Horace Kent Tenney

By Henry F. Tenney, JD '15

[This is the third in a series of lectures on eminent lawyers which is being sponsored by the Law School. The first two lectures, "Stephen Strong Gregory," by Mr. Tappan Gregory, and "Silas Stratton," by Mr. John Slade, appeared in the two preceding issues of the Record.]

A friend once asked my father, Horace Kent Tenney, how he managed to do so many things at the same time, to which he replied, "Half the fun of practicing law is to see how many balls you can keep in the air at the same time."

This ability to carry on simultaneously many wholly unrelated matters was one of his outstanding characteristics—not only to carry them on but to do so with relish and with zest. After a heart attack in 1929, his family and friends tried to persuade him to slow down and give up some of his professional labors. To these entreaties, he answered, "I intend to go down with the harness still on," and that is just what he did.

In 1859 Portage, Wisconsin, was a small frontier village between the Fox and Wisconsin rivers at a point where these rivers are scarcely two miles apart. It is, therefore, a natural portage from Lake Michigan to the Mississippi River. It was the route traveled by Pierre Radisson and by Marquette and Jolliet. For years it was the site of an active trading post and of Fort Winnebago, which protected the white settlers from the Indians. The coureurs de bois, black-robed Jesuits, roving trappers, and traders of all kinds who passed that way left something of their adventurous spirit behind them—traces of which were still apparent in 1859.

In this small town of Portage, Horace Kent Tenney was born on September 11, 1859, ninety-seven years ago last fall. As a demonstration of the then primitive character of Portage, it is recorded that a large black bear walked unconcernedly down the main street on the day of H. K.'s birth. He (that is, H. K.—not the bear) always claimed that in some mysterious way the presence of that old she-bear officiating at his birth instilled in him a lifelong craving for the forests, lakes, and streams of Wisconsin.

He took naturally to the practice of law, as his father, Henry W. Tenney, and his uncle, Daniel K. Tenney, were both active practitioners when Wisconsin was still a territory. His father's office in Portage was over the town's one bank on Main Street. There he attended to the legal wants of such clients as were available in that small community.

His family moved to Madison when, judged by its present size, it was still a small town. Covered wagons lumbering westward, wandering remnants of vanished Indian tribes, soldiers, en route to the Civil War battlefields, and restless travelers of all kinds were familiar sights on its muddy streets. It was, of course, the state capital and the seat of the state university, which gave it a distinctive flavor, a charm, and an atmosphere all its own.

The families that settled there were drawn together in a closely knit group so that, no matter how far they might wander from the home town, they were always proud of their Wisconsin heritage and looked upon all Madisonians as kinsfolk. H. K. once said, "Wherever we live we may also boast that we are Badgers still, and wherever we live we may also boast that we are Badgers who lived in the boyhood of their state."

As late as 1870 the largest part of Wisconsin was covered with forests, and Chicago, as the largest city in the vicinity, exercised a powerful magnetic pull on the surrounding area. It drew to this spot trade, industry, commerce, and people in ever-increasing numbers. Its magnetic field was sufficiently wide to include Madison and to induce H. K.'s family to leave their native heath and come here. From that time until his death in 1932, he lived in Chicago, most of the time within a few blocks of this campus.

He entered the old University of Chicago, then located at Thirty-fifth Street and Cottage Grove Avenue. As I understand it, and in this I could be wrong, it was a sort of a high school, not a university in the sense that it is today. It had a rather checkered financial career, finally closing its doors in 1886. It was, nevertheless, one of the schools from which our battleheaded towers have sprung.

At this school he had as two of his classmates his lifelong friends, Edgar B. Tolman and Cyrus Bentley. Both were to become distinguished members of the Chicago bar, the

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latter being the father of my present partner, Richard Bentley.

After two years at the University of Chicago, he entered his father's alma mater, the University of Vermont. Later he returned to the University of Wisconsin Law School, where he was graduated in 1881 with the degree of Bachelor of Laws. In later life he was awarded honorary degrees from the University of Vermont and Knox College and was elected an honorary member of Phi Beta Kappa. Such was his academic background.

He started practicing in Chicago as clerk in Stephen S. Gregory's office, and later he joined his father and his uncle in the firm of Tenney, Bashford & Tenney.

