and 1860.<sup>52</sup>

While these journalists had left the law, they still had clients—the Minnesota Territory and their political parties—whose causes they championed in their newspapers. These lawyers-turned-journalists promoted the territory in their editorials with the same tools of advocacy a lawyer uses in court. Like lawyers pleading a case, they extolled the virtues of Minnesota and denigrated the claims of California, the opposition. They ignored native tribes, made misleading statements about the climate, and exaggerated the ease of making a living by farming on the frontier. Their editorials, especially Goodhue’s, were as passionate and persuasive as any closing argument to a frontier jury. In fact, there was a sort of jury reading their arguments and

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kee ingenuity, surpasses the Celestial empire in the production of tea.”). On Le Duc’s *Minnesota Year Books*, see note 10 and accompanying text.

<sup>49</sup> Hage, *supra* note 1, at 15.

<sup>50</sup> Charles E. Flandrau, “Judge Isaac Atwater,” 8 *Magazine of Western History* 254, 257-58 (July, 1888)(“Like all aspiring western towns, St. Anthony, in the spring of 1851, concluded that it must have a newspaper. An enterprising citizen, Mr. Elmer Tyler, offered to supply the plant if an editor could be found to conduct the literary work, and Mr. Atwater was induced to undertake that department temporarily, until someone in that line of work could be found. The paper was launched under the name of the *St. Anthony Express*. The enterprise was wholly one for the public benefit, no one connected with it expecting to receive anything but such indirect reward as might result to the community. The editor did not allow his new duties to interfere with his legal work, but being once involved, he felt the responsibility, and found it more difficult to cease his connection with the paper than he had anticipated, and it was not until he had expended quite a large sum of money in keeping the enterprise afloat, and his election to the supreme bench of the state in 1857, that he was enabled to sever his connection with the paper.”).

Regarding Atwater’s commitment to journalism, Daniel S. B. Johnston wryly observed, “Journalism was more of a recreation from the onerous exactions of his profession than otherwise, and proved as profitable as Horace Greeley’s farming.” Daniel S. B. Johnson, “Minnesota Journalism in the Territorial Period,” 10 *Minnesota Historical Society Collections* (Pt. I) 247, 261 (St. Paul: Minnesota Historical Society, 1905).

<sup>51</sup> Hage, *supra* note 1, at 15.

<sup>52</sup> *Id.*

puffery—residents of east coast and Midwest communities who planned to go west to make their fortunes. Many pioneers were attracted to Minnesota by promotional literature. The “lawyer-editor-printer” may have been an effective writer of that literature in part because he had been trained in the law.

### **b. The Lawyer in Booster Literature.**

We now come to a most perplexing question: Why did certain boosters want lawyers to migrate to Minnesota in the late 1840s and early 1850s? <sup>53</sup>

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<sup>53</sup> Here we will address an anecdote told by or about Rensselaer R. Nelson, who later served as federal District Court Judge of Minnesota from 1858 to 1896. The story was repeated by Isaac Atwater and Seelye A. Willson in their article, “Territorial Bench of Minnesota” (Pt. 3), *7 Magazine of Western History* 651, 652 (April, 1888):

He landed in St. Paul in the early morning of May 12, 1850. He climbed the steep bluff from the steamboat landing by a long pair of rickety wooden stairs. The aspect that met his view was not particularly inviting. A few cheap frame and log houses, with plenty of stumps and rocks in the ungraded streets, indicated the future metropolis.

The genial Jacob W. Bass was then postmaster, and kept his office in a seven by nine room, near the top of the bluff. Mr. Nelson wanted his mail—and he wanted it right off. Early as the hour was, he disturbed the postmaster in his morning nap. To this, doubtless, was due the fact that the worthy official for a moment forgot his accustomed suavity, and caused a chilling frost to fall upon the sanguine anticipations of the young tenderfoot. Learning from a brief interview that the young man had come to St. Paul to practice law, the bowels of compassion in the heart of Mr. Bass were deeply moved for the unfortunate young man. He said: "My dear young friend, I sincerely pity you. We have a population of six hundred, and fifty of them are lawyers, the most of them starving. I advise you to take the next boat east, because you have no chance here. We have too much trouble with the lawyers here already." From our present standpoint the advice seems ludicrous, but from that occupied by Mr. Bass at that day, it cannot be doubted it was given in entire good faith. Mr. Bass (although he has since become a millionaire from his investments in St. Paul) at that time knew as little of its future as a native of Japan.

