

In Memoriam

Homer C. Eller

(July 8, 1845 • November 3, 1896)



**Ramsey County Bar Association
Ramsey County Courthouse
St. Paul, Minnesota
November 7, 1896**

Homer C. Eller died in the early evening of Tuesday, November 3, 1896, and the bar went into mourning.

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Success, it was later said, came slowly to him. The bedrock of what became a reputation for erudition was laid in October 1876, when he became the editor of *The Syllabi*, an eight-page pamphlet of abstracts of decisions of Minnesota courts, notices of new law books and advertisements that evolved into the *Northwestern Reporter*. It was published by John B. West & Co. of St. Paul. The business card of O'Brien & Eller, a firm formed two years earlier, is listed on the first page of the first issue of *The Syllabi*. In the second issue, Eller is listed as editor, a position he held until 1882. That year, while still maintaining a private practice, he wrote a digest of the decisions of the Minnesota Supreme Court from 1851 to 1879 for West Publishing Company. This required him to read the first twenty-five volumes of *Minnesota Reports*. A two volume edition of "Eller's Digest" was published in 1882, followed by a second edition in 1883.¹

In the process of editing *The Syllabi* and compiling his *Digest*, he acquired a deeper knowledge of all facets of Minnesota law than other lawyers, what became, in the memorable phrase of Judge Hascal Brill, "his unusual acquaintance with the precedents."

*

By 1887 he was the senior partner in Eller & How, specializing in real estate and corporate matters. His life had also become

¹ George N. Hillman, who served as the chief court reporter in Ramsey County for decades, recalled how Eller prepared a draft of his *Digest*:

Homer C Eller compiled the first Minnesota Digest, doing his own typing in that long and laborious task on a No. 1 Remington typewriter which printed only capital letters.

George N. Hillman, "Some Lawyers and Judges I have Known" 14 (MLHP, 2016)(first delivered, 1927).

concentrated — to home and office, and between them he went each day, with occasional trips to the courtroom. He no longer worked for West, was not a member of any social or fraternal organization except the G. A. R., and never held public office. When not at work, he was at home, usually reading. A profile of him in the *St. Paul Daily Globe* in 1891 suggests why Justice Mitchell once said that no lawyer appeared before his court whose views were listened to with more respect:

Homer C. Eller is considered the best read lawyer in this portion of the country. He is a veritable walking encyclopedia of law. Having tackled every text-book that was ever printed, and being of a most retentive memory, he is able often to refer to page and volume where legal questions are made the basis of investigation.

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Following his death at age fifty-one, St. Paul newspapers published lengthy obituaries and even longer accounts of his memorial services in district court by the county bar association. They are typical Victorian-era eulogies. No speaker mentions his work for *The Syllabi* two decades earlier. He is remembered today primarily by historians of law book publishing, less for his prominence in the bar of the early 1890s, a twist that would have astonished him.

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Eller's obituary and the county bar association's memorial services in the *Pioneer Press* follow. In the Appendix are copies of the covers of the first two issues of *The Syllabi*, profiles of Eller from *Progressive Men of Minnesota* (1897) and Hiram Stevens's *The History of the Bench and Bar of Minnesota* (1903), the colorful sketch from the May 13, 1891, issue of the *Globe*, his obituary and the memorial services as reported in the *Globe*.

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From the *St. Paul Pioneer Press*, November 4, 1896:

Death Calls Homer C. Eller

**One of the Leading Members
of the St. Paul Bar.**

**His Death Results From An Attack of Bright's
Disease —He Was Fifty-One Years Old—
Practiced law in St. Paul Twenty-Seven
Years— He Was A Native Of Indiana —
Served In The War As A Drummer Boy —
Sketch Of His Busy Life.**

Hon. Homer C. Eller, the attorney, died at his home 575 Holly Ave., at 630 o'clock last evening of Bright's disease, after a brief illness. He was fifty-one years old. Mr. Eller suffered from a most serious illness five years ago, but had apparently fully recovered, till the malady in a somewhat new and very acute form suddenly reappeared ten days ago. Since that time Mr. Eller has been unable to leave his bed, though the attending physicians, Dr. De Witt, Dr. Green and Dr. Charles Smith, entertained hopes of his recovery until three days ago. His death last evening was sudden, and its announcement will be a shock to his innumerable friends and admirers in and out of the legal profession in the city and the state.

Mr. Eller leaves a widow, Mrs. Ada Farnman Eller, and three children, Clark, aged fourteen, Miss Hattie, aged thirteen, and Kenneth, aged nine.

During the twenty-seven years he has practiced law in this city Mr. Eller was one of the brilliant lights of the

bar of Minnesota. No other lawyer was more popular in the profession and, according to the opinion of lawyers in the city, none was more brilliant. Mr. Eller's specialty was real estate and corporation law, and in his specialty none excelled him. His loss would be most keenly felt by the rising generation of lawyers, for at all times Mr. Eller's time and individual counsel was at the disposal of young, struggling practitioners without money and without price. He took a personal interest in their success and encouraged and aided them with all the wealth of his experience and research.

Homer C. Eller was born July 9, 1845, in Mishawaka, Ind., and moved to South Bend, Ind., at a very early age. He was thrown on his own resources at the age of nine years. His legal talent backed by indefatigable perseverance and conscientious study, made him what he became in his profession, for which he was adapted by nature. He was only in the profession a short time when he proved to his associates and the public that he was a magnificent type of the natural born lawyer.

Not having attained the required height of a soldier, he entered the war as a drummer boy, serving in that capacity till the end. After the war he spent a year in the Ann Arbor law school, and came to St. Paul in 1869, and remained here ever since. His legal career began, virtually, with his acceptance as a position as a member of the firm of O'Brien, Eller & O'Brien. He afterwards became a member of the firm of Clark, Eller & How, which was changed to Eller & How on the retirement of Judge Clark. The firm of Eller, How & Butler was arranged and announced to go into effect at the end of Pierce Butler's term as county attorney. Mr. Eller continued in active practice still seized with attack of illness which carried him away.