I do not know what changes have occurred in law-school teaching since 1881. I rather imagine many of the modern techniques were unheard of and, if they had been attempted, would have met with considerable protest. However that may be, one of our teaching devices was then used—that of the moot court. I have in my possession the calendar of cases in the Wisconsin moot court for the year 1881.

Case No. 1 is that of Kelly v. Doolittle. Tenney was for the plaintiff, and Harding for the defendant. These student counselors later became partners. Mr. Harding's son and grandson graduated from this Law School and became my partners. Other counsel who appeared in this moot-court calendar were Robert M. La Follette (later the governor and senator from Wisconsin) and two others who served as attorney-general of the state.

D. K. Tenney, H. K.'s uncle, came to Chicago at about the same time as H. K.'s family. I mentioned his uncle because I am sure H. K. learned something about litigation from him. He was a legendary figure at the bar, both here and in Madison. A two-fisted, rough-and-tumble lawyer, always a man of action, it was said of him that he started his lawsuits by issuing an execution. He acquired this reputation from the following incident. When he was practicing in Madison, he saw a farmer known as "Old Joe," against whom he had a claim, hitch his wagon loaded with cordwood to the rail which ran around the Capitol square. D. K. rushed over to the courthouse and into the clerk's office shouting, "Give me an execution quicker 'n Hell can scour a feather!"

"But, Mr. Tenney," asked the startled clerk, "have you got a judgment?"

"No!" said D. K. "I haven't time to get a judgment. Old Joe'll be gone if I waste time getting a judgment."

I have a printed form dated 1879 which D. K. used in forwarding claims to lawyers in other cities. Among the instructions on the form were the following:

The race is to the swift. Act promptly. Take all chances, but do not get caught by holding too long a dangerous position. Make things happen lively. Compromise when necessary.

In my book this is pretty good advice in more situations than that of collecting bills.

From his active uncle, H. K. acquired the habit of constantly moving forward in litigation—never letting the case drag or get cold. This is not always easy to do, but it is essential to the successful conduct of litigation.

He was frequently retained by other counsel in their tough cases—cases which often had been lost in the lower court. He became what might be called a "lawyer's lawyer." If he had practiced in England, he would have been a barrister.

Since the 1880's a great change has taken place in the character of litigation. Back in those days every lawyer was supposed to try cases, and, for better or for worse, most of them did. There were no such things as "office lawyers" or "library lawyers" or what the English called "solicitors."

Legal reputation was built largely on courtroom skill. In those times, when people thought of the great lawyers, it was of those who had been successful in court.

Today, business disputes which formerly wound up in the courts are settled by arbitration or otherwise. Businessmen have found that the delays and uncertainties of court procedure are so serious as to make judicial machinery a poor vehicle for deciding most business disputes.

The result is that the vast majority of cases now pending involve personal injury. These are handled by a small number of plaintiffs' lawyers and lawyers who specialize in that field. With the advent of discovery depositions and pretrial conferences, about 80 per cent of these are settled, with the result that a young man today who wishes to become a trial lawyer has difficulty in finding enough cases to try.

H. K., however, never lacked cases to try. He was, from
the start, engaged in the controversial, litigious branch of
the practice. This is remarkable when one considers what a
gentle person he was, one who scarcely ever raised his voice,
even in the most heated legal arguments. He was the antith-
esis of what many people visualize a successful trial lawyer
to be. From 1881 to the time of his death in November,
1932, he was constantly engaged in trying cases of the most
difficult character in all the state and federal courts. Cath-
erine Drinker Bowen's description of Lord Coke might be
well applied to H. K. "Coke," she said, "was above all a
fighter, a born advocate who loved to feel the courtroom
floor beneath his feet.

In my office are more than one hundred bound volumes
of his written briefs. These are just the cases which reached
the upper courts. There are, in addition, hundreds from
which no appeal was taken. The cases cover an unbelievable
variety of subjects, no two of which are the same. Each one
required special preparation on both law and facts. He did
not specialize in any one field.

Just as people are judged by the company they keep, so
perhaps a lawyer is best judged by the character of his cases.
So I think I will tell you about some of these.

**STRIKE CASES**

Back in the pre-Taft-Hartley days, at a time when there
was no legislation on the subject of labor relationships, com-
mon-law principles governed the rights of the parties. A
lawyer representing parties involved in a labor dispute was
forced to rely on a meager supply of court decisions and to
reason pretty much by analogy. There were no so-called
cow cases. Each case was largely one of first impression.

