

In Search Of Local Legal Records

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THE Upper Mississippi River, between St. Paul, Minn., and St. Louis, Mo., flows a long course, meandering in leisurely manner, skirting sandbars, and scouting channels between islands, which to an astonishing degree, appear today as they were in bygone decades. About a century and a half ago, the shores of the Upper Mississippi sprang to life with hamlets and settlements which, sooner than even optimists felt possible, blossomed into full-fledged towns and cities. Pioneer communities, some stimulated by lumbering, others by crops of wheat and corn, and many by merchandizing, soon realized that little satisfactory progress was possible without local law and regulations.

Incorporation of communities, by Territorial or State statutes, was an early step toward self-government, and then came the exciting task of electing trustees or selectmen, followed by the tedious chore of formulating, passing, and enforcing municipal ordinances. In places whose names sounded peculiar to Easterners—La Crosse, Winona, Oquawka, Keokuk, Cape Girardeau—the pragmatic, but delicate, process continued. Minute books, ordinance books, arrest books of marshals, records of proceedings in courts of justices of the peace, the verdicts of coroners—all these and more comprised a sort of town diary in which officials entered, some in flowing script and others with crabbed hands, village triumphs and successes, foibles and frustrations.

Such recordings, covering the formative period from the 1830's to the Civil War, are an indispensable source not only for the study of the day-by-day process of settlement but also for an insight into the capabilities and personalities of town fathers. They reveal problems of public health and sanitation, of economic conditions, of social and cultural patterns, and of the development of law and order. They cover, in one way or another, the gamut of the frontier experience. Archival treasures such as these should be preserved with tender, loving care and should not be discarded until a competent historian or archivist has evaluated them. A city or county clerk or a police chief, even if he has the legal right to do so, should not destroy records without consultation.

Unfortunately, in too many instances, local, legal records are not accorded the treatment they deserve. How casually and carelessly early community records have been kept—and how many lost—was emphasized dramatically when an entire summer was spent searching for this type of document. Some 30 cities, situated on or relatively adjacent to the banks

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of the Upper Mississippi, were visited. Search was made in city halls, police stations, municipal courts, and public libraries. Lack of time permitted only cursory investigation of county archives. Emphasis was placed upon the finding of 19th-century records pertaining to law and order.

Generally speaking, about one-third of the communities visited had either lost their earliest minute and ordinance books or they had been destroyed either by design or by fire or flood; a third still held some, but not in consecutive order; and a third had a full or practically full set. Few city clerks or police departments, throughout the decades, had attempted to preserve arrest books, lockup ledgers, or even departmental rules regulating the duties and conduct of officers. When inquiry about these types of sources was made, the usual reaction was, "We got rid of that stuff years ago," or, with a shrug, "I don't know nothin' about it."

The physical condition of the records ranged, as might be expected, from bad to good, and had it not been for the quality of 19th-century rag paper many would have been unreadable. Some books were ripped from bindings with the result that pages were missing; some were water stained and mildewed; others were wormy; a few were chewed by mice and rats; and others gave positive proof that urchins of long ago had followed their artistic impulse with pencil and crayon. Many loose, unorganized documents were jumbled in broken boxes. Only in four cities were records in anything near mint condition.

If the books and documents were tattered, torn, and forlorn, their housing in too many police stations and city halls was even more miserable. In a beautiful, old Mississippi town with an active, local historical society, records were found only after sidestepping litter in a basement police garage, then passing through the milk inspector's office and a dank, pre-Civil War passageway, and on to an ancient closet. In that damp vault scores of record books had been tossed without any semblance of order. Covered with the dust and grime of decades, they had deteriorated to a condition where it would cost a fortune to clean and repair them. They could not possibly be microfilmed. Yet it was possible, after a week's labor, to find in that mess information about such things as a cholera epidemic, an errant town marshal, an ordinance aimed at suppressing the docking at the town wharf of floating houses of ill fame.

The archives of another community were situated in what can only be described as a cave carved into a hill on the crest of which stood a church that 75 years previously had been converted into a city hall. Records shared their cavern with the volunteer fire department's antique truck. According to an affable, but obviously puzzled clerk, no one had looked at the books during his quarter of a century in office. As usual, coveralls were put on and a search began, with digging and dustiness lasting 8 long days. In addition to unearthing the first trustees' minutes and the earliest ordinance volumes, two complete arrest books and a part of another one were found. The marshal who kept the arrest ledgers was, by no means,

entirely literate, but he was thorough, even though his spelling was imaginative.