Being an extremely modest, unassuming man, Mr. Eller identified himself prominently with few public institutions, deriving most pleasure from domestic and professional ties. One of his partners said last night that his devotion to his profession often caused him to disregard the regularity of habits essential to good health. When absorbed in an intricate problem of law Mr. Eller would forget everything else and many a meal he lost to untangle some legal knot. He was very popular with all with whom he came in contact and commanded universal admiration for his uncompromising integrity, as well as his high mental attainments. He was an honored member of Acker post, G. A. R.²

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From the *St. Paul Daily Globe*, November 5, 1896:

BAR TOOK ACTION

In Respect to the Late Homer C. Eller.

Hiler H. Horton appeared before Judge Brill yesterday and announced the death of Judge Homer C. Eller, of the firm of Eller, How & Butler, and asked the court to appoint five members of the bar, including the president of the Ramsey County Bar association, to make arrangements for the funeral.

Judge Brill paid a high tribute to the professional ability and personal character of Judge Eller, and appointed as the committee President E. H. Ozmun, of the bar association; Hiler H. Horton, Greenleaf Clark,

² *St. Paul Pioneer Press*, November 4, 1896, at 8.

John D. O'Brien and Henry J. Horn. Judge Willis also announced in open court the death of Judge Eller, and an eloquent tribute to his memory. . . .

The pall-bearers will be: Hon. Hascal R. Brill and Hon. Charles E. Otis, of the district court; Charles N. Bell, John D. O'Brien, Otto Kueffner and J. T. Fitzpatrick. The Interment will be in Oakland cemetery.³

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From the *St. Paul Daily Globe*, November 6, 1896:

MR. ELLER'S FUNERAL,

**Many Friends Pay Their Respects
to the Deceased.**

Funeral services for the late Homer C. Eller were held from the family residence, 575 Holly avenue, yesterday afternoon. In attendance were many citizens, friends of the deceased and family, and members of the Ramsey county bar. There were also in attendance members of Acker Post, G.A. R., in which organization Mr. Eller was a comrade.

The service began at 2:30 o'clock, at which hour the house was filled with sympathizing friends. The casket in the front parlor was covered with floral offerings, the offerings of friends, the bar association and of Acker post. The services were conducted by the Rev. Charles E. Haupt, rector of the Church of the Messiah. After a hymn

³ *St. Paul Daily Globe*, November 5, 1896, at 8.

sung by the quartette choir of St. John's church, the Episcopal service for the dead was read by the clergyman. There was no other service. The dead man needed no eulogy. Already enthroned in the hearts of his friends the service was simple and brief, symbolizing his modest and unostentatious life. Cardinal Newman's perennial hymn, "Lead Kindly Light," was then sung by the choir, after which those who desired gazed for the last time on the face of their friend who had passed to the calm of death.

The pallbearers then pressed forward and bore the casket to the hearse, and the cortege went its way to Oakland cemetery, where the rites of interment were performed after the reading of the burial service by the clergyman. The pallbearers were Judge Brill and Judge Otis, from the district bench; Charles N. Bell, John D. O'Brien, Otto Kueffner and J. T. Fitzpatrick.

Among those in attendance were Messrs. John P. St. John, Otto Schrader, E. W. Bazille, R. B. Galusha, E. S. Chittenden, Edward Dwyer, E. Johnstone, Judge Sanborn, H. B. Farwell, P. J. McLaughlin, Judge Otis, Walter Chapin, O. B. Lewis, S. P. Crosby, Samuel Morrison, W. P. Westfall, E. R. Tiffany, Charles Lawrence, T. D. O'Brien, E. S. Day, J. F. George, Charles E. Flandrau, G. T. Rice, Oscar Hallam, John L. Macdonald, Otto Huebner, Judge Kelly, Judge Willis, Cyrus Thompson, F. W. M. Cutcheon, Judge Willrich, E. Whaley, A. G. Briggs, E. H. Morphy, E. S. Durment, Fred Ingersoll, W. D. Cornish, George Markham, H. P. Hall, R. L. Gorman, E. H. Ozmun, Thomas Cochran, Dr. C. G. Higbee, John B. West, W. E. Bramhall, W. G. Foulke, O. H. Comfort, Pierce Butler, Richards Gordon, Gotfried Siegenthaler and J. J. Lommen.

The courts were closed yesterday in honor of the dead attorney. Judge Brill has appointed the following members of the Ramsey County Bar association to draw up suitable resolutions to be presented to the meeting of the association which will be held on Saturday: E. H. Ozmun, president of the association; Hiler H. Horton, Greenleaf Clark, John D. O'Brien and Henry J. Horn.⁴

Several days later, the *Pioneer Press* reported the Bar Association's tribute to Eller:

TRIBUTE OF THE
BENCH AND BAR

Memorial Exercises For The Late Homer C Eller

Judges of the district court and his associates at the bar unite in expressing their personal sorrow over his loss—Addresses by Judge Brill, Judge Otis, Mr. Horn and others—Respected as a lawyer and loved and honored as a man.

Never in history of the bar in St. Paul has there been a more touching testimonial offered to the memory of a member, never has there been a more spontaneous outburst of feeling, a greater wealth of manly and honest tribute as the simple yet impressive exercises in the district court yesterday morning when the memorial to the late Homer C Eller was presented to the court.

On the bench sat Judges Brill, Kelley, Otis, Egan and Willis. Judge Kerr, whose illness prevented his

⁴ *St. Paul Daily Globe*, November 6, 1896, at 8.

presence, was the only absentee. In the court room was almost every member the bar in the city to pay tribute to the memory of the friend and associate whose sudden summons to another world came just in the prime of an honored manhood.

The committee of the bar association offered the memorial, which detailed Mr. Eller's career of over twenty years at the bar Ramsey county and spoke in glowing terms of his ability, his honesty and his patriotism. H. J. Horn, the chairman of the committee, read the memorial and spoke a few words of eulogy.