H. K. was heavily involved in two of the earliest strike
cases to reach our Supreme Court. These were O'Brien v.
People (216 Ill. 534) and Franklin Union v. People (220 Ill.
355).

The facts in the O'Brien case were briefly these. In May,
1903, Franklin Union No. 4 presented a closed-shop con-
tact to Kellogg Switchboard & Supply Company, stating
that, if the company did not sign, the plant would be struck.
The company refused to sign, and a bitter, violent strike
ensued. The company secured an injunction restraining the
union from obstructing the company's business and pre-
venting workers from entering and leaving the plant. The
injunction was violated on numerous occasions, resulting in
convictions for contempt. The union appealed to the appell-
ate court and later to the Illinois Supreme Court, where the
injunction and conviction were sustained.

The Illinois Supreme Court held, among other things,
that it was unlawful for a union to coerce the company into
signing an agreement by threats of strike and to prevent
other workers from exercising their right to work. The
court recognized the significance of the case when it said,
"The importance and far-reaching consequences of the case
are fully appreciated."

While the Kellogg strike was in progress, the plants of
R. R. Donnelley & Sons, W. F. Hall, A. R. Barnes, and
other printers, all of whom were members of the Chicago
Typothetae, were struck by Franklin Union No. 4. Vio-
ence and disorder again ensued. Chicago Typothetae ob-
tained an injunction somewhat similar to that in the O'Brien
case, which was also sustained by the appellate and supreme
courts.

These cases made new law in Illinois. They have been
cited countless times and frequently commented upon in
law-review articles. James A. Wilkerson, who later became
a federal judge, was H. K.'s partner at that time and was
associated with him in these cases. Clarence Darrow and
Edgar Lee Masters represented the union.

**ECONOMY POWER COMPANY**

Another case involving public interest was that of People
v. Economy Power Company (211 Ill. 290; 234 U.S. 498).
H. K. represented the state of Illinois in the Supreme Court
of the United States. I will not attempt to state all the legal
and factual questions involved in this prolonged litigation.
Suffice it to say that it was an action brought by the attor-
ey-general of Illinois to enjoin the Economy Power Com-
pany from building a dam across the Des Plaines River.
One of the most interesting of the claims was that the Des
Plaines River was once navigable and hence could not be
obstructed.

The Illinois Supreme Court, in a seventy-five page opin-
on held against the state on all points. The case was taken to
the United States Supreme Court, which affirmed the hold-
ing of the state court. The interesting question in the case
concerned the navigability of the Des Plaines River. A
thousand printed pages of testimony were taken on this
point alone. Excerpts from the journals of Marquette, Jol-
lie, Schoolcraft, and others were cited extensively in the
briefs to show that the early explorers had navigated the
river. Anyone interested in the history of this region will
find the record in this case a gold mine of information.

**TEXAS RANCH**

Another situation which generated years of litigation
was the following. In 1882 the state of Texas made a con-
tact with John V. and C. B. Farwell of Chicago and others
for the construction of the state capitol at Austin, to be paid
for by the transfer of three million acres of land in the Pan-
handle of Texas.

No part of the country is now as remote as was the north-
west part of the Panhandle in the seventies and early eight-
ies. The only means of transportation was by saddle horse
and team over rough ways whose course was fixed by the
possibility of water. It had to some extent supported, and
was then still supporting, buffalo and wild horses. But
would it support cattle through the varying seasons and
varying hazards of successive years so as to make cattle-
raising a commercial success? Could the land be made more
productive for agricultural purposes and, if so, to what
extent and by what means?

These were some of the questions confronting those who
ventured their capital in this vast undertaking. Any rewards would be for some future generation, not for those who conceived the enterprise.

In order to raise the necessary capital, the Capitol Freehold Land and Investment Company was organized in England. The Farwells and their associates (called the "syndicate") transferred the land to the corporation in exchange for its stock. Cash was provided by the sale of debentures. The syndicate managed this gigantic ranch under a contract with the company.

In addition to the Texas ranch, the syndicate owned a large ranch on the Yellowstone River in Montana. This was before the days of fences and large herds, and cattle were slowly driven from Texas a thousand miles across country to be fattened on the Montana ranch before going to market.

Out of this enterprise there came five separate pieces of litigation, each one of which was a major operation in itself.