There are two elements of this story that are true: one, Rensselaer Nelson arrived in Minnesota in May, 1850; and two, Jacob Bass was postmaster at the time. Most everything else is false or exaggerated. In May, 1850, there were over 1,200 residents of St. Paul, not 600 (the federal census that year placed the population of St. Paul at 1,294); there were less than 25 lawyers, not 50 (the 1850 federal census counted only 23), and most of them handled real estate transactions and other commercial matters besides

As a practical matter, lawyers were needed to draft deeds to land. Part of John Wesley North's early practice consisted of preparing deeds. He and his wife, Ann, once hand-copied deeds all night to gain clear title to some lots.<sup>54</sup> Deeds had to be notarized, and lawyers frequently held the position of notary public. After North was appointed a notary by Alexander Ramsey, he could charge twenty-five cents for acknowledging a deed.<sup>55</sup>

Because they could not subsist on scrivener work, many lawyers became land agents. They emphasized this specialty in their advertisements, as can be seen from the following sampling of business cards published in the *Minnesota Pioneer* on Thursday, October 10, 1850:

**Law and Land Agency Office.**  
WILLIAM P. MURRAY.  
Attorney and Counsellor at Law, and Solicitor in Chancery  
ST. PAUL, MIN. TER.

**R. R. NELSON,**  
**Att'y and Counsellor at Law and General Land Agent — — St. Paul, Min.**  
Particular attention given to the collection of debts, payment of taxes, securing pre-emption claims, entering lands by military warrants, &c, &c.,—Office at present in the rear of H. W. Tracy & Co.'s store.  
▶ Valuable lots for sale in Leech's Addition.

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practicing law; while life on the frontier was not easy, no lawyer was starving; and, finally, immigrants of all stripes were wanted in Minnesota in 1850, including lawyers. Bass's comments, if made at all, were likely a jest that evolved in many retellings into another tall tale about lawyers in the early territorial period.

<sup>54</sup> Stonehouse, *supra* note 8, at 49. North charged seventy-five cents a deed, clearing three hundred dollars. *Id.*

<sup>55</sup> *Id.*

**B. W. Lott,**

Attorney and Counsellor at Law, and General  
Land Agent.—St. Paul.

Particular attention will be given to collections,  
Paying Taxes, Entering Lands, Securing Pre-  
Emption Claims, and entries made by Military  
Land Warrants.

**RICE , WHITALL & BECKER,**  
**Attorneys at Law and Solicitors**  
**in Chancery,**

Will give their entire attention to the business of  
their profession. The collection of debts, pay-  
ment of taxes, buying and selling lands & c.,  
promptly attended to. Their offices are at  
*St. Paul and St. Anthony, Minnesota.*  
ED. RICE, E. G. WHITALL, GEO. L. BECKER.

The “Stillwater Business Directory” of the *Pioneer* listed the following:

**Morton S. Wilkinson,**

Attorney and Counsellor at Law, and general  
Land Agent.—Stillwater, Min. Ter.

**REFERENCES.**—Hon. W. H. Seward, Auburn,  
N. Y., Hon. Daniel Gott, Syracuse, N. Y., J  
Wilkinson, Esq., Syracuse, N. Y., Hon. Ab.  
Lincoln, Springfield, Ill., Churchill & Nelson,  
Stillwater.

**Henry L. Moss**

Attorney and Counsellor at Law, and general  
Land Agent.—Stillwater, Minn. Ter. Land  
Warrants consistently on hand and for sale—  
*Warranted genuine.*

**REFER TO**

Messrs. Woodward & Dusenbury, N. Y. City.  
“ P. Chouteau, Jr., & Co., St. Louis.  
“ K. McKensie & Co., “ “  
“ Hempstead & Washburn, Galena, Ill.  
James Carter & Co., “ “  
H. L. Dousman, Esq., Prarille du Chien.  
Hon. H. L. Sibley, Minnesota Ter.  
H. M. Rice, Esq., “ “

The importance of land agents at this embryonic stage of Minnesota's economic development cannot be overstated. Their function was described by Paul W. Gates, a prominent historian of the public lands:

The existence of a class of professional land agents facilitated land purchases by absentee capitalists. Eastern papers with a wide circulation among the wealthy contained numerous advertisements of these land agents during the years from 1830 to 1857. In every enterprising community on the frontier were agents who were prepared to buy or enter land for others with cash or warrants. For a commission of 5 percent or a share in the transaction, generally from a third to a quarter, they select land, sometimes by personal investigation, some by a superficial search of the entry books, and make purchases their principals.