Judge Greenleaf Clark followed Mr. Horn. He said:

"May it please Your Honors: In speaking of the life and character of Mr. Eller one need not fear being impelled by a sense of loss and affection beyond the limits of just encomium. It is easy to comply on this occasion with the rule that has come down to us with approval from the ancients that nothing but good is to be spoken of the dead, because there is no opportunity to speak any evil. If I should cudgel my brain to think of an evil thing to say of Mr. Eller, the attempt would fail.

"My acquaintance with him commenced in the beginning of the year 1870, when he came into the office of Mr. Bigelow and myself, then copartners, as a clerk, Judge Flandreau having joined the firm a few months later. He remained a clerk in the office until July, 1874 - four and one-half years - with constantly increasing usefulness. I became again associated with him as a copartner in the year 1885, which relation continued until the year 1889. Since then our relations were intimate up to the time of his death.

“This recital shows that I can speak of him with at least the opportunity of knowledge. Mr. Eller was born with that sense of justice, with out which no one can be

A Profound Lawyer.

“To this intuitive perception of the right was joined an acute and discriminating mind which enabled him to brush away obscurities and penetrate to the bottom of the subject. Added to this he had industry which was bounded only by his physical endurance and a fidelity which never failed. With such qualities, though without the adventitious aide of oratory, and without the advantage of commanding presence, and though modest and unassuming to a degree, he developed and grew in power and influence as a lawyer to the time of his death.

“In a conversation with Judge Mitchell since Mr. Eller’s death that learned jurist said of him that no lawyer appeared before the supreme Court whose views were listened to with more respect. The opinion of his contemporaries at the bar I am confident accorded him a position no less high, and it is safe to say that at the time age of fifty-one he had acquired a position as a lawyer in the very front rank.

“Permit me now to turn to the contemplation of the life of Mr. Eller in a broader scope. His character was pure, refined and symmetrical, even to the lesser traits. He never used course or profane language. I never knew him to lose his temper. He always remained calm and in full possessions of his faculties. He did not use stimulants, nor tobacco. If he had any vices, I do not

know what they were. Nor was this freedom from vice the concomitant or a result of a cold cynicism. He was affectionate, gentle, kind, compassionate, charitable, patient with the follies of man, and a sympathizer in their misfortunes. Every client was ever after a warm personal friend. He died, as I believe, without an enemy. He was altogether lovable. His life was spent in his office, the court and in his home. After the business of the day was over, no place had so great attraction as his home. He read many books as a relief from business cares, and was well informed on general topics and subjects. Touching the great cardinal trait of honor, fidelity and integrity his character was founded on them as on a rock. His nature would have revolted against the willful doing of an unjust and dishonorable thing.

“It is been my good fortune to be associated in business with men of superior natures. Propriety requires that I speak only of the dead, Mr. Bigelow and Mr. Eller, two with the best man. Such men are an

“Honor to Our Race.”

Judge Clark’s remarks were followed by brief addresses by Judge C Flandrau, John D O’Brien, Judge Thomas T. Fauntleroy, Sr., Hiler H. Horton, S. P. Crosby, F. G. Ingersoll, H. F. Stevens, and Frederick L. McGee.

Judge Otis, who was one of Mr. Eller’s closest friends, spoke briefly. He said:

“For a quarter of a century there has existing between Mr. Eller and myself a warm personal friendship, and yet so approachable was the man, so enjoyable was his

companionship, so attractive to his friends with his personality, that I can hardly claim a closer, if a somewhat longer, friendship than many of those here present.

“Indulgent almost to a fault, we delighted to lay our burdens upon him, and many is the time he has made them easier to be borne. And this same amiable indulgence he carried with him everywhere, and we find him laying aside his own particular work, no matter how depressing, that he may make clear some difficult problem of the law. No man ever found his door closed against him, and especially so if he was a junior member of the bar seeking to extract his client from difficulties brought about by failing to observe the more technical forms of the law. By timely counsel thus by him gratuitously rendered, without hope or desire of reward, has many a case been straightened and many a home been saved. In this manner the court has been indirectly aided, the ends of justice furthered and the right prevailed; and so it is that in every department of our professional life we have felt his influence, have been aided by his great learning and by his wise and conservative counsels. Removed from us, as he has been, in the prime of life, and almost without warning, a great personal sorrow has come to each of our hearts, in that a dear friend is to be no longer with us, and because in our trials and perplexities we can no longer look to him for light or consolation.

“In private life he was the most ideally perfect man I have ever known. If persistent, yet patient and forbearing, with the simplicity of a child, the gentleness of a woman and the virility of the most robust manhood.

Omnivorous reading, a retentive memory and discriminating judgment, with a thoroughly genial disposition, made him a delightful companion, and whether discourse of matters pertaining to his chosen profession, and which were always nearest to his heart, or of matters pertaining to other fields of literature, he was always entertaining and instructive.

In Social and Domestic Life,

as a neighbor and friend, and in those most sacred relations of husband and father he seemed to fill up the full measure of our ideals. He spoke ill of no man, however vigorously he might condemn his misdoings, while in all his active professional career, when life has been a constant warfare and abounded in antagonisms I have never heard the slightest reflection cast upon his conduct, character and reputation. No man has spoken ill of him. No man has questioned his purposes or impugned his motives. and in his life and character has ever shown forth the highest ideals of Christian manhood. May his influence and example remain and abide with us, and may we in our domestic life, in our citizenship and in our profession conform ourselves with those lofty ideals.”

Judge Brill, the senior judge of the bench, spoke as follows:

“Sympathy for the living and the desire to speak well of the dead often lead to the use of extravagant phrases on an occasion like this. It is rare, indeed, when without any mental reservation, we may use only words of praise in speaking of the character and life of any man, living or dead.

“The memory of Homer C Eller needs no fulsome flattery. To speak the whole truth concerning him is to pronounce his eulogy. My acquaintance with Mr. Eller began when he came to St. Paul. In the common struggles and hardships incident to that early period of our professional lives we were brought into close relations. I early came to admire his character and qualities, and as the years have gone my regard for him has steadily strengthened and to me his death is a personal loss.