1. In 1908 one of the original stockholders brought a suit in the Circuit Court of Cook County, alleging that all the contracts and original leases between the parties were fraudulent and void. An accounting was demanded between the syndicate and the company. H. K. represented the Farwell interests in this case. A demurrer to the bill was sustained in the lower court and on appeal by the appellate and supreme courts. The stockholders’ claim was finally defeated. The case dragged on for something like ten years. The briefs in the Illinois Supreme Court alone ran to nearly twelve hundred pages. The legal questions involved were enormously complicated and required extensive preparation both in this country and in England.

2. In 1916, on application by a stockholder, a Texas court appointed a receiver for the ranch without notice. H. K. hurried to Texas and took an immediate appeal from the order. This case required quick action if irreparable damage was to be avoided. The upper court promptly set aside the order appointing the receiver. In its opinion the court copied verbatim large parts of H. K.’s brief, saying, “This has been so orderly and well done, and in such clear, exact and concise language, that the writer finds it almost impossible to express the views of the court without infringing upon and copying therefrom. He thinks that no lawyer ought to complain of an Appellate judge for copying his brief as law in the court’s opinion if the decision is in his favor.”

3. When the lease between the Capitol Company and the syndicate expired in 1916, suit was started in the federal court to determine the rights of the parties. Numerous complicated questions of law and fact were involved. The original herd consisted of 120,000 head of Texas longhorn cold-blooded cattle. Over the years this was replaced by pure blooded stock of much greater value. Was the syndicate entitled to this increased value? That was one of the many questions involved. This accounting resulted in a judgment of nearly two million dollars in favor of the syndicate.

4. In 1917 the state of Texas started suit against the owners to reclaim part of the ranch on the ground of mistakes in the original survey. This resulted in a long trial involving the study of old surveys made some forty years previously. The court found mistakes had occurred and ordered the company to deed a considerable tract back to the state.

5. In the late 1920’s the trustees who then held title to the ranch found themselves on the defending end of a libel suit where damages of something like a million dollars was claimed. The basis of the suit was this:

The trustees, wanting to preserve the history of this remarkable enterprise, hired a professor at the University of Texas to write the story of the ranch. Just to make the book interesting, he included an account of several fights between cattle rustlers and the local vigilantes.

All this occurred back in 1900 in New Mexico at a time when it was still an unorganized range—where large herds roamed the plains almost at will. It turned out that some of the persons who were named as rustlers were still living in a small Texas town. They promptly brought suit for libel.

There was only one defense—the truth of the statements made.

To prove this defense required a year’s search for witnesses all over the Southwest and even into Old Mexico. The trial lasted about six weeks. More than a hundred witnesses testified, and the evidence read like a wild-west thriller, which in fact it was. Naturally, it attracted wide attention throughout the Southwest. What did the jury do? Of course, it found the defendants not guilty. Otherwise, I would not be telling you about the case.

TRACTION SITUATION

The attempt of the city of Chicago to solve its mass-transportation problem generated more protracted, complicated litigation than anything else in the city’s history. Essentially, the story is one of many consolidations of competing companies into a constantly decreasing number of corporate ownerships until there finally emerged the CTA, a public body owning and operating all local transportation. Without doubt, that result has been in the public interest, but forty years of bitterly fought litigation, in both the lower and the upper courts, was necessary to bring it about. Starting with the 1906 reorganization and until his death in 1932, H. K. was almost without interruption engaged in one phase or another of this litigation.

The rights of various groups of bondholders were complicated and highly controversial. They could be settled only by court decisions—generally decisions of the upper court. The last receivership lasted from 1927 to 1945, in which proceeding H. K. represented the Harris Trust and Savings Bank, foreclosing trustee of the first-mortgage bonds of the Chicago Railways Company. No step was taken in this whole case without vigorous opposition from some quarter. The ramifications, legal, factual, and political, of this litigation were without parallel in our legal history.
Various phases of the litigation reached the court of appeals something like twenty times, and several unsuccessful petitions for *certiorari* to the Illinois Supreme Court were filed. I will briefly tell you about one phase of this litigation which has some special interest.

In 1905 Judge Grosscup entered a decree which attempted to remake a lease between some of the traction companies in disregard of the right of various security holders and of the city. It was based on the supposed business advantage of the new arrangement, not on its legality. All parties were enjoined from commencing any action which would interfere with the execution of the court’s decree. H. K. and Henry Russell Platt, in spite of this, promptly filed a *quo warranto* proceeding in the state court, attacking the right of corporate officers to execute the new lease. This created a tense situation. It required courage on the part of the lawyers and confidence in their judgment that the court’s decree was entirely void. Their clients’ interests, however, would have been permanently and adversely affected if they had not made the move.