....

These western land agents rank with the registers and receivers of the land offices as among the most important people on the frontier. They dealt in land warrants and scrip, ran a local note-shaving business, purchased exchange, sometimes operated a bank of issue with funds provided by eastern capitalists, loaned eastern funds to squatters at frontier rates ranging from twenty to sixty per cent, bought and sold land, paid taxes for absentee owners and undertook to protect their lands against depredations. At a later date, they arranged for renting land, made collections, and sold produce received in payment of rent. Small investors in the East were obliged to work through these agents, to submit to their exactions, and to suffer from their careless attention to details and could not effectually protest against their obvious neglect. The agent could take his commission from rents or sales before any money was remitted to the owner, could sell his own land to prospective purchasers, rather than that of the owners he represented, could neglect tax payments and get the title involved, or could pay taxes on the wrong land. In numerous cases western agents took advantage of their clients, used the prestige which their contacts provided or personal interests, and constantly minimized the value of the land they represented in order to increase sales and thereby commissions. In this way absentee investors whose eastern responsibilities did not permit them to give personal attention to

their possessions in the West were imposed upon and victimized.<sup>56</sup>

By their nature and training, lawyers easily filled the demand or need for land agents in this agricultural economy. They knew how to represent clients, to keep their confidences and maintain their trust, to handle their funds, to negotiate, and they knew the intricacies of federal land laws.<sup>57</sup>

Another hypothesis why the legal profession was wanted in the 1840s and early 1850s has been advanced by Professor Jocelyn Wills: boosters wanted to attract settlers to urban areas that would evolve into large industrial and financial centers, and they saw that “credit, legal, and commission networks” were necessary for this expansion.<sup>58</sup> She writes:

Minnesota Territory emerged during a period of rapid national expansion and fierce competition for new settlers. Consequently, entrepreneurs at St. Paul-Minneapolis quickly moved to lure settlers into Minnesota and away from other western enterprises, such as California’s gold-digging enclaves. Like other boosters of the day, they focused first on the construction

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<sup>56</sup> Paul W. Gates, *Landlords and Tenants on the Prairie Frontier: Studies in American Land Policy* 52-53 (Ithaca: Cornell University Press, 1973)(citing sources). On Gates’s influence, see Reginald Horsman, “Changing Images of the Public Domain: Historians and the Shaping of Midwest Frontiers,” in *This Land of Ours: The Acquisition and Disposition of the Public Domain* 60-86 (Indianapolis: Indiana Historical Society, 1978).

<sup>57</sup> Henry S. Fairchild recalled the prevalence of lawyers among land agents in a paper he delivered to the Executive Council of the Minnesota Historical Society in 1903: “It goes without saying that, with only thirteen sales up to 1848, and thirty-five in 1848, there were no real estate agents before 1849. Then they began to make their appearance, but were mostly lawyers, taking real estate agency as a side issue.” Henry S. Fairchild, “Sketches of the Early History of Real Estate in St. Paul,” 10 *Minnesota Historical Society Collections* (Pt. 1) 414, 433 (St. Paul: Minnesota Historical Society, 1903).

While lawyers predominated, there were non-lawyer land agents. The advertisements of A. V. Freyer, who had a “land and general agency office” in the American Building in St. Paul, resembled those of the lawyers quoted above, but he had a more impressive list of references that included, “Hon. Millard Fillmore, Vice President...His Excellency Nelson Dewey, Gov. Wis....and Members of the first Legislative Assembly of the Territory of Minnesota.” *Minnesota Pioneer*, January 2, 1850, at 3.