“Mr. Eller was a close and thorough student: he was always unselfish and helpful; he was always the soul of honor. He was early fitted to take high rank in the profession, but he lacked the self-assertion and push of many less capable man, and his advancement came comparatively slowly. But the years of waiting were not wasted, as is too often the case in such circumstances. He was constantly enriching his mind with the learning of the profession. The work he had to do was so well done that the bench, the bar and the community came at last to understand that

He Was No Common Man.

“By patient industry and force of character, without the adventitious aids which have raised so many men to prominence, the drummer boy of the Civil War came to occupy the front wake of a learned and powerful profession. He was a leader at the bar noted throughout the country for its ability. Success came slowly, but it was a success of which any man might have been proud, and it was success based upon merit alone. With a tremendous capacity for work, an unusual acquaintance with the precedents, a clear perception and

ability to apply principles to facts with celerity, a conscientious judgment, no safer counselor ever advised client or addressed the court. His character was so correct and his manner was so kindly that he had not an enemy. More than that, he had the regard of all who knew him and affection of all who knew him well. As simple and unaffected as a child, as modest and gentle as a woman, as wise as a sage, as brave as a lion, as loyal to the truth as the needle to the pole, we earnestly command our departed brother to the young men of our profession as a model upon which they may safely shape their lives in character.

“He needs no tears who lived a noble life;
We will not weep for him who died so well;
But we will gather around the hearth and tell the
story of his strife—
Such homage him suits him well!
Better than funeral pomp and pealing bell.”

“The bench heartily concurs in all that has been said by members of the bar concerning our departed brother. His relations with the bench have always been of the most pleasant and of the most helpful character. We have always felt when Mr. Eller rose was to address us that we were to be instructed, and we can heartily join in the commendation given by Mr. Justice Mitchell, and we unite with you in your sorrow and your common bereavement.”

The memorial was ordered spread on the minutes of the court and court adjourned for the day, only such matters as were of great importance being taken up. ⁵

⁵ *St. Paul Pioneer Press*, Sunday, November 8, 1896, at 5.

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From the *St. Paul Daily Globe*, November 29, 1896:

MOURN A COMRADE.

**ACKER POST PAYS A DEEP TRIBUTE
OF LOVE TO HOMER ELLER.**

FAITHFUL TO THE ORDER.

**HIS PASSING LEAVES A NOTABLE
GAP IN THE RANKS OF THE POST.**

The annual inspection of Acker Post, G. A. R., occurred last night at the post hall in the Central block. There were 125 members present out of 357 reported on the books.

....

The following resolutions in memory of the late Capt. Homer C. Eller were read by Capt. Henry A. Castle:

“Comrade Homer C. Eller, a charter member, and the second adjutant of Acker Post No. 21, department of Minnesota, Grand Army of the Republic, died in St. Paul, Nov. 3, 1896. Comrade Eller was born July 9, 1845, in Mishawaka, Ind., and resided principally in South Bend, Ind., until the outbreak of the War of the Rebellion. He enlisted early in the contest as a drummer boy in Company F, Twenty-ninth Indiana infantry, and served

through the war in the Army of the Cumberland. After leaving the service he studied law, finishing a year's course at the law department of Michigan university, Ann Arbor.

“In 1869 Comrade Eller removed to St. Paul and at once began that modest, but diligent career, which, in twenty-seven years, lifted him to a very high rank among his professional brethren. When Acker post was organized in April, 1870, his name was enrolled among its charter members, and in July of that year, Comrade Henry A. Castle, post commander, appointed him adjutant to succeed Comrade M. D. Flower who had first filled that position. His duties as adjutant were faithfully performed, and he was endeared to all the comrades by his many amiable qualities. Comrade Eller was always an ardent adherent of the principles of our order and ever ready to testify by good words and good works, the faith that was in him.

“Comrade Eller's life was devoted to the earnest pursuit of his profession. He never sought public office, but served for a considerable period as associate Judge of the St. Paul municipal court, in the early days of its history. His commanding position at the bar was recognized by his associates, and the tribute to his memory paid by them was significant and impressive. On that occasion Hon. H. R. Brill, the senior judge of the district court referred to our departed comrade as follows:

"Judge Eller was always a close and thorough student; he was always unselfish and helpful; he was always the soul of honor. He was early fitted to take high rank in the profession, but he lacked the self-assertion of many

less capable men, and his advancement came comparatively slowly. But the years of waiting were not wasted, as is too often the case in such circumstances. He was continually enriching his mind with the learning of the profession, and the work he had to do was done so well that the bench, the bar and the community came at last to realize that he was no common man. By patient industry and force of character, without the adventitious aids which have raised so many men to prominence, the drummer boy of the civil war came to occupy the front rank of a learned and powerful profession. He was a leader at a bar noted for its ability. Success came slowly, but it was a success of which any man might have been proud, and it was a success based upon merit alone.”

Adopting and emphasizing these merited words of eulogy, this post orders that this memorial be spread upon its records, and that a copy thereof be forwarded to the bereaved family of Comrade Eller, with the assurance of our deepest sympathy in their affliction.

—Henry A. Castle,
—A. R. McGill,
—George R. Lewis,
Committee.

Homer C. Eller was born at Mishawaka, Ind., July 9, 1845; enlisted Aug. 27, 1861, drummer, Company P, Twenty-ninth Indiana infantry mustered out Dec. 2, 1865, as a veteran; joined Acker post as a charter member April 8, 1870; died at St. Paul, Minn., Nov. 3, 1896; buried in Oakland cemetery Nov 5, 1896.⁶

⁶ *St. Paul Daily Globe*, November 29, 1896, at 12 (nominations for post offices omitted).

Appendix

THE SYLLABI.

Vol. I.

SATURDAY, OCT. 21, 1876.

No. 1.

PUBLISHED WEEKLY,

By John B. West & Co.,

60 W. Third Street, ST. PAUL, MINN.

Terms \$3.00 per annum in Advance.

Rates of Advertising.