The point involved is made clear by the following colloquy between the court and counsel:

“If I understand your Honor’s position correctly, you propose to substitute the *desirability* of the ends for the *legality* of the means by which you are going to attain these ends,” said Attorney Platt.

“We must handle this matter practically,” said Judge Grosscup. “The *law* ought to follow the *business judgment*, and you cannot expect the *business* to adapt itself to the *law*.”

In H. K.’s brief in the upper court this statement appears: “The politicians may *debate* whether urgency of occasion *may* not justify the disregard of a *right*, but in the Court of *Justice* the question is not even to be mentioned.”

The court of appeals reversed Judge Grosscup on all counts.

This case illustrates the difficulty lawyers are faced with where they are certain the court’s ruling is wrong and where some immediate action is necessary without waiting for an appeal.

**ZONING CASES**

In 1923 two cases reached the Illinois Supreme Court involving the validity of zoning in Illinois. These were *City of Aurora v. Burns* (319 Ill. 84) and *Deynzer v. City of Evanston* (319 Ill. 220). By act of the legislature, cities and villages were given power to adopt a comprehensive zoning ordinance. At that time the idea of zoning was new, and its legal validity had been under attack in numerous cases. The whole future of city planning was at stake.

The Burns case involved an ordinance of the city of Aurora which zoned certain territory for residential purposes and excluded business. The city brought suit to prevent the erection of a grocery store in a residential district. H. K. was not counsel of record when the case was first argued in the Illinois’ Supreme Court, which in its original decision held the law unconstitutional.

He was retained to file a petition for a rehearing, which petition was granted. The court reversed its original decision and sustained the validity of the city’s ordinance in both cases. The decision in the Deynzer case followed the holding in the Aurora case. The fact that the court had first decided against the validity indicates that the questions were not free from doubt.

If these cases had been lost, the consequences would have been extremely serious for the whole state. They were hailed as a great victory for the future of city planning.

**FORD V. THE “TRIBUNE”**

On June 23, 1916, the *Chicago Tribune* published an editorial criticizing Henry Ford’s attitude toward his employees who were called into the service of the National Guard.

Mr. Tenney’s lecture was delivered in Breasted Hall of the Oriental Institute. Just before the lecture Mr. Tenney (center) received a quick tour of the Institute from Glen A. Lloyd, JD ’23 (right), Chairman of the Board of Trustees of the University, and Professor Francis Allen, who introduced Mr. Tenney.

Shortly after the publication of the editorial, Ford sued the *Tribune* for libel, claiming a million dollars’ damages. Naturally, the case attracted widespread attention, because of both the personalities involved and the size of the damages claimed. H. K. was associated in the defense of the *Tribune* with Weymouth Kirkland and my classmate, Howard Ellis.

At that time there was a heated controversy going on in the public press over the question of preparedness, on which the *Tribune* had taken a very strong stand. The country was on the brink of World War I, and disturbances along the Mexican border had become so serious that President Wilson mobilized the National Guard for service on the border to repel threatened invasion. It was against this background that the editorial was published.
The theory of plaintiff's case was that the editorial was libelous per se and that evidence of the condition along the border and of the international situation was inadmissible. The defense contended that the publisher was only bound to justify the words in the sense in which the jury should determine that they were used and would naturally be understood.

One of the most interesting branches of the evidence was that which was given by the witnesses from the Mexican border who told of the troubles in that part of the country. It showed such a disregard and open violation of this country's rights that a condition of practical anarchy existed all along the border.

Witness after witness told of raids from one to fifty miles within our border; of attacks upon towns, even when theoretically guarded by regular army; of farms along the whole countryside devastated; of people collected for mutual protection in villages; of women whose husbands and sons were killed in their presence; of citizens carried as captives into Mexico and there condemned to death; and of settlers actually fighting singly or in small bands to protect small squads of soldiers of the regular army from attacks by Mexicans. There was the open acknowledgment by the army officers, and finally by the President himself, that the government had not sufficient force to preserve order, enforce the law, or protect the lives and property of its citizens. This was the character and scope of the defendant's evidence. It required fourteen weeks to try this case, at the end of which the jury awarded the plaintiff six cents' damages.