He entered, for the period 1844-47, not only the name of the person arrested but also his age, sex, nationality, nature of the charge against him, and disposition of the case. Thus, on June 23, 1845, English-born James Robinson, age 23, was arrested, tried, and sentenced to a fine of \$4 and costs for inflicting a "slight wound upon the person of his wife, Sara, with a bowie knife." Nancy Williamson, age 30, a Canadian, received a suspended sentence after pleading guilty to swimming naked in the Mississippi. French-born Julia Dupre, a widow, age 65, was charged with stealing two onions, some carrots, and a head of lettuce with a value of 72c from a stand in the town market. Unable to pay a fine of \$2 and costs, she went to jail for 30 days.

Patrick O'Connor, an Irishman, age 20, paid 50c plus costs of 15c when he was convicted of permitting his pigs—three red sows and one white boar—to root in the graveyard. Now and again the marshal felt compelled to add a comment such as, "th Dekin haint sotted sinc thurs." Poor Deacon!

Such tidbits, entered in arrest books, by themselves may signify little, but, in the aggregate, they paint a picture of primitive life and values that contributes greatly to the knowledge of historians and sociologists who wish to investigate roots of daily life of the so-called common man. Once this idea was made clear to city officials, their reaction was a mixture of pride and surprise. Not one refused permission to search or take notes. All were cooperative. Indeed, many took time from duties to find, unearth, and lug heavy ledgers. Some arranged for photostating and would not accept a penny in payment. Practially all, at one time or another, said "Let me know if you find anything interesting." Even the clerk who had stored documents on shelves in the men's toilet said, "If I'd knowed what was in them things, I'd sure put'em in another place."

Not all local records were poorly preserved or kept in disarray in an unsuitable environment. A few officials, realizing the worth of the material, stored it neatly on shelves in modern vaults and saw to it that only responsible persons used the files. Yet several custodians said bluntly that they wished their holdings could be removed to a State library or historical society, where proper temperature and humidity would preserve them properly. Unfortunately, few State institutions, although they might do so under the law, seem concerned with the collection and preservation of town and county records. They will accept such material if it comes to them, but they rarely look for it.

This apparent disinterest is understandable, for traditionally emphasis was placed upon the acquisition of political sources, personal papers and letters, reminiscences, diaries, newspapers, and, more recently, business and agricultural records. Little attention was given to legal sources. Indeed, few historians, librarians, and archivists recognize the significance of legal materials and, indeed, of legal history.

Yet the law, in one way or another, is the basis of most institutions—political, social, cultural, economic. Both civil and criminal law are an integral part of the story of the national development. And legal history, as written by an attorney turned scholar, is quite different from legal history as interpreted by an historian. Each is necessary and each is significant. Yet the former exists in more generous proportion than does the latter. Court records, deeds, wills, tax accounts, sheriff and police records—all these and many more deserve more consideration than historians and archivists have given them. It is unfortunately a truism that graduate students are seldom introduced to legal materials.¹

The successful search in Mississippi River communities for legal sources on the local level proved that such documents, when properly interpreted, reflect both social purpose and social organization. Old calfskin books and frayed warrants hold clues to more than an understanding of complicated legal rules for adjudicating quarrels and disputes. They underscore the often neglected fact that law is a “social product and an agency for social control, a regime for prescribing countless aspects of the relations of men in organized society and for adjusting their desires and claims with respect to each other and to things.”²

No adequate history of the small town, on any frontier at any time, can be relied upon as being comprehensive unless attention was paid to laws and legal institutions, for these underlie both individual and corporate conduct. It was not for nothing that selectmen in scores of communities resolved that the “Clerk of the board of Trustees, be required to procure suitable books of record.” Such documents, useful at the time of their recording, are equally important today. Yet, if a diligent attempt is not made soon to collect and preserve them, a basic and illuminating part of the past will, for future generations, be as bare and blank as were the books before hand and ink inscribed them.³

¹ Walter Rundell, Jr., *In Pursuit of American History: Research and Training in the United States*, p. 142–149 (Norman, 1970).

² David H. Flaherty, ed., *Essays in the History of Early American Law*, p. 125 (Chapel Hill, 1969).

³ Archivists and historians, unversed in the nature and use of legal sources, would find these titles useful: Ervin H. Pollack, *Fundamentals of Legal Research* (Brooklyn, 2d ed., 1962) and David W. Louissell, John Kaplan, and Jon R. Waltz, *Principles of Evidence and Proof* (Mineola, N.Y., 1968).