	Spa.	1 w.	2 w.	3 w.	4 w.	3 m.	6 m.	1 y.
1 Sq.	.75	1.30	1.90	2.45	6.00	11.65	22.50	
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1 C.	5.00	9.00	11.80	14.45	42.40	81.80	162.25	

1 sq. consists of one inch of the column.

John D. O'Brien.

Homer C. Eller.

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SAINT PAUL, MINN.

SESSION LAWS.

We have the Session Laws of Minnesota from 1849 to 1875 inclusive, 34 vols., which we offer in sets, or by the volume.

Parties wishing to fill their sets, will do well to send list at once.

The syllabi of the decisions of the Supreme Court of Minnesota have heretofore appeared in the daily papers only as it happened to suit the convenience of a reporter, or when a scarcity of news made them useful in filling up space, sometimes being in one paper, and sometimes in another.

It has been a matter of much annoyance to the attorneys of our State that these decisions have not been published regularly in some one paper, immediately after being filed, and well knowing the importance of such a publication to the profession, we purpose issuing the "Syllabi."

It will contain the syllabus, (prepared by the Judge, writing the opinion,) of each decision of the Supreme Court of Minnesota, as soon after the same is filed as may be practicable, accompanied, when desirable to a proper understanding of the points decided, with an abstract of the case itself, and when the decision is one of general interest and importance, with the full opinion of the Court.

It will also contain abstracts of, and opinions in the more important decisions in the United States Courts of Minnesota, as well as those of particular interest decided in the several District Courts of the State. The general design being to furnish the legal profession of the State, with prompt and reliable intelligence as to the various questions adjudicated by our own Courts, and at a date long prior to the publication of the regular reports.

It is not our purpose to confine our attention exclusively to reports from our own State, but while making those first in importance, also to furnish digests or opinions in cases decided in other States, which may have a special importance here or be of more than general interest.

New law books will be noticed as they appear.

We shall endeavor to make the Syllabi indispensable to Minnesota Attorneys, by making it prompt, interesting, full, and at all times *thoroughly reliable*, and the better to enable us to do so we respectfully request the cordial support of the members of the Bar.

JOHN B. WEST & Co.,

Publishers.

THE SYLLABI.

Vol. 1.

SATURDAY, OCT. 28, 1876.

No. 2.

PUBLISHED WEEKLY,

By JOHN B. WEST & CO.,

60 W. Third Street, - ST. PAUL, MINN.

Terms 3 00 per annum in Advance.

HOMER C. ELLER, Editor.

Rates of Advertising.

	Spa.	1 w.	2 w.	3 w.	4 w.	3 m.	6 m.	1 y.
1 Sq.	.75	1.30	1.90	2.45	6.00	11.65	22.50	
2 Sq.	1.50	2.60	3.60	4.50	11.80	22.50	34.25	
3 Sq.	2.10	3.75	4.90	6.00	17.25	33.00	65.25	
½ C.	2.65	4.70	6.15	7.50	21.50	41.25	81.50	
1 C.	5.00	9.00	11.80	14.45	42.40	81.80	162.25	

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THE first number of THE SYLLABI was mailed gratuitously to nearly, if not quite, all the practicing attorneys of the State, and the reports received thus far, are of the most flattering character, assuring us that it not only

supplies a want long felt, but that it will meet with a hearty support. The present number will be sent out in the same manner, and we hope that those who have not already done so, will signify their intention to become subscribers, at an early day.

Volume 22 of Minnesota Reports, is now in course of preparation, and will be published sometime during the winter; it will include decisions filed prior to March 1st 1876 and perhaps some of later date. We intend in connection with current decisions to include in this publication all those filed since March 1st, 1876, bringing them down to date as rapidly as time and our space will permit.

A case of special importance, to those purchasing certificates of such school lands as have at any time been occupied by the owner or assignee of such certificate as a homestead, is that of *Wilder vs. Haughey* 21 *Minn.* 101, and the necessity of careful inquiry into the previous history and transfers of such certificates is well illustrated in the facts connected with the next case in same report viz: *Hartman vs. Munch*, for a statement of which we are indebted to Messrs. S. & O. Kipp, of Henderson. In that case, it appears, that in October 1868, L purchased 80 acres of school land receiving Commissioners certificate. He resided upon the land with wife and family, claiming it as a homestead, until November 1868, when he assigned the certificate, his wife not joining to S. S. in 1871, assigned it to Munch, who with his wife and family, resided upon the land as a homestead, until March, 1873, when, without his wife joining he assigned the certificate to Hartman. Shortly after, Munch left for parts unknown leaving his wife and family residing upon the land; Hartman then brought ejectment against Mrs. Munch, but she claiming that it was a homestead, and that the assignment, without her joining therein, was void, decision was for defendant, (21 *Minn.* 107) after that decision Hartman obtained a new assignment of the certificate from L, the original purchaser, L's wife joining therein, and again brought ejectment against Mrs. Munch, and at trial had Sept. Term 1876, Sibley Co., Judge Brown, presiding, it was held that plaintiff was entitled to recover.

Biographical sketches

From *St. Paul Daily Globe*, May 31, 1891:

Homer C. Eller is considered the best read lawyer in this portion of the country. He is a veritable walking encyclopedia of law. Having tackled every text-book that was ever printed, and being of a most retentive memory, he is able often to refer to page and volume where legal questions are made the basis of investigation. Indeed there are few lawyers in St. Paul who have not at one time or another applied to Mr. Eller for information of a legal nature. He is always most happy to grant favors of this kind, especially to young practitioners. His health for years has been very poor and he has been compelled, though most reluctantly, to remain out of court. His great forte is real estate law, and to that branch of his profession he has devoted most of his time. Mr. Eller is a small, slight man, weighing scarcely more than 100 pounds, with a good, large intellectual head perched on a light, wiry frame, in demeanor he is ever courteous and gentlemanly, and numbers his friends by his acquaintance.⁷

From *Progressive Men of Minnesota* (1897):

Homer C. Eller was for over twenty years a prominent member of the St. Paul bar. He died November 3, 1896. Mr. Eller was a native of the Hoosier state, where he was born July 9, 1845, at Mishawaka, in St. Joseph County. His father, Moses Eller, was born in Pennsylvania. In 1817, when but nineteen years of age, he migrated with

⁷ *St. Paul Daily Globe*, "Ramsey County Lawyers" 15 (MLHP, 2015)(published first May 31, 1891).

his father to Montgomery County, Ohio, where he was reared on a farm until he was nearly twenty-one, when he learned the trade of cabinet maker. His wife, Elizabeth Weeks, was a native of Ohio, her parents at an early date coming from South Carolina to Montgomery County. Her death occurred in 1853, and a year or two later the family was broken up. Homer, then but twelve years of age, was working on a farm in Southern Michigan for board and clothes and attending a winter school. A little later he traveled on foot through portions of Southern Michigan selling books and charts. When about thirteen the lad went to South Bend, Indiana, where, until August, 1861, he made his home with E. R. Farnam.