<sup>58</sup> Wills, *supra* note 29, at 44 (“Fired by visions of Minnesota’s future, these ground-breakers embarked on construction activities that set the stage for speculation and quick real estate turnovers as well as tributary industries: credit, legal, and commission networks to sustain the region’s anticipated population expansion and economic development.”).

of urban centers, where they hoped to accumulate the population and capital required for statehood and the corresponding American political and social-structures. Beyond that lay the wealth they planned to generate into larger-scale financial, wholesale, and industrial developments, commercial agriculture, and, ultimately the bigger business of railroad construction.<sup>59</sup>

This is an attractive proposition presented by an able historian. The facts, however, do not support it. While boosters such as James Goodhue dreamed about the future of their villages, they did not “focus first on the construction of urban centers.” In an editorial on August 16, 1849, Goodhue even warned, “We need no more merchants. There is already too great a supply of all sorts of merchandise adapted to this market.”<sup>60</sup> In the late 1840s and early 1850s, boosters wanted farmers not city dwellers. The *St. Anthony Express*’s “Who are Wanted” editorial on April 21, 1851, began, “We want Farmers....Let it be distinctly understood, then, that farming is by far the most profitable business at present, in Minnesota, and is likely long to continue so.”<sup>61</sup> It invited lawyers even though there was not enough traditional legal work to keep them busy.<sup>62</sup> It cautioned:

A lawyer in Minnesota should be able to plead a cause in law, to advise a client of his rights, to wield an axe or handle the hoe. He will not have business in his profession to occupy all his time, and he must think no honest labor beneath him of whatever kind it may be.<sup>63</sup>

The frontier lawyer, in other words, should be able not only to assist others in perfecting a land claim, but to “handle the hoe” on his own plot. In the *Pioneer* on August 16, 1849, James Goodhue pleaded, “We want farmers. We are almost ready to offer a bounty on farmers. And we recommend to

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<sup>59</sup> *Id.* at 38 (citing one secondary work).

<sup>60</sup> *Minnesota Pioneer*, August 16, 1849, at 2.

<sup>61</sup> *St. Anthony Express*, June 21, 1851, at 2.

<sup>62</sup> Most of the purely legal work of lawyers in the Minnesota Territory in the late 1840s and early 1850s seems to fall in three general areas: common law contract law, federal land law, and criminal law. To earn a living, most pursued other business ventures, usually involving buying and selling land.

<sup>63</sup> *St. Anthony Express*, June 21, 1851, at 2.



them to come—come as soon as they can....”<sup>64</sup> Although he wrote on January 22, 1852, “We want manufacturing capital...,” he clearly preferred farmers, declaring in the same issue: “We want ten thousand farmers, with strong hands and courageous hearts...”<sup>65</sup> Minnesota’s great attraction to immigrants at this time was its land, not its villages. When Goodhue and other boosters wrote glowingly about “production” in the new territory they were thinking of agricultural production, not manufacturing.

There is a more compelling answer to the question of why promoters invited lawyers to come to the new territory in the late 1840s and early 1850s and that lies in the realities of pioneer life and the promoters’ view of how lawyers functioned.

Men far outnumbered women, on a ratio of about 2: 1, during this period. Many of these men were single, some perhaps lonely, and all were young, fueled by ambition, energy, and optimism. Many were men-on-the-make: adventurers and land speculators, with a fair number of loan sharks, sharpies, ruffians, and drifters.<sup>66</sup> It is not surprising that this male-dominated settler community was disrupted by occasional outbursts of violence. Shooting and gambling were common in the village of St. Paul.<sup>67</sup> On August 28, 1851, James Goodhue sounded the alarm:

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<sup>64</sup> *Minnesota Pioneer*, August 16, 1849, at 2.

<sup>65</sup> *Minnesota Pioneer*, January 22, 1852, at 2.

<sup>66</sup> Immigrants in 1849 were a diverse lot, as recalled decades later by William P. Murray, a St. Paul lawyer:

Immigration grew in volumes during the year [1849]. Many immigrants came to the territory, men of all occupations and trades, among whom, and more than was necessary, were doctors, lawyers, real estate sharks, and men who, although not sent out by missionary societies of Young Men’s Christian Associations, claimed they were the benefactors and friends of the people, although in fact the disciples of the devil,... money loaners who wanted five percent a month, with ten per cent after due, sometimes requiring six months’ interest in advance.

Murray, *supra* note 11, at 107.

<sup>67</sup> In mid-1851, James Goodhue warned:

Shooting guns in town, is a reckless, vulgar practice, unworthy of any man who does not think more of killing a pigeon, than the risk of killing a human being. It is impossible to permit random shots to be made about St.