H. K. wrote an article on the case, entitled "Why It Took Fourteen Weeks To Try a Six-Cent Law Suit." He concluded the article by saying that those who look upon the trial of a lawsuit as partisans do not have their views changed by the technical result.

Perhaps their feelings are accurately described by the concluding stanza of an old Scottish poem on the Battle of Sheriff Muir. The shepherd who tells the tale of the fight recounts the varying fortunes of the two sides and winds up with this general description:

And we ran and they ran,
And they ran and we ran,
And we ran and they ran awa' man.
And some say that we won,
And some say that they won,
And some say that none won at a', man.
But of one thing I'm sure, man,
That at Sheriff Muir a battle there was
Which I saw, man.

**Insub Cases**

Another case of some public interest was *Guaranty Trust Co. of New York v. Fentress* (61 Fed. 2d 329). When the so-called Insull empire collapsed in 1930, receivers were appointed for the Insull Utility Investments, Inc., and Corporation Securities Company. These were holding companies owning stock in other Insull companies, which stock was pledged to secure loans from the Guaranty Trust Company, the General Hanover Bank & Trust Company, and the Chase National Bank of New York. H. K. represented the banks in this litigation. A temporary restraining order was entered in the receivership proceedings enjoining the sale of this collateral by the banks. In the course of the oral argument before the court of appeals, H. K. made a statement which was widely quoted in the press. He responded to the argument that the collateral should not be sold until the return of normal times by saying: "I am not so much concerned with the return to 'Normal Times' as I am with the thought that these may be 'Normal Times.'" The court of appeals dissolved the injunctions, holding the pledgors had neither possession of the stock nor the right to possession and that the rights of the receivers were no greater than the pledgors. This was to be his last court appearance. Ten days after the case was decided, he died. Died as he had often told me he wanted to—still in active practice.

Now, let us turn to another phase of his activities. H. K. never subscribed to the adage that "the law is a jealous mistress." Just who invented that euphemism is shrouded in the mists of antiquity, but certain it is that most of the great lawyers of history never followed it. They cultivated many other fields than those which nurtured legal flowers. In fact, I suspect it was the labor in those fields which enabled them to carry their heavy legal burdens. At least in H. K.'s case, I am certain that he could not have absorbed such an exhausting schedule except for the relief he found in his extra-legal activities—activities which were extensive, varied, absorbing, and in the monetary sense entirely unproductive. I have known him, after a grueling day in court, to go to a

sporting goods store and buy a sleeping bag, a flyrod, an ax, a tent, or some other out-of-doors equipment, thus refreshing his tired mind.

He made many trips into the woods and mountains, hunting and fishing. Edgar A. Bancroft was his frequent companion. Mr. Bancroft was one of the leaders of the bar, and was general counsel for the International Harvester Company, the United States Gypsum Company, and many others. He also was one for whom the law was not a "jealous mistress." He and H. K. for years had a standing date for the opening of the Michigan deer season on November 10. Between the two of them, they induced most of the judges to recognize the event as grounds for the continuance of any court engagement. In addition to deer hunting, they also made two trips to British Columbia for big game. When Mr. Bancroft was appointed United States ambassador to Japan by President Coolidge, he made arrangements through the Japanese government for a big-game hunt in Indochina. H. K. was just on the point of leaving for Tokyo when Mr. Bancroft died.

Let me read you H. K.'s description of how he and Mr. Bancroft, or the "Counselor," as he called him, killed a grizzly bear:

In a moment we saw him [the guide] hurrying back, frantically tugging at one of the horses to get him out of sight from the hilltop above, and beckoning to us. We ran over the short snow patch which lay between us, and with great excitement he told us that the bear was coming down the hill just above us. We crawled up to the rocky edge above the baiit and stretched out where we could look through the leafy screen of the spruces. By the drawing of lots it had been determined that I was to have the first shot. I looked carefully and very eagerly over the hillside before us, and at first could see nothing but landscape. Then, all of a sudden, I saw him. The sun had come out—for the first time in a week—and in a flood of sunshine he was marching with solemn dignity down a lane between two spruce hedges straight toward us. The sunlight was rippling on his tawny back and shoulders, and his great head swinging from side to side as he lurched toward a little streamlet that trickled through the heather at the foot of the hill. It was certainly a thrilling sight, and he was doing his full part in the performance. When he reached the end of the lane and was out of the cover of the spruces, I cut loose, and, as we soon learned, shot him through the heart. He whirled around and bit at the wound and received another from the "Counselor." Then we each fired again, his head went down and it was all over. And that was our first and last Grizzly.