Early in 1861 he entered the post office at South Bend as a clerk. In August he enlisted as a musician in Company F, Twenty-ninth Indiana. In December, 1863, he re-enlisted, and remained in the service, being a portion of the time in detached service, until December 2, 1865, when the regiment was mustered out. He was present at the battles of Shiloh, siege of Corinth, Triune, Stone River, Liberty Gap, Chickamauga, and in several minor engagements.

The early education obtained by Mr. Eller was such as the common and grammar schools of Southern Michigan and Northern Indiana afforded. This he supplemented by a course of self instruction in the higher mathematics, pursued while he was in the army with such books as he could carry in a knapsack, and by a short period spent in the Northern Indiana College and Academic School after his discharge. In 1866 Mr. Eller entered the law office of Hon. W. G. George, of

South Bend, Indiana, as a student, and subsequently attended the law department of the University of Michigan, graduating with the law class of 1868. For nearly a year after graduation he worked as chief clerk in the post office at South Bend. He had decided to come west in order to enjoy better opportunities, and in the fall of 1869 he located in St. Paul, and entered the law office of Messrs. Bigelow & Clark, afterwards Bigelow, Flandrau & Clark. He remained connected with this firm until August 1, 1874, when he formed a partnership with John D. O'Brien under the firm name of O'Brien & Eller. T. D. O'Brien was later admitted to the firm, and it



HOMER C. ELLER.

was known as O'Brien, Eller & O'Brien. In October, 1885, Mr. Eller severed his connection with the firm and formed a new partnership with Messrs. Greenleaf Clark and Jared How, the firm being known as Clark, Eller & How. In January, 1888, Judge Clark retired from active practice, from which time the firm was Eller & How. Mr. Eller

enjoyed an extensive practice and had the esteem of all the members of the St. Paul bar, and his death was deeply regretted not only by the members of his profession but by a large circle of friends and acquaintances.

In October, 1876, Mr. Eller became the editor of the *Syllabi*, a small legal publication of eight pages, then commenced and published weekly by John B. West & Co. After six months' appearance this publication was changed to the *Northwestern Reporter*, which was the beginning of the national reporting system and extensive publishing business now conducted by the West Publishing Company. Mr. Eller continued as editor of the *Northwestern Reporter* until May, 1882. During this period he prepared a digest of volumes one to twenty-five of the Minnesota reports which were published by the West Publishing Company in 1882.

When the St. Paul municipal court was organized Mr. Eller was appointed the first special judge, and served until his successor was elected. He also served one term as a member of the board of park commissioners. In his politics, Mr. Eller was a Republican, but he never took a very active part in the campaign.

In June, 1877, he was married to Miss Mary S. Creek, who died in August of the same year. August 28, 1879, he was married to Miss Ada Farnam. Four children resulted from this union: Clark, Harriet, Kenneth and Louise.⁸

From Hiram Stevens, "The Bench and Bar of St. Paul" in Christopher Columbus Andrews, *History of St. Paul, Minn.* (1890):

⁸ Marion D. Shutter & J. S. McLain eds., *Progressive men of Minnesota* 434-35 (Minneapolis Journal, 1897). It is subtitled "Biographical sketches and portraits of the leaders in business, politics and the professions; together with an historical and descriptive sketch of the state."

Homer C. Eller is a native of Mishawaka, St. Joseph county, Ind., where he was born July 9, 1845. He was educated at the common and grammar schools of the vicinity and at the University of Michigan, graduating from the law department in the class of 1868. During the war he served under General, afterward United States Senator, Miller.⁹ Mr. Eller was admitted to the bar at South Bend, Ind., in May, 1869, and to the Supreme Court of Minnesota January 27, 1870. In November, 1869, he removed to St. Paul where he has since resided. He was appointed one of the first special judges of the Municipal Court of the city.

Mr. Eller is the author of Eller's digest of the first twenty five Minnesota reports. He is an indefatigable student, and his labors have been rewarded by a familiarity with the principles of jurisprudence and their application to the vexed questions of modern society, rarely equaled in one of his age.

For many years he has been connected with important litigation, and has shown much ingenuity and ability in the management of his cases. Of genial manners and patient disposition, he has rendered kind and useful assistance to the younger members of the profession, and by many qualities of mind and heart has endeared himself to his associates, both young and old. Few men enjoy to the same extent the respect of the bar and the confidence of the court.¹⁰

⁹ Probably John Franklin Miller (1831-1886), who was U. S. Senator from California, 1881-1886.

¹⁰ Hiram Stevens, "The Bench and Bar of St. Paul" in Christopher Columbus Andrews, *History of St. Paul, Minn.* 31 (MLHP, 2015)(published first, 1890).

Eight years after his death in, his family placed the following in Hiram Stevens's *History of the Bench and Bar of Minnesota*:

HOMER C. ELLER.

The late Judge Homer C. Eller was for more than twenty years a prominent member of the St. Paul bar. Mr. Eller was a native of the Hoosier state, where he was born July 9, 1845, at Mishawaka, in St. Joseph county. His father, Moses Eller, was born in Pennsylvania, and his wife, Elizabeth Weeks, was a native of Ohio.