Again we say to you, people of Ramsey county that we must have a jail. We need a jail far more than we do a Court House. The criminal law is almost a dead letter, for want of a jail to lock up rogues in. Place an offender in the hands of one of our officers, and he will offer him every temptation to leave on the first boat. Sheriffs and Constables will not serve in place of jails.<sup>68</sup>

The first jail was built in St. Paul in 1851.<sup>69</sup> Construction on the first court house began in late 1850, and it was ready for use the following year.<sup>70</sup>

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Paul, no matter in what direction the gun may be pointed, without hazarding lives. Whatever the force or direction of projectiles, the shot or bullet must land somewhere. A random shot, struck a person in the face last Sunday morning on Jackson street. There is a Town Ordinance against shooting within the Corporation; but there is a set of reckless fools, who still keep popping away with guns. We give these gentry notice, that we will complain of the first we know of violating the Ordinance and try to ascertain whether our town must be made a shooting-gallery of, for half a dozen fools, who would confer a particular benefit upon the town, by standing at the other end of their guns when they shoot them, or by making targets of each other.

*Minnesota Pioneer*, June 26, 1851, at 2. In early 1852, he turned his editorial sights on gambling:

Will the People Sustain It?—If we could see the law against gambling enforced in our town, for one month, we should have more faith in the liquor law. Gambling is openly and notoriously carried on, in various public places in St. Paul—and our friends, who are urging the passage of a law [prohibiting liquor in the territory], quite as difficult to enforce, knew if, they see it every day; but not a man of them all, moves to the work of prosecuting gamblers. Man can be brave in signing petitions, valiant in the Division room; but when you look for them to enforce penal statutes, if they are not there, the statute is dead, and the law turned into derision; and those who can violate it with impunity, learn to despise all law.

*Minnesota Pioneer*, February 19, 1852, at 2.

<sup>68</sup> *Minnesota Pioneer*, August 28, 1851, at 2.

<sup>69</sup> Williams, *supra* note 2, at 280-281 (It was a small log building, weather-boarded, and about as secure as if made of paste-board. This jail, which was the first prison erected in Minnesota, stood there until 1857, when it was torn down.”).

<sup>70</sup> Work began on the court house in November 1850, and it was ready for use the following year. Williams, *supra* note 2, at 280. However it appears to have not been

This was a time of great upheaval—indigenous societies with diverse traditions stretching back over millennia were being displaced from their lands by rapacious white settlers. It was a rough and unruly world, though one would not know that from booster literature. If there was not chaos, there certainly was occasional disorder.

It was this aspect of frontier life that the boosters wanted to change. They wanted order not disorder. Toward the end of an editorial on January 22, 1852, Goodhue wrote, “We want that there should be such intelligence and such a standard of enlightened public opinion, as will awe down roguery and rowdyism, and enforce correct conduct with power far mightier than the penalties of statutes.” The *St. Anthony Express*’s “Who are Wanted” editorial aimed to lure “farmers, mechanics, ministers, lawyers and young ladies” to Minnesota.<sup>71</sup> This was not a want ad for individuals, rather an invitation to types of persons possessing common traits—all would bring needed skills as well as stability and order to the new territory (they also would form, in several decades, a middle class in the state).

Lawyers, in particular, had a moderating effect on frontier life.<sup>72</sup> The lawyer described by the *St. Anthony Express* was an idealized figure:

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entirely finished until 1852. See Henry A. Castle, 1 *History of St. Paul and Vicinity* 89 (Chicago: Lewis Pub. Co., 1912).

<sup>71</sup> For a study of four women homesteaders between the 1850s and 1880s, see Anne B. Webb, “Forgotten Persephones: Women Farmers on the Frontier,” 50 *Minnesota History* 134 (1986).

<sup>72</sup> Lawyers engaged in occasional acts of violence. The first person ever indicted in the new territory was a lawyer. As recalled by Charles E. Flandrau:

On the fourth day [of the first term of court in Stillwater in August 1849] an indictment was returned by the grand jury against William D. Phillips, the attorney of whom we have previously spoken, for an assault with intent to maim. The case was tried and a verdict rendered against Mr. Phillips for an assault, and he was fined twenty-five dollars.