His skin lies on the floor before me as I write, and I can see again the hillside flooded with sunshine, the lane through the spruces, and the bear marching down to keep his appointment with Fate.

Basically, his education was classical. It included such Latin and Greek as was the fashion in those days. He was widely read in all classical literature and had great stimulation from reading. He had the bad habit of waking up around 4:00 A.M., at which time he would turn on the light and read. In these days when we are rapidly degenerating into a race of television morons, reading habits such as his have become extinct.

This thirst for literature started when he was still a boy in Madison. His father was a great reader and saw to it that H. K. was supplied with books. He once described the library in his early home in Madison as "a room filled with shelves to receive the books and was thus transformed into the snuggest, cosiest reading room that the heart of boyhood could desire. And it was there that James Fenimore Cooper opened up to me a long trail of woodland wandering, which happily has not yet ended."

In addition to reading, he had a gift for writing, and, for a busy lawyer, one far too busy to do so, produced a considerable volume of writings. This avocation carried him into many non-legal fields, especially those relating to hunting and fishing. A few of these titles will give you an idea of the scope of his interest: "In the Greenwood with Fenimore Cooper," "A Leaf from a Fly Book," "Red Letter Day with the Deer," "On Seeing Things in the Woods," "Forest Leaves of Old England," "Caribou, Gouts and Grizzlies," "An Unsalted Luncheon," "The Boyhood of Wisconsin," and "English as a Dead Language."

There are many more, some of which were printed in a volume entitled \textit{Vert and Venison}, and the \textit{Quick-as-Scat} book, which was a collection of children's stories concerning the adventures of two red squirrels called "Tail-in-Air" and "Quick-as-Scat."

In 1924 he became a member of the editorial board of the \textit{American Bar Journal}, where some of his articles appeared. These were "The Trial of Mary, Queen of Scots," "Circumstantial Evidence in the Forest," and "A Case of Lex

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\caption{At the reception preceding the Tenney Lecture (left to right) Morris E. Feiwel, '15, President of The Law School Alumni Association, Howard Ellis, '15, and Carl S. Lloyd, '20.}
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Taliónis," which dealt with the trial of Chief Oshkosh for murder in the territorial days of Wisconsin.

Always he was out of patience with lawyers' language, with their excessive verbiage and their genius for concealing simple ideas under the impenetrable overburden of useless words. His article on "English as a Dead Language," and "Why This Reduplication of Redundant Reiteration?" attracted widespread attention. Let me quote briefly from the former:

I propose that, just as the allied hosts of Christendom in former years organized crusades to rescue from the defiling hands of the infidel the birthplace and tomb of the Son of Man, so now, in our time, the Bar Association organize a crusade to rescue our mother tongue from the hands of the lawyers. For among the lawyers, and only among the lawyers, English is a dead language.

When The Law School was organized in 1902, H. K. joined the faculty and for several years taught a course in practice. Thus he became acquainted with the great men who made up that original faculty. Beale, Hall, Mechem, Freund, Whittier, and all the others were his close friends. His Law School association was one of the pleasantest episodes in his life, because it gave him a chance to rub shoulders with these truly eminent legal scholars.

Long before the advent of the precision power tools of these modern times, H. K. possessed a well-equipped wood-working shop. Except for a mitre box, he had no mechanical aids. He worked with edged tools left in the unguided hand. The product of his shop was beautiful pieces of furniture, some of which are still in existence. He worked in metal as well as wood and gathered around his bench in our Kenwood Avenue home a group of friendly craftsmen from the University community calling themselves the "Merry Metal Workers."

He had a gift for seeing the comical aspects of many ordinary situations and of commenting on them in a humorous manner. As one of his friends said, "His delightful facility of finding so much humor in life made him always a delightful companion." He was sought after as a speaker on many occasions, not necessarily legal in nature and not because he was a great orator (which he certainly was not), but rather because he had the knack of putting into words what people were thinking. He was, in short, always quick with a pungent comment.

Once he was trying a hotly contested case in the circuit court. His opponent was one of the really learned lawyers of the Chicago bar. He had, however, a habit of making sarcastic remarks about his opponent. In the morning session of court he referred to H. K. as "That Old Maid!" and in the afternoon as "That Old Grandmother!"—at which point H. K. arose and said, "If your Honor please, I wish counsel would explain to the court just how I could be an old maid in the morning and a grandmother in the afternoon."