After the death of his mother Homer began working on a farm in southern Michigan for his board and clothes, attending a winter school. A little later he traveled on foot through portions of southern Michigan,



selling books and charts. When about thirteen he went to South Bend, Indiana, where he made his home until 1861 with E. R. Farnam. Early in the year he entered the post office at South Bend as a clerk, and in the following August he enlisted as a musician in Company F, Twenty-ninth Indiana, and served out his first term of enlistment. He

re-enlisted in December, 1863, and remained in the service, being a portion of the time in the detached service until December 2, 1865, when the regiment was

mustered out. He was present at the battles of Shiloh, siege of Corinth, Triune, Stone River, Liberty Gap, Chickamauga and in several minor engagements.

His early education was obtained in the common schools of southern Michigan and northern Indiana. This he supplemented by a course of self-instruction in the higher mathematics, pursued while he was in the army, with such books as he could carry in a knapsack, and by a short period spent in the Northern Indiana college after his discharge.

In 1866 Mr. Eller entered the law office of Hon. W. G. George, of South Bend, Indiana, and subsequently attended the law department of the University of Michigan, graduating with the class of 1868.

During the fall of 1869 he located in St. Paul and entered the law office of Messrs. Bigelow & Clarke, afterwards Bigelow, Flandrau & Clarke. He remained as a member of this firm until August 1, 1874, when he formed a partnership with John D. O'Brien under the firm name of O'Brien & Eller. T. D. O'Brien was later admitted to the firm, and it was known as O'Brien, Eller & O'Brien. In October, 1885, Mr. Eller severed his connection with the firm and formed a new partnership with Greenleaf Clark and Jared How, the firm being known as Clark, Eller & How. In January, 1888, Judge Clark retired from active practice, from which time the firm was Eller & How.

Mr. Eller enjoyed an extensive practice, and had not only the esteem of the members of the St. Paul bar, but throughout the entire state.

In October, 1876, Mr. Eller became the editor of the *Syllabi*, a small legal publication of eight pages, which was being published weekly by John B. West & Co. After six months' appearance this publication was changed to

the Northwestern Reporter, which was the beginning of the National Reporting System, an extensive publishing business now conducted by the West Publishing Company. Mr. Eller continued as editor of this publication until May, 1882. During this period he prepared a digest of volumes 1 to 25 of the Minnesota reports, which were published by the West Publishing Company in 1882.

When the St. Paul municipal court was organized Mr. Eller was appointed the first special judge, and served several years in that position. In politics he was a republican, but never took a very active part in the campaigns.

In June, 1877, he was married to Miss Mary Creek, who died in August of the same year. August 28, 1879, he was married to Miss Ada Farnam to whom four children were born. The death of Judge Eller occurred November 3, 1896, deeply regretted, not only by the profession, but by a large circle of friends and acquaintances.¹¹

From the *St. Paul Daily Globe*, November 4, 1896:

H. C. ELLER IS DEAD.

THE WELL-KNOWN ATTORNEY
PASSES AWAY AT HIS HOME
IN ST. PAUL.

DEATH WILL BE A SURPRISE,
AS THE FACT OF HIS ILLNESS
WAS NOT GENERALLY KNOWN.

¹¹ Hiram Stevens, ed., 1 *History of the Bench and Bar of Minnesota* 185 (1904). The photograph on the first page is from this book.

SKETCH OF HIS SUCCESSFUL LIFE.

**State Loses Its Best-Equipped Attorney
and the Bar Its Most
Shining-Light.**

Homer C. Eller, of the law firm of Eller & How, died last night at 6:30 o'clock at his residence, 575 Holly avenue. The immediate cause of his death was Bright's disease, although he had been in ill-health for a number of years.

Mr. Eller was born in Mishawaka, Ind., July 9, 1845. He was thrown on his own resources at the early age of nine, and went to South Bend while yet a lad. Here he lived until the war broke out, when at the age of sixteen he entered the service as a drummer boy and served until the close of hostilities. He attended the law school at Ann Arbor university, and after one year there came to St. Paul in 1869, where he has since resided. His first legal connection was with the firm of O'Brien, Eller & O'Brien, and later became a partner in the firm of Clark Eller & How. Several years ago Judge Clark retired, and the firm was continued as Eller & How. Arrangements had been made for the admission of Pierce Butler as a partner, the new firm to be known as Eller, How & Butler.

Mr. Eller leaves a widow, Ada Farnham, and three children—Clark aged fourteen; Hattie, aged thirteen, and Kenneth, a lad of nine. He was a modest, unassuming man, who possessed the respect and affection of fellow members of the bar to a marked degree.

Without exception he was the best equipped lawyer in the state in active practice. He ranked high, not only as a trial lawyer but as a counselor, and among his clients numbered J. J. Hill, whose personal business he had entire charge of. He was a member of Acker post. Arrangements for the funeral will be announced later.¹²

Several days later, the *Globe* reported the Bar Association's tribute:

LED AN ABLE BAR

**JUDGE BRILL'S HIGH TRIBUTE TO
THE LATE HOMER C. ELLER.**

**RAMSEY COUNTY BAR MEETS
AND ADOPTS A MEMORIAL ON THE
DEATH OF AN HONORED BROTHER.**

ON THE MINUTES OF THE COURT.

**Will Good Words for the Dead Advocate
be Handed Down to Future Generations.**

Never was a more eloquent or a more sincere tribute paid the memory of a member of the Ramsey County Bar association than was embodied in the memorial it

¹² *St. Paul Daily Globe*, November 4, 1896, at 8.

adopted yesterday in respect to the late Homer C. Eller. Its sincerity was evidenced by the expressed feelings of the members attendant upon the occasion. An honored member of the association, in ripe manhood, had been called from the midst of friends and associates, and the eulogies uttered in his memory bespoke the loss occasioned by his death. Time will have taken a long flight before the services of yesterday grow dim in the memory of those present.