About “Captain” Alexander Wilkin, a lawyer who served in the Mexican war, Flandrau wrote:

The captain was quick to resent an affront, and in the free and fighting days of the territory, had several personal encounters with parties who had given him offense, but happily none of them resulted seriously to either party.

Lawyers are wanted in Minnesota—men of education, character, and refinement, who thoroughly understand both the science and practice of their profession—men who adorn that profession by irreproachable lives, and high moral virtues, men, whose severe study, unswerving integrity and enlarged views, evince their love for the noble science of the law, and afford security of their usefulness in society.<sup>73</sup>

Men such as this would lead by example and be models of decorum. Most important, they would form a critical link to eastern capital.<sup>74</sup> A raucous and unruly Minnesota Territory could not attract foreign investment capital, but a stable one would. Lawyers, and the courts they practiced in, would help bring about a stable society that would be attractive and receptive to foreign investors. Without exception, every lawyer who moved to Minnesota in the late 1840s and early 1850s had apprenticed with Midwest or east coast lawyers.<sup>75</sup> They had contacts in the worlds of law and business. Some such

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Flandrau, *supra* note 32, at 336-37. Later, Flandrau described Daniel Breck:

Daniel Breck, a Kentuckian, settled in St. Paul for the purpose of practicing law this year. He unfortunately killed a man, after a short residence, and departed. While here he formed a partnership with A. L. Williams as Breck & Williams.

Flandrau, *supra* note 34, at 63.

<sup>73</sup> *St. Anthony Express*, June 21, 1851, at 2. The *Express* added that a certain type of lawyer was not wanted: “pettifoggers, who gain a wretched subsistence by stirring up quarrels in the community.” *Id.* This sentiment echoed Goodhue’s call for unity among the populace in the *Pioneer* on July 26, 1849. See *supra* note 21.

<sup>74</sup> I am indebted to Thomas L. Olson, Ph.D., University of Minnesota, 1972, for this insight.

<sup>75</sup> Bushford W. Lott was educated at St. Louis University and admitted to the bar in 1847, in Quincy, Illinois, before coming to Minnesota; Henry L. Lambert studied law in Philadelphia before coming to Minnesota; Edmund Rice previously studied law in Kalamazoo, Michigan; Ellis G. Whitall was admitted to the bar in Richmond, Virginia; George L. Becker graduated the University of Michigan in 1844 and studied law in Ann Arbor until 1849, when he came to Minnesota; Morton S. Wilkinson was a member of the New York bar; Lorenzo A. Babcock was admitted to the bar in Vermont before coming to Minnesota in 1849; Henry F. Masterson trained in New York where he was admitted to the bar, and came to Minnesota in 1849; Morton S. Wilkinson was admitted to the bar in New York before coming to the new territory; Henry L. Moss graduated from Hamilton College in New York, where he studied law before coming to Minnesota; Rensselaer R. Nelson studied law in Cooperstown and New York City, was admitted to the bar in 1849, and moved to St. Paul the following year. John Wesley North studied in

as Moss, Atwater and North became agents for insurance companies, which is significant because no industry is more sensitive to risk, which increases in an unstable social environment, than insurance. Lawyers became trusted intermediaries between east coast capital and their investments in the rich natural resources of Minnesota. Lawyers were effective land agents—a critical link in the economic development of the frontier—because they had the confidence of eastern investors. The references on lawyers’ business cards published in the local newspapers listed prominent eastern and Midwest lawyers and political figures.<sup>76</sup> There was a practical reason for this: they knew that copies of these papers made their way to the east coast, there to be read by potential clients.<sup>77</sup>

The experiences of Isaac Atwater are illustrative. He came to Minnesota in 1850 at the behest of John Wesley North, and they formed a law partnership that lasted less than a year.<sup>78</sup> He also brought money of New York friends to

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the New York law offices of William and John Jay, the son and grandson of Chief Justice John Jay, and was admitted to the bar in New York, where he practiced, before moving to St. Anthony in 1849. Isaac Atwater graduated from Yale law school in 1847, practiced briefly in New York City, before arriving in Minnesota in 1850. See generally, Warren Upham & Rose Barteau Dunlap., eds., *Minnesota Biographies, 1655-1912* (St. Paul: Minnesota Historical Society, 1912)(vol 14 of *Minnesota Historical Society Collections*); Williams, *supra* note 2; Stonehouse, *supra* note 8, at 11-12; Flandrau, *supra* notes 32 and 34.