Howard Ellis recently told me that, once in the Ford case, the assembled lawyers were somewhat desperately trying to explain to the court what a prima facie case was. After everyone had a try at it, H. K. addressed the court, saying, "I have always understood that a prima facie case was one which was good from the front and bad behind." In speaking at a Bar Association dinner for judges, he said, "I am happy to see judges here from so many different courts—from courts of original error to those of ultimate conjecture."

During his long career H. K. made hundreds of oral arguments in countless courtrooms. He never wrote out or read an argument. Long experience convinced him that effectiveness was lost when an oral argument was confined in the strait jacket of the written word. Most of his effort was directed to stating the facts clearly, accurately, and so organized as to lead the judge to the desired conclusion.

His advice to his younger partners was this: "Get the facts before the court, and let the judge look up the law. The judge always knows something about the law, but he never knows anything about the facts until they are put before him."

He always took the greatest care with the statement of facts in a brief, generally writing it out in longhand. This practice resulted in eliminating all unnecessary words, in making every word count. So careful was he that, once the statement of facts was written, he rarely made any substantial changes. In commenting on the practice of a brother lawyer who paced up and down his office while dictating his briefs with gestures, he said: "The trouble with him is that he tries his cases to the stenographer, not to the court."

To the younger lawyers in the office he said, "Never make the judge read an unnecessary word; never use a long word where a short simple word will do; use short sentences! The first twenty pages of your brief are the most important ones. Try to get the judge going your way by the time he reaches that point."

"Talk about your own case—not your opponent's."

"It pays to rake the dust heaps for evidence."

"Never go into court with your flag at half-mast."

His manner toward the court was always deferential, no matter what his personal opinion might be of the judge's ability. He might heatedly dispute with opposing counsel but never with the court. He could withstand adverse questioning from the bench without losing his poise or making damaging concessions. Adverse judicial questioning is one of the most nerve-racking ordeals a trial lawyer must withstand.

No invisible curtain hung across his door. Everyone was free to consult him at any time and did so without restraint. Once the fifteen-year-old office boy chanced to see a bill which was about to be mailed. He took it into H. K., saying: "Mr. Tenney, you can't charge as little as this. Look what you did in this case!"

"What do you think it should be?" H. K. asked.

"Why, twice as much," he said.

"All right," said H. K.; "change it and send it out."
That the boy's judgment was better than H. K.'s own was borne out by the fact that a check arrived by return mail with a note of appreciation for the modest charge.

If there is one word which describes H. K.'s life, I should say it was "versatility." His interest ranged over a vast area, covering a great many unrelated subjects. In each of these fields he had a genuine and excited interest—literature of all kinds and all ages; law and its historical development; writing, on legal and non-legal topics; nature study, which took him out of doors; fishing and hunting, in which his main concern was not a full game bag, but enjoying the smells, the sights, the sounds, and the feel of the woods, mountains, and plains. He was an expert craftsman, and, above all, one who enjoyed the company of simple unsophisticated people, one who could with unerring instinct detect the false ring in any spurious human specimen.

One thing to be learned from a life such as his is that the excitement and the interest and usefulness of your life are in direct proportion to the variety of the highways and byways down which your inclination leads you.

Howard Vincent O'Brien in his Daily News column, "All Things Considered," had this to say of him:

A gentle man, he always suggested a blade of Damascus, fragile to the eye, but tempered and tough. It was oddly fitting that one of his many interests was the history of armor.

Others may recall him in court, the successful pleader of great causes. With us, the picture that will linger is set against the green of his beloved northern Wisconsin—the great lawyer, with the sweet-smelling pine curling off under his plane, listening to the talk of small children. His was a soul that never aged.

A collection of materials by and about Horace Kent Tenney. These materials, which include trial records, appellate briefs, books by Mr. Tenney, and early Law School correspondence regarding his appointment to the Law Faculty, were exhibited in The Law School in connection with the lecture by Henry F. Tenney, which is printed elsewhere in this issue.
At the dinner preceding the Tenney Lecture (left to right) Howard Elliot, '15, Henry F. Tenney, '15, and Tappan Gregory, editor of the ABA Journal and member of The Law School Visiting Committee.