On the bench with Judge Brill, the senior member of the district bench, sat Judge Kelly, Judge Willis, Judge Egan and Judge Otis, while in the court room were gathered over 200 members of the bar association. Each had come to pay a tribute of respect to a departed brother, and the expressions of regret and sorrow at his untimely death were sincere testimonials of the love and esteem in which Mr. Eller was held by his associates. Every lawyer present was grieved at the loss sustained by the bar and by its members individually, and in the eulogies spoken the quiet life of the deceased, so full of kindness and charity; so successful as a learned practitioner, shown forth in the well deserved honor.

For two hours different members of the association, including Judge Otis, each in turn offered in feeling words his tribute to the memory of the departed brother, when his honor, Judge Brill, as the representative of the bench, spoke as follows:

“Sympathy for the living and the desire to speak well of the dead often lead to the use of extravagant phrases on an occasion like this. It is rare indeed, when, without any mental reservation we may use only words of

praise in speaking of the character and life of any man living or dead. The memory of Homer C. Eller needs no fulsome flattery. To speak the whole truth concerning him is to pronounce his eulogy. My acquaintance with Mr. Eller began when he came to St. Paul. In the common struggles and hardships incident to that early period of our professional lives, we were brought into close relations. I early came to admire his character and qualities, and as the years have gone my regard for him has steadily strengthened, and to me as to many of us, his death is a personal loss.

“Judge Eller was always a close and thorough student, he was always unselfish and helpful; he was always the soul of honor. He was early fitted to take high rank in the profession, but he lacked the self assertion and push of many less capable men, and his advancement came comparatively slowly. But the years of waiting were not wasted, as is too often the case in such circumstances. He was continually enriching his mind with the learning of the profession, and the work he had to do was done so well that the bench, the bar and the community came at last to realize that he was no common man. By patient industry and force of character, without the adventurous aids which have raised so many men to prominence, the drummer boy of the Civil War came to occupy the front rank of a learned and powerful profession. He was a leader at a bar noted for its ability. Success came slowly, but it was a success of which any man might have been proud, and it was a success based upon merit alone.

“With a wondrous capacity for work, an unusual acquaintance with the precedents, a clear perception, the ability to apply principles to facts with celerity and

a conscientious judgment, no safer counsellor ever advised client or addressed the court. His character was so correct and his manner was so kindly that he had not an enemy. More than that he had the regard of all who knew him, and the affection of all who knew him well.

“As simple and unaffected as a child, as modest and gentle as a woman, as wise as a sage, as brave as a lion, as loyal to the truth as the needle to the pole, we earnestly commend our departed brother to the young men of our profession as a model upon which they may safely shape their lives and character.

“He needs no tears who lived a noble life;
We will not weep for him who did so well.
But we will gather round the hearth and tell
The story of his strife.
Such homage suits him well,
better than funeral pomp or pealing bell. ”

“The bench heartily concurs in all that has been said by members of the bar, and it is ordered that the memorial presented be spread upon the minutes of the court.”

The memorial was presented by H. J. Horn. In his remarks, presenting the memorial, Mr. Horn said, among other things: That he had known Mr. Eller from the time of his arrival in St. Paul, and could testify to his worth as a member of the bar, a citizen and a man, and all that was said of him in the memorial. That in our bar, preeminently there exists that in which the success and distinction of a member like Mr. Eller, not only honors the profession at large, but to a certain extent is shared by each member.

Greenleaf Clark was evidently much moved when he addressed the court. He had known Mr. Eller since 1870, when he had come into the office of Bigelow & Clark as a clerk, and said:

“If I should cudgel my brains to think of an evil thing to say of Mr. Eller the attempt would fail. With such qualities, though without the adventitious aid of oratory, and without the advantage of commanding presence, and though modest and unassuming to a degree, he developed and grew in power and influence as a lawyer to the time of his death. In a conversation with Judge Mitchell, since Mr. Eller's death, that learned jurist said of him, that no lawyer appeared before the supreme court whose views were listened to with more respect. The opinion of his contemporaries at the bar I am confident accorded him a position no less high, and it is safe to say that at the age of 51 he had acquired a position as a lawyer in the very front rank.

“His character was pure, refined and symmetrical, even to the lesser traits. He never used coarse or profane language. I never knew him to lose his temper. He always remained calm and in full possession of his faculties. He did not use stimulants, nor tobacco. If he had any vices, I do not know what they were. Nor was this freedom from vice the concomitant or result of a cold cynicism. He was affectionate, gentle, kind, compassionate, charitable, patient with the follies of men, and a sympathizer in their misfortunes. Every client was ever after a warm personal friend. He died, as I believe, without an enemy. He was altogether lovable. His life was spent in his office, the court and in his home. After the business of the day was over no

place had so great attraction as his home. He read many books as a relief from business cares, and was well informed on general subjects. Touching the great cardinal traits of honor, fidelity and integrity his character was founded on them, as on a rock. His nature would have revolted against the willful doing of an unjust or dishonorable thing.

“It has been my good fortune to be associated in business with men of superior natures. Propriety requires that I speak only of the dead. Mr. Bigelow and Mr. Eller. Two of the best of men. Such men are an honor to our race.”

Other eulogistic words were pronounced by Hon. C. E. Flandrau, John D. O’ Brien, Thomas T. Fauntleroy, Sr., Hiler H. Horton, S. P. Crosby, F. G. Ingersoll, H. F. Stevens, Mr. MacGhee, and C. E. Otis of the district bench. Mr. Stevens, in the course of his remarks, referred to others of the bar who had died and whose lives reflected honor on their profession, naming Judge Gilfillan, Judge Wilkin, George Otis, Mr. Bigelow and others.

Judge Brill then said the final eulogy and the court adjourned for the day as a mark of respect to the dead.¹³

**

¹³ *St. Paul Sunday Globe*, November 8, 1896, at 2 (quotations indented).

Acknowledgments

To: The Lawbook Exchange, Ltd., for *The Syllabi: Genesis of the National Reporter System* (2011), the “Preface” by Professor Michael H. Hoeflich, and the “Introduction” by Professor William E. Butler.

**Posted MLHP: June 17, 2020;
Hillman anecdote added July 6, 2022..**