<sup>76</sup> As a practical matter, local residents who needed a lawyer would have difficulty getting a timely reply from an eastern “reference.” In an editorial in the *Minnesota Pioneer* on August 2, 1849, Goodhue complained that mail deliveries were made but once a week (“Would any one believe that in the nineteenth century, our Government would limit Minnesota, situated here in the very heart of the Republic, to one mail a week?”); see also, Bethel, *supra* note 16, at 217-218. Even after a delivery, many settlers did not pick up their mail at the post office, prompting the newspapers, as a service, to publish their names. See *St. Anthony Express*, August 9, 1851, at 3 (under headline “List of Letters,” 53 persons are named as having letters at the post office); and the *Minnesota Pioneer*, August 28, 1851, at 2 (listing 220 persons who had mail).

<sup>77</sup> In the August 30, 1849, issue of the *Minnesota Pioneer*, Goodhue stated that he had published and distributed “over two thousand copies of the Pioneer in April and May 1849.” In 1851, he printed 1,000 copies of the *Pioneer* each week, and some were forwarded to readers on the east coast. Bethel, *supra* note 16, at 33.

<sup>78</sup> Stonehouse, *supra* note 8, at 52-59.

loan.<sup>79</sup> In the June 28, 1851, issue of the *St. Anthony Express*, the business card of “North & Atwater” appeared, as did another that read:<sup>80</sup>

MONEY TO LOAN.  
**\$3000** To Loan. Inquire of I. ATWATER,  
Esq., *St. Anthony Falls*.

This was an early sign of Atwater’s links with eastern capital. He invested in and became one of the publishers of the *St. Anthony Express*.<sup>81</sup> In July 1851, he became the Minnesota agent of the Washington Union Insurance Company of Cleveland, Ohio.<sup>82</sup> The North-Atwater law firm was dissolved on August 8, 1851.<sup>83</sup> Atwater continued to practice law, and his new business card appeared promptly in the *Express*:<sup>84</sup>

**ISAAC ATWATER,**  
**ATTORNEY & COUNSELLOR.**  
*at Law,*  
AND SOLICITOR IN CHANCERY,  
*Office on Main Street, Opposite the Falls.*

Several weeks later, another version of his card appeared in the *Express* that emphasized his expertise in real estate matters:<sup>85</sup>

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<sup>79</sup> *Id.* at 59.

<sup>80</sup> *St. Anthony Express*, June 28, 1851, at 3. The money came from “friends in New York.”

<sup>81</sup> See *supra* note 50 and accompanying text.

<sup>82</sup> *St. Anthony Express*, July 26, 1851, discussed in text at note 38.

<sup>83</sup> The *St. Anthony Express* carried the following notice on August 16, 1851, at 3: “NOTICE, The Copartnership heretofore existing between the undersigned is this day dissolved by mutual consent. J. W. North, I. Atwater. Aug. 8, 1851.”

<sup>84</sup> *St. Anthony Express*, September 6, 1851, at 1.

<sup>85</sup> *St. Anthony Express*, October 18, 1851, at 3. This issue also carried a legal notice that Probate Judge Henry A. Lambert had appointed Atwater administrator of the Estate of Steuben Rexford. A few lines below that was an ad of John Wesley North: “FOR SALE. A Few choice Village Lots for sale, cheap for cash. Inquire of J. W. North.”

**ISAAC ATWATER,**  
*Attorney and Counsellor at Law, and*  
*Solicitor in Chancery,*

**W**ill give prompt attention to any business intrusted him in the line of his profession, in any part of the Territory. Particular attention paid to locating *Land Warrants*, Payment of Taxes, sale of Patents when issued, and Real Estate in general.

Office at St. Anthony, on Main st. , opposite the falls.

He bought and sold large tracts of what later became Minneapolis, whose history he would edit and publish in 1893.<sup>86</sup> In 1852, he was an incorporator of the company that built the first bridge that spanned the Mississippi.<sup>87</sup> Still later, he was one of the founders and managers of the Minneapolis & St. Paul Railroad Company.<sup>88</sup>

Because of Atwater's reputation and contacts, eastern investors retained him as their agent to direct their investments in Minnesota land. After the Panic of 1857, these investments turned sour. Apparently believing that Atwater had breached his fiduciary duties as their land agent, his former investor-clients clamored for redress. Meanwhile on May 24, 1858, he began service as an associate justice on the Minnesota Supreme Court. In a sketch of Atwater published in 1888, his friend, Charles E. Flandrau, described what happened next:<sup>89</sup>

Previous to his elevation to the bench he had in the course of business loaned many thousands of dollars for eastern parties on landed security, and generally at the enormous interest of two and a half per cent. per month, which was the current rate of that day. In 1857 a financial crash destroyed all values in the

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<sup>86</sup> On Atwater's real estate ventures, see Charles E. Flandrau, 1 *Encyclopedia of Biography of Minnesota* 190-191 (Chicago: Century Pub. And Engraving Co.,1900). Atwater's *History of the City of Minneapolis, Minnesota* (New York: 1893) was published in two massive volumes.

<sup>87</sup> *Minneapolis Journal*, December 22, 1906, at 2.

<sup>88</sup> *St. Paul Pioneer Press*, December 23, 1906, at 6.

<sup>89</sup> Flandrau, *supra* note 50, at 258-259.

state, reduced the people to poverty and rendered the payment of debts an impossibility. Although Judge Atwater was in no sense responsible to these creditors, having never guaranteed their claims, and only exercised his judgment for them in placing the loans, they became clamorous for their money, and rather than have even his judgment impugned, he offered to allow them to select from his private securities amounts equal to their claims, or to give them his note in exchange for them bearing one per cent. per month. They all accepted the latter, which left him with very large outstanding obligations, which he was compelled to meet to save his credit.

About that time the new territory of Nevada held out especial promise of large returns for professional services.... Solely with the view of availing himself of this opportunity of making some ready money to meet his self-assumed obligations, he resigned his seat on the bench and went to Nevada and located at Carson City. He met with immediate success, and induced the writer of this article, who was then his associate on the supreme bench, to resign and join him in Nevada. In two years and a half he realized all his hopes and paid every dollar of his indebtedness, principal and interest. He never contemplated a permanent departure from this state, and when his cherished object was achieved, he returned to Minnesota better satisfied than with any venture of his life. After his return he continued in the practice of his profession in Minneapolis, where the writer joined him, and was his partner for four years, under the firm name of Atwater & Flandrau.

Atwater died on December 22, 1906. In a memorial service to him before the Minnesota Supreme Court on April 3, 1907, Justice Charles Elliott remarked, "Judge Atwater was the last survivor of the original supreme court of the state."<sup>90</sup> He might have added that Atwater was also the last of the original lawyer-editor-boosters.

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<sup>90</sup> Remarks of Associate Justice Charles Elliott in *Proceedings in Memory of Associate Justices Atwater and Young*, 99 Minn. xvi, xxi (1907). Atwater served on the court from May, 1858 to March, 1864.



## IV. Conclusion

Lawyers filled many roles during Minnesota's early territorial period. They handled routine legal matters; a few were newspaper publishers, who published booster literature; some were land agents; most were respected members of the pioneer community; and still others were crucial conduits for eastern investment capital.

Aside from a few nostalgic remembrances of lawyers published toward the end of the nineteenth century, there has been almost no scholarship on the state of lawyering during Minnesota's important territorial period.<sup>91</sup> Perhaps this essay on lawyers and booster literature will encourage serious, in-depth research on such topics as: What happened to that first generation of lawyers; when could they, if they chose, make a living strictly from legal work; when did some begin to specialize in fields other than federal land law; did lawyers continue to write booster literature in the post-bellum period; how did the growth of the insurance industry effect the practice of law in Minnesota in the nineteenth century; and most intriguingly, was Atwater's decision to repay his investor-clients a simple act of generosity by a man of noble character or a settlement with creditors that was not unusual after the speculative bubble of the mid-1850s burst? And surely a hypothesis of this essay—that boosters wanted lawyers to come to the new territory to give it the stability that was necessary to attract outside investment capital—calls for a critical reexamination by others.



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<sup>91</sup> About the only one is Robert J. Sheran & Timothy J. Baland's "The Law, Courts, and Lawyers in the Frontier Days of Minnesota: An Informal History of the Years 1835-1865," 2 *William Mitchell Law Review* 1-52 (1976), but it is largely anecdotal and descriptive.